some leading Athens dailies, and they quickly ended their critical practices. The new law will make these practices punishable by prison terms and fines.

While the new code tries to discourage irresponsibility of the press, which had been rampant before the coup, the penalties it imposes on a broad range of topics is likely to inhibit journalists.

It is widely believed here that the Government will soon announce the reactivation of Article 14 of the Constitution, safeguarding press freedom, to prove its intention to restore constitutional rule.

But the enactment of the press code heavily qualifies that freedom down to such minute detail that Greek journalists feel that in effect, they will be forced to consult their lawyers whenever they plan to write the latest sports roundup.

PESTICIDES ARE KILLING OUR HONEY INDUSTRY

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 18, 1969

Mr. TEAGUE of Texas. Mr. Speaker, recently Secretary Finch publicly announced an HEW directive to terminate the use and sale of DDT over the next 2 years. In light of this decision and the reasons given for such action, I feel it is time for the House to take a careful look at H.R. 10749, legislation introduced by the gentlewoman from Washington (Mrs. MAY) to indemnify our Nation's beekeepers for losses sustained from the use of pesticides on adjacent farmlands. In a letter to Secretary Hardin outlining the problems now facing the honey industry, Mr. Roy Weaver, of Navasota, Tex., stated 500,000 of our 5 million bee colonies were destroyed or heavily damaged by pesticides in 1967. It is important for the membership to read and understand the significance of Mr. Weaver's letter, which follows:

NAVASOTA, TEX.,
September 18, 1969.

SECRETARY OF AGRICULTURE,
U.S. Department of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: I am Roy S. Weaver, Jr., a commercial beekeeper in Texas operating about 5500 colonies of honey bees in partnership with my father and one brother. I am chairman of the Legislative Committee of The American Beekeeping Federation, and chairman of the Government Relations Committee of the Honey Industry Council of America. Duriny my beekeeping career I have served as president of the American Beekeeping Federation, president of the American Bee Breeders Association, and president of the Texas Beekeepers Association.

The honeybee is of great value to agriculture as a pollinator, and is the only known pollinator which can be moved into an area in great numbers when desired. However, the beekeeping industry in the United States is in poor condition. For the last 22 years the number of colonies of honeybees in the U.S. has declined steadily at the rate of 1% per year. Many operators are finding it an unprofitable enterprise and are going out of business. If the abundant agricultural production of the United States is to continue, ways must be found to reverse the decline in the number of colonies of honeybees. There are two obvious sources for increased income to beekeepers. The first is through the sale of the traditional cash crop, honey, at profitable prices. The second is through the rental of honeybee colonies for the pollination of agricultural crops.

Briefly, I recommend that the United States Department of Agriculture aid the beekeepers in selling their honey at a profit, and aid beekeepers and farmers to a better understanding as to the value of honeybees as pollinators with the thought that eventually fees for pollination services will be on the main sources of income for beekeepers.

About 90 crops grown in the United States, valued at more than a billion dollars, are considered to be dependent upon insect pollination. In addition, other crops valued at about 4 billion dollars are benefited by insect pollination. The honeybee is the only insect which can be moved into the vicinity of these crops in large numbers to perform the pollination service at the time it is required.

The primary purpose of the beekeeper has generally been the production of honey as his cash crop. Little has been understood by beekeepers or farmers as to the value of honeybees as pollinators. Much of the pollination is done incidentally while the beekeeper is trying to produce a crop of honey. Communications between beekeepers and farmers has been poor. As a result most pollination fees are "starvation wages" for beekeepers.

It is imperative for agriculture that honey become a stronger competitor with other food commodities. Although there are about 200,000 beekeepers in the United States, only about 1,200 are full-time commercial operators with 400 or more colonies. However, they produce about one-third of the honey crop and provide most of the colonies used in commercial pollination. There are about 12,000 part-time beekeepers who own 25 to 400 colonies each and produce another third of the honey. The remaining 187,000 are hobbyists who own less than 25 colonies each.

These beekeepers encounter many problems. Some of these are: low prices of honey and low pollination fees in relation to the high cost of operation; decreasing bee pasture due to changing agricultural practices and urbanization; losses caused by bee diseases; and losses due to pesticides.

While the cost of operating a beekeeping enterprise has been spiralling upward the price of honey has remained almost static. Honey is not holding its own in the marketplace. Even though it is our only natural unrefined sweet, the per-capita consumption is slowly declining.

The price support program on honey has operated quite well in that it has prevented disastrously low prices and at the same time has provided honey for school lunches at a very low cost to the government. However, the support price has not been high enough to prevent a decline in the number of colonies of bees. I recommend that the support program be continued, and that the support rate be gradually raised until it approaches parity.

For a long time to come beekeepers will continue to produce honey as their cash crop. As a permanent solution to the problem of low honey prices we need to increase the per-capita consumption of honey. In order to do this the beekeepers of the United States have devised a self-help promotion and research program on honey which requires enabling legislation. This proposed legislation is now before the 91st Congress in H.R. 955, S 1851, and similar bills. I request that the USDA strongly recommend passage of this act and assist the beekeeping industry in implementing it as rapidly as possible.

If the price of honey rises due to increased supports or increased demand it is possible that low priced foreign honey will come into the country in large quantities. The import tariff on honey is only 1 cent per pound. H.R. 374 and similar bills before the 91st Congress would increase the tariff to 3 cents per pound and require the USDA to set quotas on honey to be imported. I am working for the passage of this bill.

If neither increased support prices or increased demand for honey caused by the promotion of this delicious and healthful sweet serve to reverse the decline in the numbers of honeybees available for pollination of our crops then direct subsidy payments to beekeepers may be become necessary. Our country must have enough honeybees to fill their vital role in our abundant agricultural production.

In 1967, an estimated 500,000 colonies of honeybees out of the 5 million in existence in this country were destroyed or heavily damaged by pesticides. Thousands more were damaged or destroyed by diseases. The total damage to the beekeeping industry by pesticides and disease is estimated to be $7.5 million annually, while the income from the production of honey and beeswax is less than $40 million. Changing agricultural practices and urbanization are destroying many wild plants which honeybees depend on for pollen and nectar for building strong colonies. Operating a beekeeping enterprise requires much expensive hand labor and complex management decisions.

The solutions to these and other problems can be found only through research, both on the scientific level and on the practical level by beekeepers and others who have the incentive to try to progress. The USDA can be of great help in this. I recommend a thorough study and implementation of "A National Program of Research for Bees and other Pollinating Insects and Insects Affecting Man" prepared by a joint task force of the U.S. Department of Agriculture and the State Universities and Land Grant Colleges. This is a good outline of some of the research that is sorely needed.

Respectfully submitted.

ROY S. WEAVER, JR.

SENATE—*Wednesday, November 19, 1969*

The Senate met in executive session at 10 o'clock a.m. and was called to order by the President pro tempore.

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

O Lord, Thou hast been our dwelling place in all generations. Before the mountains were brought forth, or ever Thou hadst formed the earth and the world, even from everlasting to everlasting Thou are God.—Psalm 90: 1 and 2.

O Lord, renew our knowledge of Thee and of Thy grace and providence. To those who mourn, give comfort; to those who are ill, send Thy healing grace; to the youthful voyagers in the vastness of Thy universe, give wisdom and courage; and to each of us here, give an awareness of Thy presence moment by moment, that as we live and work we may submit our lives to Thy higher judgment. In the name of Him who taught us to seek first the kingdom of God and His righteousness. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, November 18, 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, I ask unanimous consent that statements in relation to the transaction of routine morning business as in legislative session 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.

NOMINATIONS

Mr. MANSFIELD. Mr. President, in executive session I ask unanimous consent that the Senate proceed to the consideration of nominations on the Executive Calendar under "New Reports."

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

INTERSTATE COMMERCE COMMISSION

The bill clerk read the nomination of Robert Coleman Gresham, of Maryland, to be an Interstate Commerce Commissioner.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

FEDERAL TRADE COMMISSION

The bill clerk read the nomination of Caspar W. Weinberger, of California, to be a Federal Trade Commissioner.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may proceed for 4 or 5 minutes as in legislative session.

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

U.S. MILITARY BASES IN THE PHILIPPINES

Mr. MANSFIELD. Mr. President, the Subcommittee on U.S. Security Agreements has now made available the text of its initial hearings. This first release, a censored version of several sessions of executive hearings of Government witnesses, is focused on the military bases which are leased by the United States in the Republic of the Philippines.

The press of other Senate business prevented me from attending all but one of the sessions, and that very briefly. As a member of the subcommittee, however, I have seen the full transcript, both before and after certain deletions were made.

For the record, it should be noted, that the executive branch requested a delay in publication of these hearings until after the general elections in the Philippines. That was a request to which I could and did fully subscribe because it seemed to me a most reasonable and responsible course for the Senate committee in the circumstances. The proposed delay was for but a few days, and it afforded the advantage of avoiding even a remote suggestion of an intrusion in the Philippine election.

Beyond that request for a delay, however, I made no proposal myself nor endorsed any proposal for the deletion of any material in these hearings on the Philippines for any purpose whatsoever. That any deletions are necessary in Senate hearings is always regrettable even though, in this instance, those involving security were unavoidable. In any event, so far as I am aware, the decisions on deletions were made solely by representatives of the executive branch and of the Foreign Relations Committee.

It seems to me that the committee's hearings brought together a great deal of useful information. The immense cost of the bases to the people of the United States, for example, is highly relevant to the work of the Senate. So, too, is what appears to be a superfluity in these installations in terms of reasonable utility. It is useful, too, that there be a Senate awareness of the great dimensions of this base complex, because from its vastness stems distortions in the country of location and in our relations with that country. The committee's investigation into these aspects of the U.S. base problem and the diplomatic complications which they pose was necessary and appropriate.

Moreover, it is to be anticipated that we will be confronted in the near future with the problem of renegotiating the base agreements with the Philippines. The hearings have made a distinct contribution to the Senate's understanding of what will be entailed in that process.

In recognizing these values, however, it should also be noted that matters were touched on in the course of the hearings—in some cases there were references to deprecating innuendoes and sensational rumors involving Philippine Government leaders, citizens, and internal Philippine affairs. These are matters which, in my judgment, did not fall within our responsibility and, in any case, tend to detract from the main purpose of the investigation. The record of the hearings, however, suggests a somewhat unintended involvement on the part of the committee in these matters as they pertain to the Philippines. Any such suggestion seems to me to be unfortunate in this instance, especially because the Philippines is now the oldest continuing free democracy in Southeast Asia. Its special link with the United States can be, if the relationship evolves in the context of cooperation and respect, an element of great reciprocal advantage as well as a factor of general stability in the western Pacific.

Lest the relationship be damaged through inadvertence, I think it would be well to emphasize for purposes of balance and perspective that every nation, our own included, has problems of violence and crime as well as imperfections in its institutions. It would be well to bear in mind, too, that the Philippines ceased to be an American colony in 1946, and that, while the newly formed Republic, in the wake of the great devastation which it suffered in World War II, counted heavily on promised help from the United States and the carryover of certain prewar dependent relationships, the situation has changed markedly. A quarter of a century later, the Philippines has moved a long way—a very long way—from these vestiges of the past. A social, political, and economic momentum has been generated on the basis of an awakened Filipino nationalism which, in my judgment, is authentic, dynamic and constructive.

It would be well to bear in mind, finally, that the U.S. military bases remain on Philippine soil by our design and desire as well as by the request of the Philippine Government. The bases are for the use and convenience of the U.S. Armed Forces and for the security of this Nation as well as for the security of the Philippines. To the extent that they are no longer mutually required—and I stress "mutually required"—adjustments can be made in existing arrangements and, by all means, they should be made without delay. It would be most unfortunate, however, if these and other adjustments in the relationship should be brought about in an atmosphere between the two nations which is disturbed by irrelevant hangovers from the past and avoidable misunderstandings in the present.

ORDER OF BUSINESS

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. MANSFIELD. 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.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Chair lay before the Senate messages from the House of Representatives on S. 2000, H.R. 7066, and Senate Joint Resolution 26.

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

ESTABLISHMENT OF THE LYNDON B. JOHNSON NATIONAL HISTORIC SITE

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 2000) to establish the Lyndon B. Johnson National Historic Site, which was to strike out all after the enacting clause and insert:

That, in order to preserve in public ownership historically significant properties associated with the life of Lyndon B. Johnson, the Secretary of the Interior is authorized to acquire, by donation or by purchase with donated funds, such lands and interests in lands, together with the buildings and improvements thereon, at or in the vicinity of Johnson City, Texas, as are depicted on the drawing entitled "Lyndon B. Johnson National Historic Site Boundary Map", numbered NHS-LBJ-20,000 and dated September 1969, together with such lands as from time to time may be donated for addition to the site and such lands as he shall deem necessary to provide adequate public parking for visitors at a suitable location. The drawing shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. When acquired such site shall be known as the Lyndon B. Johnson National Historic Site.

SEC. 2. The Secretary shall administer the Lyndon B. Johnson National Historic Site in accordance with the Act approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and the Act approved August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.), as amended.

SEC. 3. There are hereby authorized to be appropriated not more than $180,000 to provide for the development of the Lyndon B. Johnson National Historic Site.

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

ESTABLISHMENT OF WILLIAM HOWARD TAFT NATIONAL HISTORIC SITE

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives 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, which was to amend section 1 of the act as amended by the Senate to read as follows:

That, in order to preserve in public ownership historically significant properties associated with the life of William Howard Taft, the Secretary of the Interior is authorized to acquire, by donation or purchase with donated funds, such land and interests in land, together with buildings and improvements thereon and including scenic easements, at or in the vicinity of Auburn Avenue, Cincinnati, Ohio, as are depicted on the drawing entitled "William Howard Taft National Historic Site Boundary Map," numbered TAHO-20009, and dated August 1969. The drawing shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. When acquired such site shall be known as the William Howard Taft National Historic Site.

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

DEVELOPMENT OF THE EISENHOWER NATIONAL HISTORIC SITE

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the joint resolution (S.J. Res. 26) to provide for the development of the Eisenhower National Historic Site at Gettysburg, Pa., and for other purposes, which were to strike out all after the resolving clause, and insert:

That there are hereby authorized to be appropriated not more than $1,081,000 for the development of the Eisenhower National Historic Site at Gettysburg, Pennsylvania, which may not be expended for the construction of major capital improvements as long as the special use permit issued to Mamie Doud Eisenhower by the National Park Service, United States Department of the Interior, on June 3, 1969, remains in effect.

SEC. 2. There are hereby excluded from the boundaries of Gettysburg National Military Park, and included within the boundaries of the Eisenhower National Historic Site, the lands and interests therein identified as "Additions to Eisenhower NHS" on the drawing entitled "Proposed Additions to Eisenhower National Historic Site", numbered EISE-20000 and dated June 1969, which is on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

And to strike out the preamble.

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

CREDIT LIFE OVERCHARGE REACHES $250 MILLION

Mr. PROXMIRE. Mr. President, the latest figures from Spectator magazine, an insurance industry trade publication, reveal that the credit life insurance industry overcharged the American consumer by $250 million in 1968 compared to a $225 million overcharge in 1967. Despite assurances given by industry spokesman that the States are beginning to protect consumers, the latest figures show just the opposite. The consumer is being socked even harder to the tune of one quarter of a billion dollars.

The overcharge on credit life insurance has been computed according to the formula developed by a former State insurance commissioner who first testified at congressional hearings in 1967. Each year the overcharge has steadily increased despite industry claims that the States are beginning to regulate the charges. Today, the overcharge is approaching scandalous proportions.

Credit life, health, and accident insurance is commonly sold by finance companies, auto dealers, banks, and other creditors in connection with a credit transaction. The insurance pays off the loan in the event the buyer dies or becomes disabled. The insurance thus protects the creditor as much as the buyer although the buyer usually is required to pay the full cost.

The person who buys credit life insurance is generally anxious to obtain credit and is in a poor position to bargain over the cost of credit insurance. Because of the captive market, many creditors charge all the traffic will bear and pocket the excess charge in the form of kickbacks from the insurance company. Creditor kickbacks sometimes run as high as 80 percent of the premium dollar according to evidence contained in Senate Banking Committee hearings.

Credit life insurance in force at the end of 1968 was $64 billion or about 70 percent of total consumer installment debt. Many finance companies who loan to hardpressed borrowers are able to "sell" credit life insurance on over 99 percent of their loans, thus illustrating the captive nature of the market.

I should hasten to add that not all insurance companies overcharge the public on credit life insurance. For example, in 1968, 10 reputable, well-established companies collected $205 million in premiums and paid out $156 million in benefits to the public, a loss ratio of 76 percent. However, the rest of the industry took in $646 million but paid out only $286 million, a loss ratio of 44 percent.

State insurance commissioners feel that credit life insurance companies should pay back at least 50 percent of their premiums to the public to avoid excessive charges. However, the vast bulk of the industry only pays back 44 percent. Moreover, the 44 percent payback figure for 1968 is identical to 1967. Benefits paid to the public have not increased despite industry claims that the situation is getting better.

The States have had 10 years to solve the problem and have failed. In 1961 the payback ratio for most companies was only 42 percent, practically unchanged from the current 44 percent. During this same period, the well established reputable companies consistently returned 75 percent of the premium dollar to the public, showing that it can be done.

Last April, I introduced legislation to authorize the Federal Reserve Board to establish maximum charges on credit life insurance. During the hearings in June, industry spokesmen urged delay on the grounds that State regulation was beginning to have an effect. However, the latest figures make it clear that this is just not so.

As a result, I intend to press for legislation curbing excessive charges on credit life insurance. Passage of the legislation can save the consumer $250 million a year. It is high time we put a stop to the credit life scandal and bring reform to the industry.

Mr. President, I ask unanimous consent to have printed in the RECORD two tables showing the losses paid on credit life insurance in 1968 and the computation of the amount of overcharge.

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

CREDIT LIFE, HEALTH, AND ACCIDENT INSURANCE EXPERIENCE, 1968

[Dollars in millions]

	Earned premiums	Incurred losses	Loss ratio (percent)
A. 10 "low charge" companies:			
Prudential	$108,225	$82,230	75.9
Credit Union Mutual	50,075	40,597	81.0
John Hancock	14,277	9,481	66.4
Metroplitan	7,986	6,279	78.6
Aetna	8,037	5,252	65.3
League Life	4,543	4,271	94.0
New York Life	3,273	2,371	72.4
Minnesota Mutual	3,805	2,575	67.6
Travelers	2,263	1,681	74.3
Equitable	2,164	1,610	74.3
Subtotal	204,648	156,347	76.4
B. 9 "high charge" companies:			
Old Republic	115,619	52,783	45.7
Credit Life Insurance Co	30,346	13,296	43.8
AmericanNational	25,697	11,760	45.7
Continental Assurance	20,673	10,036	48.5
American Health & Life	19,409	10,133	52.2
American Bankers Life	22,237	8,343	37.5
Connecticut General	17,653	9,098	51.4
Bankers National Life	15,329	8,369	54.5
Federal Life & Casualty	14,959	7,697	51.4
Subtotal	281,922	131,515	46.6
C. All other companies	363,888	154,262	42.3
D. Industry total excluding 10 "low charge" companies (B + C)	645,810	285,777	44.3

Computation of overcharge—Credit life, health, and accident insurance, 1968

Premiums collected by the industry	$935,000,000
Less legitimate expenses:	
Actual benefits paid to the public	486,000,000
Actual insurance company administrative cost	78,000,000
Allowance for creditor administrative cost (10% of net premiums)	66,000,000
Allowance for insurance company profit (3% of premiums)	28,000,000
Allowance for creditor profit (3% of premiums)	28,000,000
Total legitimate expenses and profit	686,000,000
Overcharge	249,000,000

SOURCE: Spectator Magazine, October 1969. Premiums are on an earned basis. All figures increased by 10% to cover all companies not included on the Spectator survey.

THE DANGER OF DISREGARD

Mr. PROXMIRE. Mr. President, the United Nations General Assembly should be highly commended for the service it performed when, on December 10, 1948, it spelled out for all the world to see the basic principles of human rights. These principles should be examined closely by all nations as a standard to see how each individual nation measures up to these most fundamental rights of free men. This, of course, was the purpose of the President's Commission for the Observance of Human Rights Year. Even in this Nation that has the grandest tradition for liberty and respect for human rights, former President Johnson felt it necessary to ascertain the status of human rights in the United States. The Universal Declaration of Human Rights is the yardstick for this measurement.

Perhaps the most pressing need for this appraisal, not only for this Nation but for all nations, was expressed in the preamble of the Universal Declaration in the following manner:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

In response to this section of the preamble, the President's Commission wrote:

Secondly, the Preamble notes that "disregard and contempt for human rights have resulted in barbarous acts." These words reflect the vivid memory of tyranny, oppression, and murder of millions of innocent persons in World War II, and the clause goes on to reaffirm President Roosevelt's Four Freedoms.

Clearly, then, this paragraph in the preamble lies within our American tradition of human rights. But, just as clearly, it points out an aspect of our approach to human rights that is not, and should not, be a part of our tradition. This aspect that we should not be alined with is disregard.

As the preamble expressed in its first sentence of the above paragraph, "disregard and contempt for human rights have resulted in barbarous acts." This Nation has never had contempt for human rights, but its refusal to ratify the Human Rights Conventions on Political Rights for Women, on Forced Labor, and on Genocide come dangerously close to what I would call "the danger of disregard." All nations, particularly this one, should attempt to avoid what would appear to be disregard for human rights.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. 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. WILLIAMS of Delaware. 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.

(Unless otherwise indicated the following proceedings, up to the conclusion of morning business, were held as in legislative session.)

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON AID TO VIETNAM

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a confidential report on aid to Vietnam; to the Committee on Appropriations.

REPORT OF PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

A letter from the Executive Secretary, Public Service Commission of the District of Columbia, transmitting, pursuant to law, the 56th annual report of the Commission for the calendar year 1968 (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the omission of significant costs from charges to the Federal Republic of Germany for pilot training, Department of Defense, dated November 19, 1969 (with an accompanying report); to the Committee on Government Operations.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference classifications for certain aliens (with accompanying papers); to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

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

By the PRESIDENT pro tempore:

A resolution adopted by the Board of Supervisors of Sullivan County, N.Y., expressing support of the President of the United States in the endeavor to bring the Vietnam war to an end; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, without amendment:

H.R. 13949. An act to provide certain equipment for use in the offices of Members, officers, and committees of the House of Representatives, and for other purposes (Rept. No. 91-545);

H.R. 14195. An act to revise the law governing contests of elections of Members of the House of Representatives, and for other purposes (Rept. No. 91-546);

S. Res. 272. Resolution authorizing additional expenditures by the Committee on the

Judiciary, Subcommittee on Internal Security (Rept. No. 91-540);

S. Res. 281. Resolution authorizing the printing of additional copies of the Senate report on H.R. 13270, the Tax Reform Act of 1969 (Rept. No. 91-541);

S. Res. 284. Resolution authorizing additional expenditures by the Committee on Commerce (Rept. No. 91-542);

S. Con. Res. 44. Concurrent resolution to authorize printing of manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings," as a Senate document (Rept. No. 91-543); and

S. Con. Res. 46. Concurrent resolution authorizing the printing of a report entitled "Handbook for Small Business," as a Senate document (Rept. No. 91-544).

By Mr. TYDINGS, from the Committee on the District of Columbia, without amendment:

S. 1421. A bill to amend the District of Columbia Legal Aid Act (Rept. No. 91-547); and

S. 2602. A bill, the District of Columbia Public Defender Act of 1969 (Rept. No. 91-548).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. MAGNUSON. Mr. President, from the Committee on Commerce, I report favorably sundry nominations in the Coast Guard which has previously appeared in the CONGRESSIONAL RECORD and ask unanimous consent, to save the expense of printing them on the Executive Calendar, that they be placed on the Secretary's desk for the information of any Senator.

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

The nominations, ordered to lie on the desk, are as follows:

Walter E. Mason, Jr., and sundry other officers, for promotion in the Coast Guard; and

Jack K. Stice, Reserve officer, to be a permanent commissioned officer in the Coast Guard.

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. NELSON:

S. 3151. A bill to authorize the U.S. Commissioner of Education to establish educational programs to encourage understanding of policies and support of activities designed to enhance environmental quality and maintain ecological balance; to the Committee on Labor and Public Welfare.

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

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 3152. A bill to amend section 1482 of title 10 of the United States Code to provide for the payment of certain expenses incident to the death of members of the Armed Forces in which no remains are recovered; to the Committee on Armed Services.

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

By Mr. FONG (for himself, Mr. JACKSON, and Mr. INOUYE):

S. 3153. A bill to authorize the Secretaries of Interior and the Smithsonian Institution to expend certain sums, in cooperation with the territory of Guam, the territory of American Samoa, the Trust Territory of the Pacific Islands, other U.S. territories in the Pacific Ocean, and the State of Hawaii, for the conservation of their protective and productive coral reefs; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. JACKSON relating to cosponsorship of the bill appear later in the RECORD under the appropriate heading.)

By Mr. WILLIAMS of New Jersey (for himself, Mr. TOWER, Mr. SPARKMAN, Mr. BENNETT, Mr. MUSKIE, Mr. BROOKE, Mr. MCINTYRE, Mr. PERCY, Mr. MONDALE, Mr. GOODELL, Mr. HOLLINGS, Mr. PACKWOOD, Mr. RANDOLPH, Mr. TYDINGS, and Mr. HUGHES):

S. 3154. A bill to provide long-term financing for expanded urban public transportation programs, and for other purposes; to the Committee on Banking and Currency.

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

By Mr. BURDICK (for himself, and Mr. GRAVEL) (by request):

S. 3155. A bill to amend the Organic Act of Guam to clarify the application of tax on transfer of funds to a U.S. corporation from a Guam subsidiary; to the Committee on Interior and Insular Affairs.

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

By Mr. GURNEY (for himself, Mr. HOLLAND, Mr. RUSSELL, and Mr. TALMADGE):

S.J. Res. 165. A joint resolution granting the consent of the Congress to an agreement between the State of Florida and the State of Georgia establishing a boundary between such States; to the Committee on the Judiciary.

S. 3151—INTRODUCTION OF ENVIRONMENTAL QUALITY EDUCATION ACT

Mr. NELSON. Mr. President, I am introducing the Environmental Quality Education Act which is designed to give the Office of Education a high priority and a firm mandate to support bold and imaginative programs in this area. There is a dire need to improve the understanding by Americans of the ominous deterioration of the Nation's environment and the increasing threat of irreversible ecological catastrophe. We must all become stewards for the preservation of life on our resource deficient planet. Moonscape scenes must remain on the moon, but may be duplicated on earth if our air, water, and soil resources are continually used with short-term objectives mainly in mind.

We can no longer afford the luxury, which is an implicit assumption of our technical and industrial sector, of managing our resources with the view that "progress" over "prudence" and "waste" over "wisdom" should prevail. We are no longer in a survival of the fittest struggle with nature, but must, instead, learn the act of coexistence.

Education, I believe, is the only proper way to influence values, attitudes, and basic assumptions in a democratic society. Behavior, in the long run, can best be changed through the process of education.

On September 20, I proposed a national teach-in on the crisis of the environment to be held on April 22, 1970. The purpose is to focus sharply on the vital concerns of this generation of youth about the environment they will inherit—not a legacy to be proud of. The magnitude, diversity, and intensity of interest shown thus far has prompted me to introduce legislation today on environmental and ecological education. The ecological crisis is so severe that we need an environmental teach-in every day and not just on one day.

New teaching techniques and curriculums are a necessity in order to make greater use of the environment as a teaching resource and to teach ecology in a more imaginative and exciting manner in the classroom.

The bill specifically authorizes the Commission of Education to develop a national strategy on environmental education to encompass preschool, elementary, secondary, undergraduate, graduate, adult and community education and teacher training as well. Curriculum development, demonstration and dissemination, teacher and related personnel training, and community education programs are underscored for support in the bill. Support of the preparation and distribution of materials for use by mass media is also included.

Examples of what is being done gives a hint of the potential of this bill, if enacted.

Too often elementary and secondary school teachers are uncomfortable with the thought of using the outdoors as a classroom. New techniques are being devised for teacher training to help to break down this barrier so that the relationships between man, his artificial world and nature can be viewed as a whole and not in academic pieces. Also curriculums in the classroom are being expanded to steer away from the superficial approach of memorizing tree and bird charts and disecting ad nauseam and toward more active participation by the student in the learning process.

Efforts at the secondary and undergraduate level include emphasis on the problem-solving approach. Students are encouraged to go out into the field and look at pollution firsthand. They normally start with the science phase. What has happened chemically or physically? They proceed to the technology phase. What can be done to prevent or reduce the pollution? Then, they get into the economic and political aspects. Is it economically and politically feasible to make the change? This approach again gives the student a total view of the problem, sharpens his sense of inquiry and has often contributed useful data and recommendations to local and State governmental agencies and private industries.

At the graduate level the purpose would be primarily to step up the professionalization of the discipline of ecology.

Mr. President, in conclusion let me point out that we are a highly urban nation. Our environmental crisis should be largely viewed from that context. Many of the past assumptions about conservation education may no longer be valid.

The intense interest by the public in the quality of our lives as affected by the environment clearly indicates that we cannot just use incentives and prescriptions to industry and other sources of pollution. That is necessary but not sufficient. The race between education and catastrophy can be won by education if we marshal our resources in a systematic manner and squarely confront the long-term approach to saving our environment through the process of education.

Man, the incessant conqueror of nature, has to reexamine his place and role. Our world is no longer an endless frontier. We constanly are feeling the backlash from many of our ill-conceived efforts to achieve progress.

Rachel Carson's theme of "reverence for life" is becoming less mystical and of more substance as our eyes are opened to much of the havoc we have wrought under the guise of progress. A strong commitment to an all-embracing program of environmental education will help us to find that new working definition of progress that is a prerequisite to the continued presence of life on this planet. This proposal has already been introduced in the House by Mr. BRADEMAS, Mr. SCHEUER, Mr. REID of New York, and Mr. HANSEN of Idaho.

I welcome cosponsorship of this bill and encourage my colleagues to do so.

I ask unanimous consent that the full text of the bill be printed in the RECORD at this time.

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

The bill (S. 3151) to authorize the U.S. Commissioner of Education to establish educational programs to encourage understanding of policies and support of activities designed to enhance environmental quality and maintain ecological balance, introduced by Mr. NELSON, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3151

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

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress of the United States finds that the deterioration of the quality of the Nation's environment and of its ecological balance is in part due to poor understanding by citizens of the Nation's environment and of the need for ecological balance; that presently there do not exist adequate resources for educating citizens in these areas, and that concerted efforts in educating citizens about environmental quality and ecological balance are therefore necessary.

(b) It is the purpose of this Act to encourage and support the development of new and improved curriculums to encourage understanding of policies, and support of activities designed to enhance environmental quality and maintain ecological balance; to demonstrate the use of such curriculums in model educational programs and to evaluate the effectiveness thereof; to disseminate curricular materials and information for use in educational programs throughout the Nation; to provide training programs for teachers, other educational personnel, public service personnel, and community and industrial business leaders and employees, and government employees at State, Federal, and local levels; to provide for community education programs on preserving and enhancing environmental quality and maintaining ecological balance.

USES OF FUNDS

SEC. 3. (a) From the sums appropriated, the United States Commissioner of Education, hereinafter referred to in this Act as the "Commissioner", shall assist in educating the public on the problems of environmental quality and ecological balance by:

(1) Making grants to or entering into contracts with institutions of higher education and other public or private agencies, institutions, or organizations for:

(a) Projects for the development of curriculums to encourage preserving and enhancing environmental quality and maintaining ecological balance.

(b) Pilot projects designed to demonstrate and test the effectiveness of the curriculums described in clause (a) whether developed with assistance under this Act or otherwise.

(c) In the case of applicants who have conducted pilot projects under clause (b), projects for the dissemination of curricular materials and other information regarding the environment and ecology.

(2) Undertaking directly or through contract or other arrangements with institutions of higher education or other public or private agencies, institutions, or organizations evaluations of the effectiveness of curriculums tested in use in elementary, secondary, college, and adult education programs involved in pilot projects described in paragraph 1(b).

(3) Making grants to institutions of higher education, local educational agencies, and other public or private organizations to provide preservice and inservice training programs on environmental quality and ecology (including courses of study, symposiums, and workshops, institutes, seminars, conferences) for teachers, other educational personnel, public service personnel, and community, business and industrial leaders and employees, and government employees at State, Federal, and local levels.

(4) Making grants to local educational, municipal, and State agencies and other public and private nonprofit organizations for community education on environmental quality and ecology, especially for adults.

(5) Making grants for preparation and distribution of materials suitable for use by mass media in dealing with the environment and ecology.

APPROVAL OF APPLICATIONS

SEC. 4. (a) Financial assistance for a project under this Act may be made only upon application at such time or times, in such manner, and containing or accompanied by such information as the Commissioner deems necessary, and only if such application—

(1) provides that the activities and services for which assistance under this title is sought will be administered by or under the supervision of the applicant;

(2) sets forth a program for carrying out the purposes set forth in section 3 and provides for such methods of administration as are necessary for the proper and efficient operation of such programs;

(3) sets forth policies and procedures which assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in section 3, and in no case supplant such funds.

(4) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title; and

(5) provides for making an annual report and such other reports, in such form and containing such information, as the Commissioner may reasonably require and for keeping such records, and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

(b) Applications from local educational agencies for financial assistance under this Act may be approved by the Commissioner only if the State educational agency has been notified of the application and been given the opportunity to offer recommendations.

(c) Amendments of applications shall, except as the Commissioner may otherwise provide by or pursuant to regulation, be subject to approval in the same manner as original applications.

ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY EDUCATION

SEC. 5. (a) The Secretary of Health, Education, and Welfare shall appoint an Advisory Committee on Environmental Quality Education which shall—

(1) advise the Secretary concerning the administration of, preparation of, preparation of general regulations for, and operation of, programs supported with assistance under this Act;

(2) make recommendations regarding the allocation of the funds under this Act among the various purposes set forth in section 3 and the criteria for establishing priorities in deciding which applications to approve, including criteria designed to achieve an appropriate geographical distribution of approved projects throughout all regions of the Nation;

(3) review applications and make recommendations thereon;

(4) review the administration and operation of projects and programs under this Act, including the effectiveness of such projects and programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for improvements in this Act) to the Secretary for transmittal to the Congress; and

(5) evaluate programs and projects carried out under this Act and disseminate the results of such evaluations.

(b) The Advisory Committee on Environmental Quality Education shall be appointed by the Secretary without regard to the civil service laws and shall consist of twenty-one members. The Secretary shall appoint one member as Chairman. The Committee shall consist of persons familiar with education, information media, and the relationship of man as producer, consumer, and citizen to his environment and the Nation's ecology. The Committee shall meet at the call of the Chairman or of the Secretary.

(c) Members of the Advisory Committee shall, while serving on the business of the Advisory Committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

TECHNICAL ASSISTANCE

SEC. 6. The Secretary, in cooperation with other Cabinet officers with relevant jurisdiction, shall, upon request, render technical assistance to local educational agencies, public and private nonprofit organizations, private profitmaking organizations, institutions of higher learning, agencies of local, State, and Federal Government and other agencies deemed by the Secretary to play a role in preserving and enhancing environmental quality and maintaining ecological balance. The technical assistance shall be designed to enable the recipient agency to carry on education programs which deal with environmental quality and ecology and (2) deal with environmental and ecological problems pertinent to the recipient agency.

PAYMENTS

SEC. 7. Payments under this Act may be made in installments and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

ADMINISTRATION

SEC. 8. In administering the provisions of this Act, the Secretary is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or private agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon.

AUTHORIZATION

SEC. 9. There is authorized to be appropriated for the fiscal year ending June 30, 1970, for carrying out the purposes of this Act such sums as Congress may deem necessary.

S. 3152—INTRODUCTION OF A BILL TO PROVIDE FOR THE PAYMENT OF CERTAIN EXPENSES INCIDENT TO THE DEATH OF MEMBERS OF THE ARMED FORCES IN WHICH NO REMAINS ARE RECOVERED

Mr. HATFIELD. Mr. President, we are all aware, or should be, that as we debate the pros and cons of the war in Vietnam, our young men are dying in that conflict. As we march and countermarch, the death toll mounts. I carry with me the knowledge that irreplaceable young people have been lost to my home State of Oregon and to the Nation.

Surely, to no other group do we owe the same type of debt as to the families of those lost in this conflict.

And yet, I recently learned that a portion of these families must bear a burden that is greater than others. In the case of most Vietnam dead, the military returns the body and assumes certain costs for burial services. But some bodies are not returned. Some families must live forever with the statement that "the body has not been recovered." And these families, twice bereft, must assume the cost of memorial services, because under present statute, services and allowances are applicable only in the cases of recovered remains.

A recent letter to the editor of the Portland Oregonian dramatically illustrates the pain of a family caught in this situation:

> The service was held April 19 in a local funeral home chapel. Like any funeral service, we had the minister, organist, soloist, ushers for guests, flowers and the many services of the owner.
>
> On June 12, one year from the day he left home for Ft. Lewis and army duty, we were told the expenses would not be paid. It was explained that when the bill was passed in Congress to take care of "burial expense" of service-connected personnel it did not include cases where the remains were not recovered. An application to Social Security came back with the same answer.
>
> Right now I am numb with disbelief that a country that is willing to take on what we feel is injustices to others and send our sons 8,000 miles from home to die has not considered that there is some expense to those that have nothing brought back to them.

Surely, we owe this family, the H. E. Lovegrens of Portland, Oreg., and the other families in similar circumstances, the same honor, the same assistance we give in cases where the body is recovered. I am, therefore, introducing legislation to eliminate this inequity. Such legislation is overdue. Let us meet this debt.

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

The bill (S. 3152) to amend section 1482 of title 10 of the United States Code to provide for the payment of certain expenses incident to the death of members of the Armed Forces in which no remains are recovered; introduced by Mr. HATFIELD (for himself and Mr. PACKWOOD), was received, read twice by its title, and referred to the Committee on Armed Services.

S. 3153—COSPONSORSHIP OF A BILL RELATING TO CONSERVATION OF CORAL REEFS

Mr. JACKSON. Mr. President, I wish to join the Senator from Hawaii (Mr. FONG) in cosponsoring the bill (S. 3153). If enacted, this measure promises to control the devastating crown of thorns starfish that currently threatens the economic livelihood of Guam and may soon have an adverse impact upon the economy of the Trust Territory of the Pacific Islands. Although relatively little is known about the intensity of starfish infestations in other areas of the Pacific under the jurisdiction of the United States, this menacing creature has been noted in American Samoa and the State of Hawaii.

As chairman of the Committee on Interior and Insular Affairs, which has legislative jurisdiction over the insular possessions of the United States, I have long sought to assist in their economic development. If something is not done soon to control this starfish which feeds on the living parts of coral, it could have long-range economic repercussions, particularly since many of the islanders are dependent upon the reefs and their fisheries resources for subsistence. Evidence now indicates that following the destruction of the living parts of the coral by the starfish, the dead coral becomes encrusted with algae and the resident fishes diminish in total numbers because their food supply has been eliminated.

In addition to providing a habitat and food source for fish, the living coral reefs offer protection to the islands during tropical storms. If the coral dies, and begins to erode, the islands become susceptable to erosion and other damage caused by typhoons.

I am uncertain why the crown of thorns starfish, which was regarded as a rarity only 5 years ago, has undergone such a rampant population increase in the South Pacific. Perhaps it is a cyclical phenomenon similar to the lemmings of the Scandinavian countries, and will dissipate itself just as abruptly. It is my belief, however, that unless control measures are initiated, the starfish population will not diminish until the available food supply, namely the living parts of coral, are diminished.

Somehow the balance of nature, and more specifically the predator-prey relationship, has been upset and has enabled the starfish to reach a position of dominance among the living creatures of the reefs. I believe the actions of man, attempting to better himself economically, have brought about a large part of this problem. The triton, the chief predator of the adult crown of thorns starfish, has been removed in large numbers from coral reefs because of the value of its beautiful shell.

Also, the dynamite blasting and excavation of coral reefs may have greatly assisted the starfish. As anomolous as it may seem, the living parts of coral are actually predatory on small starfish and help keep its population in check. When the coral is killed by blasting, the juvenile starfish survive in large numbers, and subsequently expand their geographic limits until they have matured and become predatory upon the coral.

Mr. President, the crown of thorns starfish is not just a menace to the insular possessions of the United States and a potential threat to the State of Hawaii. It has now become a matter of concern to all nations and territories of the South Pacific. The starfish has already destroyed about 100 square miles of the Great Barrier Reef off Australia. It undoubtedly is present in numerous other islands of the South Pacific which have not been surveyed because of the lack of funds.

During the South Pacific Commission meetings held last month in New Caledonia, that body passed a resolution requesting the financial assistance and technical scientific expertise of the United Nations be applied toward solving this matter. The 17 nongoverning territories and independent states which are associated with the South Pacific Commission voted unanimously to seek international support to solve an international problem.

For the U.S. part, I am hopeful that expeditious action will be taken on this measure to insure that damage by this starfish is brought to an abrupt halt.

S. 3154—INTRODUCTION OF THE PUBLIC TRANSPORTATION ASSISTANCE ACT OF 1969

Mr. WILLIAMS of New Jersey. Mr. President, on behalf of myself and Senators TOWER, SPARKMAN, BENNETT, MUSKIE, BROOKE, MCINTYRE, PERCY, MONDALE, GOODELL, HOLLINGS, PACKWOOD, HUGHES, RANDOLPH, and TYDINGS, I am honored today to introduce the Public Transportation Assistance Act. This bill is an amended version of S. 2821, the administration's mass transportation bill, which was first introduced on September 9, 1969.

The amended Public Transportation Act would provide \$3.1 billion in Federal funds for the improvement of mass transit facilities. The money would be committed over a 5-year period of time. But most importantly, immediately upon enactment the funds would become available for obligation, thereby guaranteeing the long-term commitment which our States and cities must have in order to embark upon the construction of new and innovative mass transportation facilities.

This bill is the product of true bipartisan efforts. The majority and the minority of the Banking and Currency Committee, under the leadership of our chairman, the senior Senator from Alabama, Senator SPARKMAN, and the ranking minority member of our Housing and Urban Affairs Subcommittee, the junior Senator from Texas, Senator TOWER, have worked in full cooperation with the administration. Secretary of Transportation Volpe has made this legislation one of his first priorities.

At the outset there was a common objective. Differences appeared, not in principle, but in method. Without any compromise in principle, but with enlightened compromise in method, this bill was originated.

And so, Mr. President, I am honored today to introduce this legislation. It is legislation which transcends the consideration of party and partisanship. It is legislation whose only goal is to help meet the mass transit needs of our Nation.

The Banking and Currency Committee has already held 7 days of hearings on the Public Transportation Assistance Act. During those hearings, the widespread support for this legislation has become abundantly clear. And, during that time, the merits of this legislation became equally apparent.

This bill is supported by Governor Rockefeller of New York, Governor Reagan of California, Governor Moore of West Virginia, Governor Ellington of Tennessee, Governor Mandel of Maryland, Mayor D'Alesandro of Baltimore, and Mayor Jonsson of Dallas.

Perhaps the legislation might more appropriately be described as nonpartisan rather than bipartisan since it has the backing of the U.S. Conference of Mayors—League of Cities, the American Transit Association, and the Institute of Rapid Transit.

The bill will aid all segments of our population; the poor who cannot afford cars.

The elderly who either cannot afford cars or who are unable to drive. For them, mass transit can be their only link with the rest of the world. It can represent the difference between lonely days at home or happy days of community involvement.

For suburban commuters it can mean a greatly reduced workweek; a workweek in which they will not have to undergo the time-consuming and exhausting daily battle with traffic jams.

It will assist business by cutting the spiraling costs which stem from the time trucks and delivery vehicles lose in traffic jams. These savings can be passed on to consumers who no longer would have to underwrite the built-in charge of traffic congestion.

Not the least of the benefits of this legislation would be the reduction of air pollution caused by motor vehicle exhausts.

The bill will help in the orderly development of cities and States by opening reasonable means of access between homes and job.

And it will help end the strangulation which each year constricts more tightly around our urban centers.

The need is extremely urgent. We have seen without question that private automobiles cannot cope with the problem of moving masses of people despite our gigantic, Federal roadbuilding program.

Today, daytime city traffic literally moves more slowly than it did in the horse and buggy days.

The average highway user spends about 13 percent of his day in his car. In a year or two, that figure may increase to 20 percent unless we do something about it.

Obviously, the situation is not going to improve unless help is forthcoming. In 1968, there were 200 million people driving nearly 100 million cars. Projections indicate that by 1985, there will be almost 265 million people driving nearly 144 million motor vehicles. Perhaps crawling would be a better description than driving.

We must also remember that this is not a problem indigenous to any one area of our country. Today, 70 percent of all Americans live in or near urban areas. If the past is prolog, that figure will rise. Certainly, mass transit is a problem national in scope.

Under the terms of this legislation, the Secretary of Transportation can expend moneys not to exceed in aggregate, the following amounts: Prior to July 1, 1971, $80 million; prior to July 1, 1972, $310 million; prior to July 1, 1973, $710 million; prior to July 1974, $1,260 million; prior to July 1, 1975, $1,860 million and not to exceed an aggregate of $3,100 million thereafter. I again stress those are aggregate figures.

Some might question the relatively small expenditure for the first 2 years. However, experience shows that actual expenditures under programs of this nature are fairly small in the first year or two as cities and States begin to embark on new developments.

One other major consideration that I would like to mention specifically concerns the relocation provisions of S. 1. That legislation has been passed by the Senate and now is pending before the House. The administration has given me its full commitment that if S. 1 has not passed the House prior to the passage of the Public Transportation Assistance Act, it would have no objection to those relocation provisions being included in this legislation.

Mr. President, this bill is a major step forward in meeting our Nation's transit needs. I wish to again state my appreciation for the farsighted and sound position of President Nixon, Secretary Volpe, and Senator Tower.

With this legislation, we will have the funds and the guaranteed commitment that will enable us to move forward and aid all of our Nation's citizens.

Mr. President, I ask unanimous consent that this bill be printed in the RECORD at this point.

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

The bill (S. 3154) to provide long-term financing for expanded urban public transportation programs, and for other purposes, introduced by Mr. WILLIAMS of New Jersey (for himself and other Senators), was received, read twice by its title, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 3154

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of all citizens to move quickly and at a reasonable cost an urgent national problem; that new directions in the Federal assistance programs for urban public transportation are imperative if efficient, safe, and convenient transportation compatible with soundly planned urban areas is to be achieved; and that success will require a Federal commitment for the expenditure of at least $100,000,000,000 over a twelve-year period to permit confident and continuing local planning, and greater flexibility in program administration. It is the purpose of this Act to create a partnership which permits the local community, through Federal financial assistance, to exercise the initiative necessary to satisfy its public transportation requirements.

SEC. 2. Section 3 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602), is amended by—

(1) redesignating subsection (c) as subsection (e); and

(2) striking subsections (a) and (b) and inserting in lieu thereof subsections (a), (b), (c) and (d) as follows:

"(a) The Secretary is authorized, in accordance with the provisions of this Act and on such terms and conditions as he may prescribe, to make grants or loans (directly, through the purchase of securities or equipment trust certificates, or otherwise) to assist States and local public bodies and agencies thereof and private transit systems in financing the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in public transportation service in urban areas and in coordinating such service with highway and other transportation in such areas. Eligible facilities and equipment may include land (but not public highways), buses and other rolling stock, and other real and personal property needed for an efficient and coordinated public transportation system. No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have—

(1) the legal, financial, and technical capacity to carry out the proposed project; and

(2) satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and equipment.

The Secretary may make loans for real property acquisition pursuant to subsection (b) upon a determination, which shall be in lieu of the preceding determinations, that the real property is reasonably expected to be required in connection with a public transportation system and that it will be used for that purpose within a reasonable period. No grant or loan funds shall be used for payment of operating expenses. No grant or loan shall be made for the benefit of a private transit system unless the application for assistance has been approved by the appropriate State or local public body or agency thereof, as determined by the Secretary. No grant shall be made directly to a private transit system unless the Secretary determines that (1) there is no appropriate State or local public body or agency thereof through which a grant for the benefit of a private transit system may be made, and (2) the public interest does not require the establishment of a public body or agency for the purposes of that grant. An applicant for assistance under this section shall furnish a copy of its application to the Governor of each State affected concurrently with submission to the Secretary. If, within 30 days thereafter, the Governor submits comments to the Secretary, the Secretary must consider the comments before taking final action on the application.

"(b) The Secretary is authorized to make loans under this section to States or local public bodies and agencies thereof to finance the acquisition of real property and interests in real property for use as rights-of-way, station sites, and related purposes, on urban public transportation systems, including the net cost of property management and relocation payments made pursuant to section 7. Each loan agreement under this subsection shall provide for actual construction of urban public transportation facilities on acquired rights-of-way within a period not exceeding ten years following the fiscal year in which the agreement is made. Each agreement shall provide that in the event acquired real property or interests in real property are not to be used for right-of-way purposes, an appraisal of current value will be made at the time of that determination, which shall not be later than ten years following the fiscal year in which the agreement is made. Two-thirds of the increase in value, if any, over the original cost of the real property will be paid to the Secretary for credit to miscellaneous receipts of the Treasury Repayment of amounts loaned shall be credited to miscellaneous receipts of the Treasury. A loan made under this subsection shall be repayable within ten years from the date of the loan agreement or on the date a grant agreement for actual construction of facilities on the acquired rights-of-way is made, whichever date is earlier. An applicant for assistance under this subsection shall furnish a copy of its application to the comprehensive planning agency of the community affected concurrently with submission to the Secretary. If, within thirty days thereafter, the comprehensive planning agency of the community affected submits comments to the Secretary, the Secretary must consider the comments before taking final action on the application.

"(c) No loan shall be made under this section for any project for which a grant is made under this section, except—

(1) loans may be made for projects as to which grants are made for relocation payments; and

(2) project grants may be made even though the real property involved in the project has been or will be acquired as a result of a loan under subsection (b).

Interest on loans made under this section shall be at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of one per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs and probable losses under the program. No loans shall be made, including renewals or extensions thereof, and no securities or obligations shall be purchased which have maturity dates in excess of forty years.

"(d) Any State or local public body or agency thereof which makes or approves applications for a grant or loan under this Act to finance the acquisition, construction, reconstruction, or improvement of facilities or equipment which will substantially affect a community or its public transportation service shall certify to the Secretary that it has held public hearings, or has afforded the opportunity for such hearings, has considered the economic and social effects of the project for which application for financial assistance is made and its impact on the environment, and has found that the project is consistent with any plans for the comprehensive development of the urban area. If hearings have been held, a copy of the transcript of the hearings shall be submitted with the certification."

SEC. 3. (a) Subsection 4(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1603(a)), is amended by—

(1) striking out "section 3" in the first sentence and inserting in lieu thereof "subsection (a) or (b) of section 3"; and

(2) striking out the next to the last sentence and inserting in lieu thereof the following: "Such remainder may be provided in whole or in part from other than public sources and any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. If a grant is made to a private transit system for the acquisition of buses or other rolling stock, the grant agreement shall include an undertaking by the grantee that it will establish an escrow account which shall be reserved for the purchase of buses or other rolling stock and into which shall be paid annually an amount equal to the annual depreciation on that portion of the cost of the buses or rolling stock financed with the Federal grant."

(b) Section 4 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1603), is amended by adding at the end thereof the following new subsections:

"(c) To finance the programs and activities, including administrative costs, under this Act, the Secretary is authorized to incur obligations in the form of grant agreements or otherwise in amounts aggregating not to exceed $3,100,000,000. This amount shall become available for obligation upon the effective date of this subsection and shall remain available until obligated. There are authorized to be appropriated for liquidation of the obligations incurred under this subsection not to exceed $80,000,000 prior to July 1, 1971, which amount may be increased to not to exceed an aggregate of $310,000,000 prior to July 1, 1972, not to exceed an aggregate of $710,000,000 prior to July 1, 1973, not to exceed an aggregate of $1,260,000,000 prior to July 1, 1974, not to exceed an aggregate of $1,860,000,000 prior to July 1, 1975, and not to exceed an aggregate of $3,100,000,000 thereafter. Sums so appropriated remain available until expended.

"(d) The Secretary shall report annually to the Congress, after consultation with State and local public agencies, with respect to outstanding grants or other contractual agreements executed pursuant to subsection (c) of this section. To assure program continuity and orderly planning and project development, the Secretary shall submit to the Congress (1) authorization requests for fiscal years 1976 and 1977 not later than February 1, 1972, (2) authorization requests for fiscal years 1978 and 1979 not later than February 1, 1974, (3) authorization requests for fiscal years 1980 and 1981 not later than February 1, 1976, and (4) an authorization request for fiscal year 1982 not later than February 1, 1978. Concurrently with these authorization requests, the Secretary shall also submit his recommendations for any necessary adjustments in the schedule for liquidation of obligations."

SEC. 4. Section 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604), is amended by striking out the next to the last sentence and inserting in lieu thereof the following sentences: "Such remainder may be provided in whole or in part from other than public sources and any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. If a grant is made to a private transit system for the acquisition of buses or other rolling stock, the grant agreement shall include an undertaking by the grantee that it will establish an escrow account which shall be reserved for the purchase of buses or other rolling stock and into which shall be paid annually an amount equal to the annual depreciation on that portion of the cost of the buses or rolling stock financed with the Federal grant."

SEC. 5. Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611), is amended to read as follows:

"STATE LIMITATION

"SEC. 15. Grants made under section 3 (other than for relocation payments in accordance with section 7(b)) before July 1, 1970, for projects in any one State shall not exceed in the aggregate 12½ per centum of the aggregate amount of grant funds authorized to be appropriated pursuant to section 4(b); except that the Secretary may, without regard to such limitation, enter into contracts for grants under section 3 aggregating not to exceed $12,500,000 (subject to the total authorization provided in section 4(b)) with local public bodies and agencies in States where more than two-thirds of the maximum grants permitted in the respective State under this section has been obligated. Grants made on or after July 1, 1970, under section 3 for projects in any one State may not exceed in the aggregate 12½ per centum of the aggregate amount of funds authorized to be obligated under subsection 4(c), except that 15 per centum of the aggregate amount of grant funds authorized to be obligated under subsection 4(c) may be used by the Secretary, without regard to this limitation, for grants in States where more than two-thirds of the maximum amounts permitted under this section has been obligated. In computing State limitations under this section, grants for relocation payments shall be excluded."

SEC. 6. Nothing herein shall affect the authority of the Secretary of Housing and Urban Development to make grants, under the authority of sections 6(a), 9, and 11 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605(a), 1607a, 1607c et seq.), and Reorganization Plan Numbered 2 of 1968, for projects or activities primarily concerned with the relationship of urban transportation systems to the comprehensively planned development of urban areas, or the role of transportation planning in overall urban planning, out of funds appropriated to him for that purpose.

SEC. 7. (a) Reorganization Plan Numbered 2 of 1968 is amended by changing "Urban Mass Transportation Administration" to "Public Transportation Administration", wherever it occurs, and by changing "Urban Mass Transportation Administrator" to "Public Transportation Administrator" wherever it occurs.

(b) The Urban Mass Transportation Act of 1964, as amended, is further amended by changing the words "mass transportation" to "public transportation" wherever they occur.

SEC. 8. This Act may be cited as the "Public Transportation Assistance Act of 1969."

Mr. TOWER. Mr. President, on October 14, Secretary Volpe appeared before the Committee on Banking and Currency and testified on S. 2821, the administration's mass transit legislation, of which I was a cosponsor. This bill provided for $3.1 billion to be annually appropriated on a scheduled basis over a 5-year period.

There was also pending in that committee at the same time, S. 1032, which would create a mass transit trust fund to be funded by moneys from the automobile excise tax. This trust fund was supposed to parallel the trust fund which has been created for the Federal highway system; but it was readily apparent that there was an obvious discrepancy between the means by which these trusts obtained their funds. The highway trust is financed by user taxes which are levied directly upon those persons using the facility; whereas the mass transit fund was to acquire moneys from persons not using the facility; that is to say, automobile operators. The justification for this type tax apparently was that the automobile driver would benefit by not having as many vehicles on the highway if mass transit systems were initiated. This logic may be justified in congested metropolitan areas, but we would be hard pressed to explain to the rural population of this Nation that their excise tax dollars were being expended on mass transit systems.

Yet, it was obvious also that the administration bill was not the answer to the problem. Testimony revealed, very pointedly, that the primary obstacle facing mass transit was the nonavailability of long-term Federal commitments in this area. Local authorities could not pass referendums without binding contracts between themselves and the Federal Government which would guarantee the Government's full participation for the whole project.

S. 2821 required that the Department of Transportation go to the Appropriations Committee each year with its request for funds; this means that there could be no long-term guarantees issued to a broad-based segment of American cities.

It appeared that the line had been drawn on this issue and we were at an impasse; neither the advocates of the trust fund nor the administration appeared willing to capitulate. There was one thing, however, which gave us hope of reaching a compromise: the testimony of Secretary Volpe wherein he stated:

> We would be willing to work with your staff in developing language that would provide for the five-year contract authority and a total of the $3.1 billion providing that a schedule of expenditures were written into the bill which clearly shows that the money would be spent in an orderly and prudent fashion.

We have now come forth with a compromise proposal which I feel accomplishes the aim of our national transit goals. Secretary Volpe, Senator WILLIAMS of New Jersey, and I have conferred with representatives of industry, labor, transit authorities, municipal and State governments; we have received overwhelming support for this compromise proposal for the administration bill. The reason we have acquired this support is that we have accomplished the end result of a trust fund without earmarking specific tax revenues for funding. Under this legislation the Secretary can obligate by contractual authority up to $3.1 billion immediately, but the budgetary impact will be held to a minimum. Even though the money may be obligated, it will be spent over an extended period of time pursuant to a schedule which is contained in the bill. These amounts to be annually expended increase proportionally with the passage of time because experience has shown that, as transit systems progress, proportionally more funds are needed.

Also, the Secretary is directed to report upon the progress of the program to the Senate every 2 years; and, if he finds that the amounts specified are in any manner inappropriate, then he will recommend such changes as he feels necessary. If we are to alleviate our national transit crisis, we must have legislation of this type—legislation which does not place a direct burden upon those who will not directly benefit from the systems, yet legislation which guarantees long-term, broad-based contractual commitments by the Federal Government. This bill will accomplish these ends.

Mr. RANDOLPH. Mr. President, I am pleased to join with Senator WILLIAMS of New Jersey and the other cosponsors of the Public Transportation Assistance Act of 1969. This measure can provide an important interim step in the development of a responsive mass transportation program for the cities of our Nation. I join in the sponsorship of this legislative proposal, not because I believe it is a final answer to the difficult problem of providing adequate transportation facilities for our cities, but because I recognize that without it we will not soon achieve the posture for developing such a program.

As chairman of the Committee on Public Works, I have been vitally concerned with the development of our Nation's highway system. The committee has long recognized that highways alone cannot supply the total transportation needs of our urban transportation. With 70 percent of our Nation's population living on 1 percent of its landmass, good transportation is a priority of the first magnitude. We need the service of all forms of transportation in order to provide the proper service and if we are to avoid stagnation, frustration, and disruption of our urban growth patterns.

I would have preferred, as I know Senator WILLIAMS would have preferred, to make provision for establishing a trust fund to finance the program which would be carried forward by the bill being introduced today. It does not seem to be possible to accomplish that goal at this time. I feel, however, that we should persevere with efforts to establish a mass transportation trust fund and I know that other Members of the Senate will continue to work with us toward making such an ultimate goal a reality.

S. 3155—INTRODUCTION OF A BILL TO AMEND THE ORGANIC ACT OF GUAM

Mr. BURDICK. Mr. President, on behalf of the junior Senator from Alaska (Mr. GRAVEL) and myself, I introduce, by request, a bill to amend the Organic Act of Guam to clarify the application of tax on transfer of funds to a U.S. corporation from a Guam subsidiary.

The purpose of the proposed legislation is to clarify the intent of Congress with respect to the application of the Guam territorial income tax.

Present subsection (e) of section 31 was adopted in 1958 to set up the mechanics of administering and enforcing the income tax laws in Guam by authorizing the substitution of nomenclature and other changes in language—that is, "Guam" for "United States"—to the income tax laws of the United States for appropriate application as the Guam territorial income tax. It was understood at the time that Congress enacted section 31 of the Organic Act of Guam that some inequities could result from a strict application of substitution of language and for this reason expressly provided for "omission" of language substitution which might be or is "manifestly otherwise required" to effect the intent of the statute.

By the legislation herein proposed, a specific clarification is being made so as to correct an inequity which inadvertently has resulted from this substitution of language and which has caused confusion for the courts.

A situation exists under section 881 of the income tax laws of the United States, as applied by Guam, where a 30-percent tax is imposed on the transfer of dividends from a Guam subsidiary corporation to a parent U.S. corporation. This tax is imposed in addition to the normal 48-percent income tax applied by Guam under section 11 of the income tax laws of the United States. A judicial determination was made in 1966 that applying the substitution of language provided for by present subsection (e) of section 31 of the Organic Act of Guam to sections 881 and 7701 of the Internal Revenue Code of 1954 did not create liability for the 30-percent tax on transfers from a Guam subsidiary to a U.S. parent corporation. The Ninth Circuit Court of Appeals decided, in 1966, that to consider a California corporation a "foreign" corporation so as to make transfers from its Guam subsidiary taxable under section 881 was "a manifest and substantial inequity" not intended by the Congress. The court went on to say that if Guam is allowed to impose the 30-percent tax called for by section 881 on these facts then: "the combined Guam and Federal tax burden on the income which a California corporation ultimately received from the business of its Guam subsidiary substantially exceeds the applicable corporate income tax rate under either the laws of Guam or the United States. We find nothing to indicate that Congress intended the Guam tax laws to be interpreted so as to reach such a result." *Atkins-Kroll (Guam) Ltd.* v. *Government of Guam*, 367 F. 2d 127, 129 (1966).

This decision, however, was specifically overruled by the same court in a 1968 case based on a new set of facts not involving a corporate parent-subsidiary relationship. The court in the second case said that if its original interpretation of subsection (e) of section 31 of the Organic Act of Guam, as it applies to sections 881 and 7701 of the income tax laws of the United States, were to be followed in the later case, the effect would be to limit the section 881 tax available to Guam under this new set of facts and would result in an inequity to Guam, whereas, on the other hand, under the facts of the previous case involving a U.S. corporate parent-Guam subsidiary, it would be inequitable to apply the tax there. Because of these conflicting results, the court pointed out in its second decision that the only recourse is to clarify the intent of section 31 through legislation. In a footnote to its opinion, the court stated:

> Congress has provided an avenue of relief from combined tax burdens imposed upon

dividend income paid to foreign parent corporations through the medium of the treaty-making power. 8 Mertens, Income Tax 45.69 (1964 rev.). Congress could as readily provide relief appropriate to Guam without distorting the basic taxing structure. We cannot. Sayre & Company v. Riddell, 395 F. 2d 407, 413 (1968).

Since Guam is a territory of the United States and not a "foreign" country, there can be no bilateral income tax convention which would solve the problem without need for legislation.

The net effect of the court's later decision has been to penalize a U.S. corporation doing business in Guam through a Guam subsidiary corporation as opposed to a branch office only. In the first instance, the Guam subsidiary pays to Guam a 48-percent tax on earnings and, as a result of the court's second decision, also pays a 30-percent tax on the earnings transferred to its parent corporation in the United States. Because of the limitation on the amount of credit for foreign taxes paid provided by sections 901-906 of the income tax laws of the United States, the result is that the U.S. company ends up paying a combination tax equivalent to approximately 64 percent of earned income in Guam as opposed to the normal 48-percent corporate tax rate. Under the second set of facts where a branch office only is operated in Guam, the income derived from sources within Guam is taxed at the regular corporate rate of 48 percent and this is the only tax levied on the U.S. corporation's earnings in Guam which are transferred from its branch in Guam to the home office in the United States. The U.S. corporation, in turn, takes the full 48-percent corporate tax paid to Guam as a credit against the tax to be paid to the United States.

The purpose of the amendment proposed here is to eliminate this double tax in Guam based simply on the form of doing business. Without this amendment, there can only be a discouragement of new subsidiary corporations being formed in Guam for development of its economy and thus a lessening of the overall tax revenue to the detriment of Guam.

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

The bill (S. 3155) to amend the Organic Act of Guam to clarify the application of tax on transfer of funds to a U.S. corporation from a Guam subsidiary, introduced by Mr. BURDICK (for himself and Mr. GRAVEL), by request, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

SENATE RESOLUTION 286—RESOLUTION REPORTED TO PAY A GRATUITY TO ROSETTA JONES

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 286); which was placed on the calendar:

S. RES. 286

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Rosetta Jones, widow of Levi Jones, an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 287—RESOLUTION REPORTED TO PAY A GRATUITY TO BLANNIE E. McATEE

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 287); which was placed on the calendar:

S. RES. 287

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Blannie E. McAtee, widow of James McAtee, an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 288—RESOLUTION REPORTED TO PAY A GRATUITY TO VALERIA E. RAINES

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 288); which was placed on the calendar:

S. RES. 288

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Valeria E. Raines, widow of William F. Raines, Sr., an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

NOTICE OF HEARING ON SENATE JOINT RESOLUTION 133, REDESIGNATING CAPE KENNEDY IN THE STATE OF FLORIDA AS CAPE CANAVERAL

Mr. JACKSON. Mr. President, as chairman of the Senate Interior and Insular Affairs Committee, I would like to announce an open public hearing on Senate Joint Resolution 133, redesignating Cape Kennedy in the State of Florida as Cape Canaveral.

The hearing will be conducted starting at 10 a.m., Monday, November 24, in room 3110 of the New Senate Office Building.

While the resolution would redesignate the area as Cape Canaveral, it provides that the facilities of the National Aeronautics and Space Administration and of the Department of Defense shall continue to be known as John F. Kennedy Space Center.

TRIBUTE TO OUR ASTRONAUTS

Mr. DODD. Mr. President, it is natural and fitting that all Americans should share in a sense of national pride and elation over the successful landing of astronauts Charles Conrad and Alan Bean on the moon this morning.

There is nothing parochial or chauvinistic about this feeling of pride. Like astronauts Neal Armstrong and Buzz Aldrin, Conrad and Bean "Come in peace for all mankind." And mankind will applaud their triumph as it applauded the triumph of the first moon landing.

But it is proper that we, as Americans, should take a special pride in the flight of Apollo 12 because the ingenuity, the pioneering spirit, and the courage that went into the making of this triumph, are qualities deeply ingrained in the American tradition.

There is, perhaps, an emotional tendency to downgrade Apollo 12 because it is the second moon landing and not the first. But in terms of new scientific knowledge and precision space navigation, there is common agreement that Apollo 12 will be even more important than Apollo 11. As one correspondent writing from Houston this morning put it:

> If Apollo 11 was the landing of Columbus, Apollo 12 is De Soto journeying inland.

Our technological triumph in this case is all the greater when one recalls the grim predictions that were made in October 1957, when the Soviet Union orbited its first satellite.

At that time and for a number of years thereafter, we were told that the United States was hopelessly behind in the space race, that the Russians were at least 4 or 5 years ahead of us technologically.

But in 12 years' time we have not only wiped out the 4- or 5-year lead which Russia is once supposed to have held: We have forged several years ahead of the Soviet Union in most aspects of our space program.

It is not difficult to imagine the strident and boastful propaganda campaign that the Soviet Union would have mounted if its cosmonauts had landed on the moon in two successive flights before America achieved its first lunar landing.

In repeated broadcasts, in every language, the nations would have been told that this was clear proof of the superiority of the Communist system over the Capitalist system, and that it was still another augury of the coming triumph of communism throughout the world.

And it is not difficult to imagine the mood of depression that would have spread across America if the first two moon landings had, in fact, been Soviet triumphs instead of American triumphs.

The success of our moon program has denied Moscow an important psychological triumph that it would have exploited to support its campaign of expansion and subversion.

It has enhanced the respect of the world for America and the respect of the American people for themselves.

It has given our people a feeling of unity that somehow cuts across all the other divisions that today plague our country.

It has demonstrated once again that free men working in a free environment are more than a match for technological slaves working in a closed totalitarian society.

But if we take pride in the success of our moon program, it is a pride that is restrained and devoid of any threat to other nations.

I join Senators in congratulating all those concerned with the flight of Apollo 12 and, above all, Astronauts Conrad, Bean, and Gordon.

We all pray for their safe return to earth.

THE 39TH WORLD TRAVEL CONGRESS—ADDRESS BY ROBERT T. MURPHY

Mr. PASTORE. Mr. President, recently the American Society of Travel Agents, Inc.—ASTA—the world's leading travel agent association, held its 39th World Travel Congress in Tokyo, Japan. The congress, which attracted more than 2,800 delegates from more than 90 countries throughout the world, had a full and interesting agenda considering many issues of concern to the world's travel and tourism industry.

One of the important programs was a panel discussion on the role of government in travel's future. A participant in that discussion was the Honorable Robert T. Murphy, member of the Civil Aeronautics Board and former counsel to the Senate Committee on Commerce.

Because of the important issues touched upon by Mr. Murphy, I ask unanimous consent his remarks be printed in the RECORD.

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

ADDRESS BY MR. MURPHY

I am pleased and honored to have this opportunity, in connection with my other business here in Tokyo, to participate in the 39th World Travel Congress of ASTA. It is quite fitting that you are conducting your convention in this city and at this time. This is the most significant commercial gateway in all of Asia—Asia which is the greatest travel market of the future.

This is my first visit to Japan. As my plane was coming in over Tokyo a few days ago and I had my first glimpse of this great city, I could not help but think that here I was, arriving at one of the great travel centers which was the subject of all those reams of briefs, weeks of hearings and volumes of evidence which marked our processing of the monumental *Transpacific Route Case*. The geographic sweep of that case was the largest in the history of our Board, extending from the Atlantic seaboard communities in the United States, across the continent and the Pacific into Southeast Asia and from the Arctic areas of Alaska south to the Antipodes. Its thrust, of course, was to provide not only for the present but for the future needs of the public for travel and trade over this whole vast area. It contemplated not only increased travel by United States citizens to this beautiful country and other lands in the Pacific area but also the potential increase in visitations by residents thereof to the United States.

Obviously, our traffic projections in that case were keyed to the future. Like all economic forecasts, they were subject to acceptance or qualification depending on one's point of view. But I believe they were reasonably realistic. If we could postulate—as I like to do—an era of peace and good will which some day will prevail in all of Asia, then those traffic forecasts are indeed most conservative. Promotion of tourism can do much to bring such a happy day to a realization. The interchange of peoples, the communication afforded by tourism, constitutes a force for better international understanding and hence serves as an invaluable tool for the advancement and enhancement of world peace.

I note the attendance here today of representatives of the tourist industry from all parts of the world. Naturally you have in mind your own economic self-interest and the interests of the countries you represent. More than that, however, you are forging a common bond of unity in your mutual desire to promote and develop the free interchange of people with people. In this sense, therefore, you are truly engaged in building a better world community.

Our topic today is a rather broad one—"Governments—and Travel's Future". The most important function of government in relation to the travel industry and its future is to bring to bear an attitude and outlook of a liberal character. Freedom to travel constitutes the very essence of your business as well as that of air transportation. This freedom has been generally characteristic of the American way of life since the foundation of the Republic. Our concerns of more than a year ago on the subject of balance of payments as related to travel expenditures of U.S. citizens abroad, in my judgment, have been laid to rest. That concern, however, did serve a useful purpose. It led to serious studies by the Industry-Government Special Task Force on Travel ably headed by former Ambassador Robert M. McKinney, which focused our attention upon the urgent need for a coordinated effort to facilitate visits to the United States by tourists from foreign countries. I was pleased to participate in many of the meetings and discussions of that committee in Washington and I was impressed with the spirit of cooperation and assistance that was volunteered and given by the air transportation and travel industries. I am delighted to note that the Director of the United States Travel Service, C. Langhorne Washburn, is participating in this panel discussion and I know he will touch upon this phase of the government's functioning in detail.

The role of the Board has been that of fostering and encouraging the development of international air travel as well as regulating it in accordance with an international air policy which has permitted a flourishing growth of travel to and from the United States by foreign flag carriers as well as U.S. flag carriers. In this respect, therefore, our function as an arm of Government and your function as travel agents have a common purpose, namely, the promotion of air transportation. In the past and as of today it is United States citizen travel that constitutes much of the grist upon which the wheels of international air transportation grind. The economic achievements of our U.S. flag carriers and their principal foreign competitors constitute convincing evidence that our international air policy has been equitable and fair to all alike.

I believe you are aware of the fact that the jurisdiction of the CAB with respect to the business in which you are engaged, namely the sale of air transportation, is chiefly an indirect one. It derives principally from the provisions of the Federal Aviation Act which allows the air carriers to enter into various agreements affecting your operations subject to approval by the Board. Under these agreements the carriers, acting through their international and domestic travel conferences, are able to pass upon the fate and fortune of travel agents. In approving such agreements we are directed to take into account antitrust policy considerations.

There are an unusual number of matters pending before the Board affecting the welfare of travel agents.

First of all, there is the matter of agents' commissions. On the fifteenth of August we approved, subject to possible later modification, a revised schedule of commissions proposed by the carriers' Air Traffic Conference. Under this schedule, commissions for sale of point-to-point tickets over $70 were raised to 6 percent and over $140 were raised to 7 percent. Commissions on Discover America and Family Fares were raised from 7 percent to 8 percent and such fares were made commissionable when purchased on the Universal Air Travel Plan. Other commissions were raised from 10 percent to 11 percent. While these increases do not meet all the demands of travel agents, I believe you will agree that they will provide some improvement in the economic position of your industry.

Along with these commission increases, however, the Air Traffic Conference has proposed five other major revisions of the Agency rules. These resolutions involved five far-reaching changes as follows:

One, they provide that no new applicants may be placed on the agents list for an area where 25 percent of the agencies in that area sold less than $150,000 in travel in the previous calendar year. Second, they would remove from the list of agents those who failed to achieve $150,000 of airline business in a calendar year. Third, they would require that agency locations be unmistakably separated from any other type of business on the same premises. Fourth, they would permit agents to assess service charges against their customers and finally, they would allow agents to elect to sell only certain types of air transportation.

I realize that a good deal of time and effort have gone into these resolutions by the carriers and your representatives. But you will recognize that certain of these proposals, particularly those restricting entry of new companies into the travel business will have far-reaching effects and raise a number of difficult questions. Our Board has therefore deferred action on approval of these five resolutions and has requested public comment on the issues which they present.

Pending also before our agency is the equally difficult question of the ATAR System, the Automated Travel Agents Reservation System. On the one hand this wonderful computer system with its almost superhuman capacity to receive, store and deliver information and confirm reservations will serve as a great boon to all of you in your day to day task of making and confirming air reservations. We are told by your representatives that ATARS will enable the travel agent to cut his selling costs by an average of 72 cents on every domestic ticket sold using the system. The ATAR System, however, presents the Board with a novel and difficult legal question. The agreement between the airlines and the agents as it now stands, provides that the airlines will not provide information or use any competing system, thus excluding any competitors from the field.

The first question which must be asked, and which the technicians must answer is, must the system be exclusive in order to operate feasibly. The second question is can we permit an arrangement under which all the parties agree among themselves not to use the facilities of any competing system. I raise the question and its answer will have to await further study and consideration.

In conclusion, I think it is well for us in government to realize that while there are many, many things we can do in a positive sense to benefit travel, perhaps the most useful contribution government can make is in the things they do not do. Let us in government, therefore, bend every effort to reduce the restraints which impede or discourage the movement of people so that these great engines of air transportation that we have created can do the work for which they were designed.

A LOOK AT THE MORATORIUM

Mr. HATFIELD. Mr. President, the Washington Post of November 18 included two editorials which are perceptive and to the point. The first editorial takes a hard look at the recent events across the Nation in reference to the moratorium and New Mobe activities and the administration's response, both before and after the march in Washington, D.C., November 15. When we are facing an undeclared, debilitating war in Asia and increasing polarization and alienation here at home, particularly among our youth, we should be doing everything possible to decrease these tensions rather than contribute to furthering divisiveness.

The second editorial, written by Frank Mankiewicz and Tom Braden, views this problem from another perspective and makes some discerning conclusions which are particularly relevant to our political party system and its future.

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

There being no objection, the editorials were 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 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.

NIXON, LIKE FDR, FACES PROBLEM OF KEEPING REVOLT WITHIN SYSTEM

(By Frank Mankiewicz and Tom Braden)

On the whole it would appear that Mr. Nixon has won this round.

The orchestration was brilliantly conceived and carried out in a fashion which made Lyndon Johnson's performances look primitive.

It began with Clark Mollenhoff, the former newspaperman turned White House counsel, calling his former associates "fraudulent." It went on to Vice President Agnew, and the spectacle of a Republican dinner in Iowa being treated as though it were a moon shot.

The result is that many who have been embarrassed since the late Sen. Joseph McCarthy was censured feel like patriots again and are swamping television stations with obscene phone calls. Doubtless the polls will reveal a great upsurge in presidential popularity and an almost corresponding drop in the number of the George Wallace faithful.

The real problem, however, is not Mr. Nixon's popularity, but whether the President can handle the revolt which is on the horizon. To make an analogy with recent history, we appear to be in a period rather like that between 1932 and 1936. Old structures were then as now under attack. The question then was whether the President (Franklin D. Roosevelt) could move fast enough to keep the revolt within the system. The world knows that he did.

Mr. Nixon and his men are behaving, on the other hand, rather as Herbert Hoover and his men did. "Prosperity is just around the corner" has a familiar ring as compared with reassurances about Vietnam. And the mobilization of the Liberty League is surely comparable in weight if not in technique with the White House instigation of Bob Hope's counter-demonstration on Veteran's Day which drew a crowd generously estimated at 8,000 and to which television gave its time in equal proportion to that afforded the largest political rally in history.

The President is—as has been pointed out—a brilliant politician. Right now, he is playing the averages. The averages tell him that the American voter is 45 years old, earns $8,600 per year, and is, if male, a veteran. Common sense tells him that this voter is on his side and against the college youth who poured into Washington to protest.

But to look carefully at those who marched is to predict a future radicalization of American politics as clearly as hindsight affords the knowledge that the years from 1932 to 1936 predicted the radicalization of the American economy. The marchers were almost entirely white. They were almost entirely upper-middle class. They were serious; they were well-educated.

In fifteen to twenty years they will be congressmen, senators, judges and mayors, and long before that, they will be voters.

Their business as voters—Mr. Nixon, Mr. Mitchell, Mr. Agnew and others having given them the backs of their hands—will be to revolutionize the political system, just as a previous generation—scorned by Herbert Hoover, W. R. Hearst and the Liberty League, revolutionized an economic system.

The depth of their feeling and the massiveness of their demonstration raises a great many questions—including the political question of how long Mr. Nixon can keep the generation gap on his side. If the young can mobilize politically as ably as they mobilized for a march, it is conceivable that they can turn things around quite rapidly—creating, say, the same kind of vague impulse for change which brought Roosevelt into power in 1932.

If they cannot do this in time for 1972, their political strength seems certain to grow as their age grows.

Mr. Nixon—on the winning side as of now—may thus escape direct vengeance. But the administration's carefully rehearsed efforts to minimize the march will imprint the minds of the young as Mr. Hoover's refusal to see the collapse around him imprinted the best young minds of an earlier day. The Newtonian theory—that every action has an equal and opposition reaction—is true—and not of physics alone.

HOW TO STOP SMOKING

Mr. MOSS. Mr. President, the Triangle Stations, through their Philadelphia station, WFIL–TV, have prepared an outstanding series of public service programs which I wish to bring to the attention of the Senate.

These programs are in the form of a series of 20 broadcasts, each 3½ minutes in length, and are aimed at helping cigarette smokers who want to quit, actually to give up the habit.

Narrated by E. G. Marshall, these programs will be picked up by 47 worldwide stations of the Armed Forces Television Service in early 1970. In addition, several commercial stations, including KSL–TV in my home city, Salt Lake City, will be presenting the series.

I compliment Triangle Stations for this effort, and ask unanimous consent that a news release explaining the entire series be printed in the RECORD.

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

E. G. MARSHALL HOSTS WFIL–TV SMOKING SERIES

PHILADELPHIA, October 30, 1969.—E. G. Marshall, noted TV actor, is currently heading a most serious program series, and he is not acting. He is host of the WFIL–TV instructional series on cigarette smoking, "Why Not Quit?"

The series, 20 five-minute color tapes, is designed to help people who want to quit. It was produced and premiered by WFIL–TV in September, and shown twice nightly on the station's 6 and 11 p.m. newscasts over a four week period.

Offered by Triangle Stations for national distribution in September, "Why Not Quit?" has already been accepted for programing by the Armed Forces Television Service for an early 1970 start on its 47 world-wide stations. In addition, KLAS–TV, Las Vegas; KSL–TV, Salt Lake City; KIRO–TV, Seattle; and the Triangle television outlets (WFIL–TV, Philadelphia; WNBF–TV, Binghamton; WFBG–TV, Altoona-Johnstown; WNHC–TV, Hartford/New Haven; WLYH–TV, Lancaster-Lebanon; and KFRE–TV, Fresno) have scheduled the series.

"Why Not Quit?" was produced with the cooperation of the extensive medical facilities of the University of Pennsylvania. Dr. Luther L. Terry, former Surgeon General of the United States and now Vice President for Medical Affairs at the university, appears with host Marshall in two of the programs, the opening and the closing.

Dr. Daniel Horn, Director of the National Clearing House on Smoking and Health, a division of the U.S. Department of Health, Education and Welfare, served as consultant.

Based on Dr. Horn's research findings that the individual smoker must learn his own particular problem characteristics before he will attempt to break the habit, the programs are designed to enable the smoker to find definite reasons for quitting based on added insight and understanding of his own attitudes toward smoking.

The guide for discussions throughout the series is the "Smoker's Self-Testing Kit," a Public Health Service handbook. The kit centers on four basic reasons for quitting: health; setting a good example for others; self-control; and esthetics, the unpleasant aspects of smoking.

The self-testing kit is being made available free by the Triangle Stations to those who register requests with the stations.

Net proceeds from sales of the series will be contributed by Triangle to the University of Pennsylvania for medical research.

"This kind of series, informative and educational, is what television is best equipped to do," notes George A. Koehler, chief executive of the station group. "Triangle does not feel that as a broadcaster it can dictate whether the public should smoke or not, but we think it is in the public interest to offer instructional methods in the breaking of the cigarette habit for those who want to stop and need help to do so."

E. G. Marshall just completed narration for another Triangle Television production, "Whatever Happened to Law?", a study of the 'law and order' question. The one-hour film was presented prior to its national release and for the first time, on October 15th, in a Lincoln Center (New York) invitation gathering of newsmen and honored guests. The presentation also featured a panel discussion on law and order, with E. G. Marshall hosting a group of noted experts in the field, and featuring a question and answer segment with the audience.

REVERSION OF OKINAWA TO JAPAN

Mr. INOUYE. Mr. President, recently we have heard an increasingly loud cry for the early return of the administration of Okinawa to Japan. The question of the reversion of Okinawa to Japan was a major issue in the recent Japanese national election as well as in recent diplomatic discussions between the United States and Japan.

Eighteen years ago, our Nation became a party to the Japanese Peace Treaty of 1951—a treaty which describes Japan's relationship to the Ryukyus as one of residual sovereignty. It was agreed that Okinawa was Japanese territory and, therefore, would be returned to the Japanese at some undetermined date in the future. We have administered the affairs of the people of the Ryukyus for nearly 30 years. To prolong the future return date much longer would be unreasonable and unwise.

While our military presence in Okinawa has provided a decided defense umbrella for Japan, it has at the same time been a matter of serious concern for her. In fact, the distress voiced by the Japanese over the return of Okinawa to their country is most understandable. It is understandable because the stationing of foreign troops, no matter how friendly they may be, creates an uneasiness, particularly when such troops remain in a country long after the cessation of warfare.

We Americans should be able to understand this uneasiness. We need only picture Washington, our Nation's Capital, occupied by a division of troops—troops of a different country and culture—and Long Island with a military base composed of a jet airport, an arsenal of destructive weapons and several divisions of foreign troops to know how we would protest the prolonged stationing of such foreign troops on our soil, regardless of how friendly they were. Therefore, as we deal with the question of returning Okinawa to Japan, we must remember that while foreign troops can be tolerated for a short time this cannot be continued for generations.

Why then do we remain in Okinawa? Is it to guard against a potential Japanese military threat? I cannot believe this. I think most reasonable men will agree that there is little or no danger of Japan rearming and attacking the United States again. Nor is there any question of the ability of the Japanese to govern themselves and Okinawa. It thus appears that our primary reason for remaining in Okinawa is to use the island as a convenient military outpost to check Chinese Communist expansion or aggression. While this is a worthy reason, neither the Japan-United States Security Treaty nor the understanding that members of the United Nations have of our occupation of Okinawa provides for our continued presence on the island for this purpose. It is my belief that we can just as effectively check the expansionist ambitions of Red China without insisting that the Japanese live indefinitely under the indignity of military occupation.

A most important consideration in our discussion of the Okinawa problem, but one often forgotten, is that in the 20th century, stability in Asia will depend on four powers: the United States, the Soviet Union, Japan, and Communist China. This consideration makes developing and maintaining a cooperative relationship with Japan, from the standpoint not only of economics but also military security, vital to our national interest. We can insist on keeping an occupation force in Okinawa only at the risk of deteriorating the good relationship we have been able to develop with Japan in the last two decades.

To further good Japanese-American relations, we must first reduce our presence on the major islands of Japan. Even the most conservative of military minds admit that most of our bases there are unnecessary. They are simply costly and abrasive to our relationship with Japan.

Second, we should sit down with the Japanese to resolve the Okinawa question. If Japan desires that our troops remain in Okinawa but without the nuclear weapons we are presently storing there, then so it should be. There are other places where these weapons can be stored.

While I believe that we should seek in all possible ways to foster our good relationship with the Japanese, let me also add a word of caution: the people of Japan must realize that if the United States leaves Okinawa, they may find it necessary to increase their own defense expenditures. American presence in Okinawa has provided a defense umbrella under which Japan has prospered to unprecedented heights. The reality of our withdrawal may well mean that Japan will have to spend more yen for defense and security.

Further, if the Japanese are sincere in arguing that the principle of the Okinawan problem is sovereignty, then they should with equal vigor and insistence call on the Soviet Union to return the Kurile Islands. If they fail to do this, it will be more than understandable if Americans begin to feel that they are being picked on as whipping boys.

The Japanese must also be willing to accept the responsibility of providing for the future of Okinawa. The history of Japan indicates that just prior to the commencement of World War II, Okinawa was equivalent to our Appalachia. Poverty abounded. Little yen from the central government ever filtered down to the Ryukyus. Socially and politically, Okinawans were considered inferior.

Since our occupation of the Ryukyus, the Okinawan economy has spurted and expanded until today the per capita income of the islanders is far higher than that of many other Asian countries. The United States alone is presently pumping some $260 million each year into the Okinawan economy—over 50 percent of the Ryukyuan GNP—and directly employing over 50,000 Okinawans. The Okinawan economy has, in fact, expanded at a rate of 18 percent per annum for the last 5 years.

Once Okinawa is returned to Japan, the task of buttressing and developing the island's economy will rest with Tokyo. I sincerely hope that the Japanese will not default on this responsibility and permit Okinawa to revert to its former status as the Appalachia of Japan. I further hope that Okinawa is not being used as an international political football. The people of Okinawa deserve better than that. Their welfare should be our joint concern.

A HOOSIER HOUSEWIFE'S PLEA FOR SANITY

Mr. HARTKE. Mr. President, in yesterday's mail I received one of the most remarkable letters it has ever been my privilege to have come to my desk. It was written, in longhand, by a young housewife in Spencer County, Ind., whose concerns and hopes are shared by almost all Americans. Never have I seen them expressed more poignantly.

Mrs. Jake Miller is a lifelong Republican from a generations-old Republican family. But she finds the current administration's campaign against dissent so repellent that she has "decided to become the first Democrat in the history of her family." This despite the fact that she is not a "dove" on Vietnam but "was willing to go along with the President's plan for ending the war." When, however, she found herself being propagandized through her own elementary schoolchildren, she decided that she no longer wanted to be counted a part of Mr. Nixon's "silent majority."

Let me say that I take no personal comfort or satisfaction from Mrs. Miller's letter. There are no bouquets in it for the senior Senator from Indiana. She demands of me what she demands of all of us in Government: That we be mindful of our responsibilities and join in a common effort to pull this country back together again while there is still time. "Forget the circus," she tells us, "and get down to business."

Mr. President, that is important and necessary advice. In the hope that all of us may be inspired to follow it, I ask unanimous consent that Mrs. Miller's letter be printed in the RECORD so that it may be read with profit by all Members of the Congress.

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

NOVEMBER 17, 1969.

DEAR SENATOR HARTKE: I am a 32 year old housewife. I have been a Republican all my life, as have two generations before me. The same goes for my husband and his family. Both our families have lived in Spencer County for over 100 years. I say this to illustrate the fact that we are not given to changing our minds easily. Especially when it comes to politics. However, I am becoming increasingly disillusioned with the present Republican Administration. So disillusioned, in fact, that I have decided to become the first Democrat in the history of my family. And I assure you, this takes a great deal of courage.

I can't help thinking it's wrong for our President and Vice-President to deliberately set the citizens of our country at each other's throats. And yet, this seems to be exactly what they are doing. I thought the President was supposed to be the leader of *all* the people, not just a chosen few. Our country has always been large enough to permit people from all backgrounds to live in peace and harmony. Are we becoming so narrow-minded that only our own point of view has validity?

I was willing to go along with the President's plan for ending the war in Vietnam. I made no protest when my husband lost his job in construction during the recent slowdown. I wanted what was right for my country. I like it here; I didn't want to shake the boat. I didn't demonstrate in the streets during the moratorium. I left that to the students. I did envy them their naive idealism, but only to myself.

I did become angry and disturbed, however, when my children came home from elementary school with cards reading "Silent Majority." I do not like the idea of political propaganda being distributed in the schools. I do not like being told, through my children, that I am to be a part of the "Silent Majority." I rather prefer the old-fashioned American way of letting each person make his own decision, according to his own conscience. The only democracy I can think of that was built on silence was Hitler's and I pray to God that's not what our leaders have in mind for us. Mr. Agnew's speech concerning government control of television did nothing to reassure me on this point.

Instead of taking sides on every conceivable issue, why can't our leaders try to bring everyone together? Maybe I feel so disillusioned because I don't seem to fit into any of the neat pigeonholes this Administration has so kindly provided for us. I'm not a super-patriot or a Communist, and I will not be taken for granted as a part of Mr. Nixon's so-called "Silent Majority"! So where do I fit in? If there were a group called the "Increasingly Irritated Independents," I might subscribe to that. However, I prefer being just plain old American.

Just how long can we expect this state of affairs to continue? There are things that need to be done in our country. Our leaders don't have the time to be playing cowboys and Indians in the streets and on television. Our economy, our cities and our schools are going to hell in a handbasket while our leaders are cavorting about and coining cute little phrases for one another. Is this any way to run a country? Our own leaders in government have saved Saigon the trouble of dividing our country by doing it themselves. Won't somebody please wake up before it's too late? Put aside your petty quarrels and bickering, and pull us back together into what was and still can be a great nation. Don't destroy everything our ancestors worked so hard to achieve. I say not to you, but to every lawmaker in our country, and most importantly, our President and his Vice President: Set us a good example. Give us something to have faith in. Show us and the rest of the world what great statesmen are made of. Let us point to you with pride. We need your diplomacy, wisdom and tact as we have never needed it before.

For just this once, stop and think of the importance you have in shaping this country's future, the awesome responsibilities you hold in your hands, and the millions of people in the world whose lives your decisions affect.

Forget the circus and get down to business.

Please.

Very Sincerely,

DIXIE MILLER
Mrs. Jake H. Miller.

ROCKPORT, IND.

POLITICS IN VIETNAM

Mr. EAGLETON. Mr. President, on October 8 of this year, the Senator from Iowa, HAROLD HUGHES, and I submitted a resolution calling for the termination of the U.S. commitment to the present Government of South Vietnam unless major reform steps are taken by that Government in the next 60 days.

That government has remained unrepresentative and unresponsive, and in fact, seems to be becoming more so. In this regard I found a recent series of articles on politics in Vietnam, written by Elizabeth Pond, special correspondent of the Christian Science Monitor, of great interest.

She concludes:

The Thieu government is no Chiang Kai-shek postwar regime ready to collapse under its own decadence and irrelevance. But President Thieu's decision to organize an Army/Catholic party—at this time and in this manner—sets the course for increasing isolation of the Saigon regime. This step is politically irrevocable in a way that naming of a hardline cabinet, for instance, was not.

It will be argued by doves that the history of the United States involvement in Vietnam has decreed this outcome from the start with the inexorability of a Greek tragedy.

They will contend that the United States repeatedly made shortsighted decisions: in picking up the French mantle at all; in supporting President Diem with combatant advisers while he was stifling any possible development of social democracy; in sending United States combat troops to Vietnam in 1965 in an effort to counter what was basically a political decay that had escalated into mobile warfare; in valuing stability above reform from then on; in supporting the military over civilian candidates in the 1967 presidential election.

Perhaps the doves are right. But politically, until September, 1969, there was a chance of salvaging something from the deaths of 90,000 South Vietnamese, 40,000 Americans, and over half a million North Vietnamese casualties. After September, 1969, this chance seemed remote.

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

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

[From the Christian Science Monitor, Nov. 6, 1969]

NEW SAIGON PARTY—THIEU PICKS MILITARY FOR POLITICAL BASE

(By Elizabeth Pond)

SAIGON.—After two years of deliberation and maneuvering, Nguyen Van Thieu has crossed the Rubicon.

He is organizing a new party with its nucleus in the Army and is giving its formation top priority.

All indications are that the South Vietnamese President no longer is equivocating but has finally made his decision. He is turning to military hard-liners and former Diemists as his primary political base.

With this move a new phase has begun. President Thieu finally is shifting away from his long-held negative strategy of dispersing his rivals but not building any political structure of his own.

BREATHING SPACE

Two diametrically opposed projections for the future arise from this development.

In the optimistic analysis, President Thieu now feels himself firmly enough in the saddle to control whatever political apparatus he builds.

If all goes well, Saigon will be able to keep the mass of South Vietnamese benevolently neutral toward the government long enough to contain the Communist insurgency politically. This will allow the United States the few years' breathing space necessary to disengage.

In the pessimistic analysis President Thieu is turning to the military and the Roman Catholics out of weakness and a self-centered determination to hold power as long as possible.

In this view Saigon will strangle the beginnings of political consensus here and forfeit the one chance to transform its present military advantage over the Communists into a longer-term political superiority.

The exact shape of President Thieu's new party—tentatively called the Great Masses Force—is not yet clear. Partial information gives some indication of the general character of the party, however.

First, it should be very similar to the Can Lao Party, as it is being directed by old Diemists, several of whom were Can Lao members.

SENSITIVE ROLE

Second, the vigor with which President Thieu is quietly pushing the party indicates a major commitment on his part, not another trial balloon or decoy effort.

Thus the baffling question of the past year—how President Thieu was planning to hold together the non-Communist nationalists in the absence of any organizational bone structure—now is answered.

Third, it appears that the military will form the nucleus of the party.

The role of Army officers in the party is the most sensitive aspect of the whole development as the Constitution forbids political activity by members of the armed forces.

The best information now available, however, would indicate there will be a secret elite organization within the Army anyway, in traditional Can Lao fashion. And it is obvious that a number of Diemist generals will have a close working relationship with the party.

Other segments of the party are to be organized among trade unionists, businessmen, civil servants, possibly among the People's Self-Defense Forces, and various other civilian groups. But unlike the Can Lao, it appears that this time the military may form the core of the whole party.

President Thieu appears to believe he is operating from a position of strength, not weakness. But he is turning back wholeheartedly to the Army and the northern Catholics who elected him after a year of daring to offend them by negotiation offers to the Communists. And he is returning to the fold without having found any alternative political base in the meantime.

ULTIMATE VICTORY SEEN

Fourth, the party will be hard-line on two major issues in Vietnam: the war, and non-Communist nationalist opponents.

"The Republic of Vietnam will not stop short of victory no matter what happens in Washington," Mr. Thieu said to graduating Revolutionary Development cadres at the end of September. What is known of his private conversations with party organizers confirms the toughness of this and other public pronouncements.

To an associate of his, President Thieu reportedly elaborated that he had just realized the right way to handle the Americans.

Before and after his election, he said, he would propose policies and discuss them with the Americans before pushing ahead. But the Americans would consider such proposals at length and advise one thing and another until the original policy was completely destroyed. So the proper solution, Mr. Thieu said, is to inform the Americans of a proposed course of action and then proceed with it. The Americans may object and even bring pressure to bear, but in the end they give up.

ARMY LINK NURTURED

So the new party will be used to counter the Communists, opposition non-Communists, and also any American pressures for a peace displeasing to Saigon.

As Vietnamese sources analyze President Thieu's thinking, he is calculating that the U.S. cannot afford to lose the war and is therefore stuck here almost no matter what Saigon does.

The U.S. might dare, it is reasoned, to abandon the Thieu regime within a year or so, but it would never dare to destroy the South Vietnamese Army. If President Thieu links his destiny inextricably to that of the Army, then, he may figure that the U.S. cannot depose him.

The relationship of Mr. Thieu to the Americans—or, more accurately, the South Vietnamese President's perception of it—is crucial in his decision to push ahead with the new party. It is extremely difficult for any outsider to unravel this relationship, however. The best that can be offered is a working hypothesis, which may be wrong, but might at least cast some light on developments.

PRESSURE RECOGNIZED

A case can be made that until fall of 1969 Mr. Thieu leaned politically half on the Americans and half on the Army and northern Catholics who had elected him. In this view, up through some point after Midway, President Thieu used hard-line pressures in South Vietnam primarily in an attempt to slow down, not to sabotage, the American timetable of troop reduction.

In this period, President Thieu had probably not yet made up his mind quite how far to fall in with the Americans and play them against his political rivals, quite how far to use hard-line rivals against American peace pressures.

The Americans, after all, had been essential to Mr. Thieu's rise to primacy in 1967, in standing behind President Thieu's invocation of the Constitution in 1968, in reneging on his promise to follow the military committee's orders, and in forbidding any coups. But the Army was his real base within the country, and President Thieu ran the danger of turning it against him if he went too far too fast in his peace offers and his reduction of Vice-President Nguyen Cao Ky's position.

At some point President Thieu's fears for his own future at the hands of the Americans crystallized, however. Perhaps the moment of truth came with American enthusiasm for formation of a high-powered advisory council.

As Vietnamese analyzed it, a strong and prestigious advisory council could all too easily be substituted for President Thieu as the ranking authority.

At some point after Mr. Khiem's appointment as Prime Minister, then, the final decision was made to go ahead with the tentative plans for the largely Army-backed party. And it is this, rather than the naming of a hard-line Cabinet, that marks the real turning point in Vietnam.

SOCIAL IMMOBILITY

Social immobility is the rule in the Army. To begin with, most of the top command fought for the French against Vietnamese independence. The highest-ranking officers were promoted under Diem on a political basis. Generals and colonels resist changes that would erode their personal positions.

Even this military conservation might have been surmounted. Once upon a time Mr. Thieu might have established an infrastructure in the Army and the civil service that could have carried out village development and linked it with Saigon But this is clearly not in the cards now. For that President Thieu would have had to approach the Army from an unequivocal position of strength.

Mr. Thieu and his fellow generals are probably too suspicious of each other ever to return to a really chummy arrangement. Each will have an acute sense of the other's actual power, however. Both will know that President Thieu now has boxed himself in—and that he will be proportionally bound by rigid policies in the coming fluid period of political transition.

[From the Christian Science Monitor, Nov. 8, 1969]

VIET CONG DISLIKED MORE NOW—PEASANTS SIDE WITH SAIGON REGIME—FOR THE MOMENT

(By Elizabeth Pond)

SAIGON.—The fundamental axiom for any analysis of South Vietnam must be that this country consists of a mass of largely neutral peasants (and slightly less neutral urbanites) strung between two political authorities—the Saigon government and the National Liberation Front (NLF).

While the majority would much prefer no rule at all to rule by either side, they feel the government is the stronger of the two at the moment. And they dislike the Viet Cong more than they do the government.

There are exceptions. Villages dominated by Roman Catholics, the Hoa Hao, and some others are often staunch anti-Viet Cong bastions for ideological reasons of their own. Contrariwise, in a few areas that have been Viet Minh/Viet Cong heartland for 20 years or so, something of the old revolutionary mystique survives.

LEADERS HEEDED

But for the most part the peasants fall in with whichever power is dominant in an area.

Nevertheless, insofar as there is choice, the peasant basically favors the side that presses him least. At this stage of a messy war that less oppressive side is the government.

By now the sheer weight of years of firepower, massive sweeps, and grand forced population shifts have reduced the population base of the NLF and made the Viet Cong squeeze their remaining peasants ever harder and less discriminatingly for recruits, porters, and rice taxes. By contrast, government control tends to be much less disciplined.

At this point too there is for the average citizen more of that intangible that might be termed a sense of possibility. Villagers who five years ago sought to redress their grievances by joining the Viet Cong have many more channels for change opened up to them now—and use them.

AVENUES OF REDRESS

These channels include:

Joining the local militia to escape national military service away from home.

Using civil-defense forces to keep marauding South Vietnamese soldiers as well as Viet Cong tax collectors away from villagers.

Increasing harvest incomes by selling watermelons or vegetables in Saigon, getting technical assistance to grow high-yield miracle rice, or doubling crops with water pumps bought with funds from mutual loan associations.

Drifting to the city for relatively well-paying jobs with the Americans.

Complaining about inequities to American advisers or even occasionally lower-house representatives and village-council members.

The rural poor are able to find a better life in the government-run cities now than in NLF villages. And one of the important issues that drew adherents to the NLF in earlier days, land reform, may even be appropriated by the government, if present plans are implemented soon.

PROSPERITY ASSESSED

Finally, the peasant on the government side is simply better off materially than his brother on the NLF side. Prosperity is radiating out from Saigon. People are acquiring something of a stake in the system.

But this preference for the government is only passive, relative, and fragile.

As for the "sense of possibility," this is all too easily shriveled when rampant corruption skews daily life.

As for the Communist side, it may be too weakened now to take quick advantage of Saigon's embarrassments. It lost heavily in Tet of 1968. And the highly successful Accelerated Pacification Campaign of November 1968, to January 1969 hampered NFL political cadres in many areas by depriving them of their military cover.

But at the present rate of neutralization of political cadres, the NLF infrastructure simply is not going to be rooted out. And as long as the infrastructure exists, Viet Cong troops can always be rebuilt.

Furthermore, any trend toward a decline in government fortunes and reprieve for the NLF, once set in motion, would only be exacerbated in a cease-fire situation. The inevitable sagging of discipline would hurt the government more than the tightly organized Communists.

The greater ambiguities of a relative peace would blur what now is in many ways an exclusive choice between the government and the NLF. The faults of the government side would loom larger, the harshness of the Communist side fade a bit in memory.

[From the Christian Science Monitor, Nov. 14, 1969]

ARMY PREFERRED AS POLITICAL BASE—THIEU REJECTS BROADENING OF GOVERNMENT INTO GRASS ROOTS

(By Elizabeth Pond)

SAIGON.—In turning to the military for his political base, President Thieu appears to have discarded such alternatives as he had to constructively unify the non-Communist forces within South Vietnam.

These alternatives included organization of a real cadre structure—for national rather than for the elite purposes his chosen course suggests—or decentralization and nurturing of strong local governments.

The need to build a solid organizational infrastructure is vital if Saigon hopes to hold this traditionally fragmented country together. The Army and civil service would be the logical places on which to base such an infrastructure. But in forming the neo-Can Lao Party, President Thieu has opted for tightening his own administrative grip rather than for using the Army and civil service for community or structural political development.

They are not to be used to rally patriots of differing stripes to the national cause or to provide the linkage between the macropolitics of Saigon and the micropolitics of the village. Rather they are being used to maintain the narrow interests and power of the existing military oligarchy as long as possible.

COALITION A POSSIBILITY

One organizational possibility other than the military and civilian bureaucracies might have been based on coalescence of the major existing political parties. The Americans were eager to pursue this idea and pushed President Thieu into forming the six-party National Social Democratic Front bloc last spring.

It is sufficient to say, however, that a major stumbling block to realization of this hope is South Vietnam's political underdevelopment. Parties here continue to be factional and semiclandestine rather than vehicles for mass participation or interest resolvers and policy advocates. The very name for party in Vietnamese incorporates a word for "secret."

Some veteran Vietnamese and American officials put their hopes in a combination of decentralization and strong village development. This, they contend, is the only chance, when the maximum that can reasonably be hoped for is tolerance of the Saigon regime rather than commitment to it.

In this analysis, the only workable arrangement would be a tacit coalition between the central government and those who are in effective control over particular areas.

Saigon would, it is suggested, grant to local authorities funds and a fair degree of autonomy, including selection of or veto over local police and militia, cultural guarantees to ethnic minorities, and general immunity from incursions by the national Army.

SPUR TO OPPOSITION?

Local authorities, the theory goes, finding loose arrangements with Saigon more beneficial than the manpower and ideological demands of the NLF, would, with minimal national assistance, defend their own areas against the Viet Cong.

But as with his other options, President Thieu also has decided against this route to political development.

As for the Buddhists (nominally three-quarters of the population), President Thieu has made no attempt at reconciliation.

Given the history of Buddhist-government relations since 1964, any reconciliation is highly unlikely. But a mutual truce was never even explored.

Most Vietnamese name a time span of at least five years—if there is real progress—as necessary to glue the non-Communist nationalists together. But even this projection assumes constant cohesive pressure of one sort or another.

And President Thieu now has chosen the contrary strategy of dispersal of other nationalists in favor of a power concentration in the inward-looking elite of the Army and the Roman Catholics.

OPTION FORFEITED

He would appear to have forfeited conclusively the option of decentralization and accommodation of local interests, in much the same way that Saigon squandered the voluntary leadership following the Tet offensive of 1968.

The unexpected could happen. An outbreak of major warfare between Communist China and the Soviet Union, for instance, could halt delivery of material to North Vietnam and cripple Hanoi's war effort. A succession struggle in Hanoi might lead to crucial indecision on the war.

In the absence of any such historical accidents, however, as the course now is set, it would appear to be only a matter of time before Saigon itself strangles the beginnings of political consensus here and leaves the field to superior Communist organization, discipline, and staying power.

In the negative political sense it won't even matter if the new Army party turns out to be relatively weak. Perhaps especially if it is weak, handing its members capricious privileges but little discipline, it will effectively serve to alienate other nationalist groups that would have had to unite in order to survive the Communist threat.

DECISION SEEN IRREVOCABLE

The Thieu government is no Chiang Kai-shek postwar regime ready to collapse under its own decadence and irrelevance. But President Thieu's decision to organize an Army/Catholic party—at this time and in this manner—sets the course for increasing isolation of the Saigon regime. This step is politically irrevocable in a way that naming of a hardline cabinet, for instance, was not.

It will be argued by doves that the history of United States involvement in Vietnam has decreed this outcome from the start with the inexorability of a Greek tragedy.

They will contend that the United States repeatedly made shortsighted decisions: in picking up the French mantle at all; in supporting President Diem with combatant advisers while he was stifling any possible development of social democracy; in sending United States combat troops to Vietnam in 1965 in an effort to counter what was basically a political decay that had escalated into mobile warfare; in valuing stability above reform from then on; in supporting the military over civilian candidates in the 1967 presidential election.

Perhaps the doves are right. But politically, until September, 1969, there was a chance of salvaging something from the death of 90,000 South Vietnamese, 40,000 Americans, and over half a million North Vietnamese casualties. After September, 1969, this chance seemed remote.

POLLUTION CONTROL AND THE POTENTIAL OF NUCLEAR POWER

Mr. GORE. Mr. President, the American people have shown increased concern in recent years over the accelerated deterioration of our environment. And there is genuine cause for concern. Should present trends continue, we are warned, the earth may well become uninhabitable by man. Before the dismal formula of Malthus finally produces a thinning of the population through cruel and absolute starvation. Fortunately, trends do not continue unbroken, straight-line progression for an indefinite period. Having become alerted to some of the problems and some of the processes now threatening our environment, we can take action—intelligent, reasoned action—to reverse or alter current deterioration.

Let me emphasize that we need to approach our environmental problems intelligently. We are not yet faced with a crisis and crash programs are not indicated. Some would have us believe that we face such an imminent and catastrophic environmental deterioration as that confronting residents of Pompeii, Herculaneum and Stabii in A.D. 79. When the first rumblings from Mount Vesuvius were felt and heard. Perhaps our outlook is not so foreboding, but action now is clearly imperative.

Furthermore, although the automobile is our number one polluter, being responsible for 60 to 70 percent or more of pollution in some areas, the militants have chosen to center attention on a less troublesome, but the more headline catching, problem of pollution from electric power generating plants. These plants do cause pollution—particulate, thermal, radiation, for example—and this particular problem must be dealt with promptly and positively. But this problem must be placed in perspective and considered rationally, not viscerally.

We could, of course, control pollution from powerplants by cutting back on power demands, just as we could control pollution from automobile exhaust by manufacturing fewer automobiles. But this is a most unlikely solution, and one which I would reject. We must continue to move forward in all phases of production, and power generation is clearly basic to our mode of life. Because of population growth and more concentration in cities, increased generating capacity is necessary just to stay abreast of demand at current levels. We are now operating on the borderline. We recall vividly the massive power failure of 1965 which blacked out New York and a large portion of the northeastern part of the country. Such situations must not be allowed to recur, and this, of course, means that we must not only install increased generating capacity, but accomplish a degree of grid integration that will stagger the present profit-motivated utility isolationism.

Let me emphasize this point. With a proper national grid, economies can be achieved and safeguards erected against the possibility of major area blackouts without installation in each area of extra capacity which would make each area completely self-sufficient. The necessary margin of safety for unforeseen contingencies, often local in nature, can in this way be provided at lower cost, both in dollars and in pollution. But this may require that the Federal Government take a stronger hand in the power field. The individual States are unable to cope with this kind of problem or to provide for this type of solution.

According to present estimates, the demand for electric power by 1980 will be 150 percent of the 1965 level. And by the year 2000, a date which not so long ago had only Buck Rogers connotations, but which will be upon us within a short generation, we will be using two and one-half times as much electric energy as we did in 1965. Strikingly, during the period 1974-80 we must install more new generating capacity than the total capacity now in being.

Now, since our environment is being somewhat altered by the operation of these electric generating plants, and since we must install much greater, rather than less, capacity, it behooves us to look to the operation of these plants and determine just how detrimental they may be and what may be done to make their operation less disruptive of our environment.

And it is certainly fair to acknowledge that, since a large proportion of new generating capacity is likely to be nuclear rather than fossil fueled, an additional increment of public concern has been introduced. Because of the relative newness of nuclear reactors, and the mysteries surrounding nuclear processes and byproducts, but most of all, I feel, because nuclear operations conjure up the awful destruction of fission and fusion weapons of war, an additional element of concern amounting almost to public hysteria seems to be injected whenever a proposal to build a nuclear power plant is considered. We have seen this in connection with proposals in various parts of the country, notably in New York and now in Minnesota.

This Minnesota situation is interesting in that the whole question of Federal preemption in the nuclear field has been called into question and is being litigated. State authorities in Minnesota want to impose tighter restrictions and higher standards than does the Federal Government through the Atomic Energy Commission. Perhaps all standards should be reexamined, but we should approach this with a balanced view.

Radiation is present in any nuclear operation. But in nuclear reactors the radiation emission is of a very low level, and is released under carefully controlled conditions. There are, of course, dangers from any level of radiation, but the levels we are talking about are not unknown in nature. We live in a world in which radiation is an ever present factor. Radiation levels vary widely, depending on where we live, the altitude, the types of materials of which our houses are constructed.

Nuclear plants now generating electricity do release radiation. They give forth a degree of radiation pollution. But, as I understand it, they release low levels of radiation under controlled conditions. They operate within the limits of safety prescribed by the Atomic Energy Commission, and improvements in this regard are being made with each new installation and with each new generation of reactors developed. To date, no accidents whatsoever affecting the general public have occurred in the civilian nuclear reactor program. In fact, since 1943, a total of seven workers have died in radiation-connected accidents of any or all sorts.

True, the adequacy of the AEC standards for powerplants has been called into question, and this, too, is involved in the Minnesota litigation. But the basic question there seems to be whether the Federal Government has preempted, and whether it constitutionally can and has intended deliberately to preempt, the field of regulation of nuclear power plants. The Minnesota Pollution Control Agency has issued Northern States Power an operating permit, but it has specified standards which are considerably tighter than those of the AEC. Indeed, standards sought to be imposed by the State of Minnesota contemplate some 2 percent of the radioactivity discharge allowed by the AEC.

Are the AEC standards inadequate? Scientists may disagree. But the standards have been arrived at, not arbitrarily or capriciously by a bunch of bungling bureaucrats, but, rather, they have been set in the light of recommendations of the Federal Radiation Council, which itself is representative of several Federal agencies, and national and international experts in the radiation field.

Mr. President, we must recognize radiation dangers and we should constantly review and reexamine our standards. We must, also, understand that in the current popular wave of militant attitudes the conservation movement has been taken over by militants and they have made nuclear generation of electric power their chief whipping boy. The Congress and the Federal Government cannot allow the power needs of the Nation to go unmet. In all respects, the Government, the agent of society, must be responsible—yes, without quibble. But equally the Government must resist irresponsibility.

We are concerned about pollution of all sorts, and rightly so. But the greatest single offender by far is the automobile, and I have heard of no militant conservationist giving up his automobile. The automobile problem requires attention. It is receiving some attention but perhaps in the absence of a proper sense of urgency.

I want to see sufficiently tight standards applied to electric generating plants, whether they are privately or publicly owned, whether they are fossil or nuclear fueled, whether they are located in areas already heavily polluted or relatively clean. But I also want to see our power generating capacity continue to expand. It must. This is the life blood of modern industry and the index to comforts and conveniences of homelife. We cannot stand still. We cannot go backward. We can, through genuine Federal-State cooperation, pursue a proper course.

One of the very interesting chapters in man's general progress is the use and control of new sources of energy. Without the tremendous strides in harnessing energy sources beyond man's own very limited physical efforts, economic, social and political progress would have stopped far short of present standards. Present goals, yet unrealized, would be unthinkable, true, mistakes have been made in the exploitation of each newly developed energy source, but this must not stop our pushing ahead.

The relative merits or demerits of fossil and nuclear fuels is an interesting question. My State has a sizable interest in both; the Tennessee Valley Authority is utilizing both. So, the people in the southeastern part of the United States, as elsewhere, are interested in both.

Fossil fuels firing electric generating plants cause pollution. They add heat to air and water. They add carbon dioxide, sulfur dioxide and particulates to the atmosphere. Nuclear plants are better in that they do not pollute the atmosphere with these dioxides and particulates, and such pollution as they are guilty of is released under more controlled conditions. They do, as I understand, add more heat to the water than do fossil fueled plants. There is considerable dispute about how much damage, if any, this heated water does. In addition, they add low levels of radiation to the environment.

At this point, I do not believe there is a clear consensus among those who are well informed in this area as to which type of plant is more detrimental to the environment.

But, regardless of the relative merits of fossil versus nuclear fuels, we must continue in the foreseeable future to develop, improve and install both types. Both types can and must be improved. Carbon dioxide and sulfur dioxide emission must be brought under better control insofar as fossil fuels are concerned. Radioactivity must be closely watched in nuclear installations. In both types, thermal pollution of both air and water must be held within proper limits, with this excess heat preferably being utilized in a positive and beneficial way.

Of course, it goes without saying that we want better, more efficient, less polluting powerplants. Improvements are needed for reasons beyond the pollution problem.

Fuels, whether fossil or nuclear, are not inexhaustible. Improved powerplants will use less fuel, and this is fast becoming critical in fossil fuels. We may very soon be faced with the more pressing need for coal and petroleum to be preserved for use in chemical processes. They are perhaps already too valuable, in a social if not a monetary sense, to be wasted in powerplants and in behemoth automobiles employing 300 horsepower to transport one man to work, or a 100-pound housewife to the grocery store.

Then, too, improvements will allow reuse in our powerplants of what are now waste products. We still get only a small fraction of the potential energy from any of our power sources. Improvements in this regard will preserve raw materials as well as assist in the antipollution drive.

Perhaps, because of their relative newness, there is more opportunity for rapid improvement in design in the nuclear plants. We should proceed more purposefully, it seems to me, with the development of advanced reactors, particularly of the breeder type. The molten salt reactor seems to be particularly promising and more money and more manpower should be put to work in furthering this development on an accelerated, although not necessarily a crash, basis. Perhaps controlled fusion will not much longer elude us.

On the other hand, there is a great deal we can do right now with our present reactors to hold down the level of radioactive pollution. Indeed, the standards sought to be imposed by the State of Minnesota can be met, but at some additional cost in the form of more frequent shutdowns with more frequent reworking of the fuel elements. This is a matter of cost, not of physical impossibility or even of technical difficulty. With present reactors, an increased nuclear fuel supply would probably be required.

Mr. President, we face problems from pollution, and we must meet these problems boldly. Our environment must be preserved, we must set about this task, however, without hysteria. Future generations cannot be denied the benefits of a safe environment, nor, on the other hand, should they be denied the potential of nuclear power.

WEEK OF NATIONAL UNITY—PROCLAMATION BY CITY OF SPARTANBURG, S.C.

Mr. HOLLINGS. Mr. President, on November 11, 1969, the city of Spartanburg, S.C., proclaimed a "Week of National Unity" in support of "our gallant veterans of all wars." The purpose of this proclamation is to help to restore confidence in America in support of patriotic endeavors and to recognize the contributions of our servicemen throughout the world.

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

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

PROCLAMATION OF THE CITY OF SPARTANBURG, S.C.

Whereas, November 9–16, 1969, is "Week of National Unity," and

Whereas, National Chairman Bob Hope, has requested that we join in participating in Unity activities to promote patriotic support for Americanism, and

Whereas, today, November 11, 1969, is National Veterans Day in honor of our gallant veterans of all wars, and

Whereas, it behooves all honest, law abiding Americans to support patriotic endeavors and to help restore confidence in America by our fighting servicemen throughout the world,

Now, therefore, I Robert L. Stoddard, as Mayor of the City of Spartanburg, South Carolina, do hereby proclaim this week, November 9–16, as "National Unity Week" and call upon our citizens to display flags, to write a letter to a serviceman, to turn on your car lights today, November 11, as you travel, to write President Nixon in support of his policies in Vietnam and on law and order; and for our churches to have a special prayer for National Unity and Support of our servicemen on Sunday, November 16, 1969.

Witness my hand and the seal of the City of Spartanburg this 11th day of November, 1969.

ROBERT L. STODDARD,
Mayor.

UDALL SPEAKS OUT ON CRISIS OF THE ENVIRONMENT

Mr. NELSON. Mr. President, recently Stewart Udall, the Secretary of Interior under Presidents Kennedy and Johnson, spoke at the campus of Wisconsin State University at Eau Claire in the first of a series of forum speeches.

Mr. Udall's speech pulled no punches in describing the crisis of our environment. He pointed out:

We are richer; yet we're living in filthier communities like Croesus on a garbage heap.

He mentioned that perhaps the real America today could be characterized by a bumper sticker he saw in Madison: "Be American—Pollute Something." Man, he said, could be characterized as an endangered species. Our cities, unlike most civilizations, are disaster areas instead of places of pride, he pointed out.

Ex-Secretary Udall painted a gloomy picture which unfortunately is all too true.

One of the listeners to this eloquent plea was John Lavine, publisher of the sprightly Chippewa Herald-Telegram. His editorial of October 27, 1969, describing the speech is another example of the press of our country taking its responsibility seriously and bringing the crucial issue of our generation to the American people.

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

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

WHAT CAN BE DONE ABOUT THIS HORROR PICTURE THAT WE ARE MAKING OUT OF OUR ENVIRONMENT?

(By John Lavine)

I know that there prevails the stereotype that daily newspapermen are supposed to be a hard boiled lot. And perhaps in some ways we are.

Yet, I must frankly admit that last Thursday evening I went to hear a quietly stated speech at Wisconsin State University-Eau Claire, WSU-EC. And it really scared me. In fact, I think that it scared me enough that it made me into a convert, but also a bit of a raving fanatic!

The speech was given by Yale University Professor Stewart Udall—the Secretary of Interior under John Kennedy.

Udall's speech was the first of the FORUM speeches of the year. And, frankly, by all outward signs, it should have bored me silly.

I mean what excitement could there be in hearing a man who was out of office, a man who would probably talk about hunting and fishing—and I do neither—and a man who had turned a fairly minor cabinet appointment into a full professorship?

Was Udall's a quiet, boring speech? Not by a trip to the moon and back it wasn't.

The first thing that the ex-Secretary did was paint a picture of America today:

(After talking about some of our accomplishments as a nation such as the Apollo 11 trip, Udall outlined the other side of the ledger.)

"We produce more pollutants and waste than any other country in the world . . . Our cities instead of being a place of pride, as in most civilizations, are a disaster area . . . We are richer and richer; yet we're living in filthier communities like Croesus on a garbage heap . . . We think that all growth is good growth—even if it hurts the quality of our life."

Perhaps the real America today, Udall stated, is the one personified by the bumper sticker he saw recently in Madison, Wis. It read: "Be American—pollute something!" Or, maybe our life is better characterized by the title of the Dept. of the Interior's year book which was called: "Man—an endangered species?"

Finally looking at the heart of America, Mr. Udall noted the price we pay for our amazing mobility of which we are so proud: The price is: 1.) "The main source of air pollution is the automobile. 2.) The noise level in the United States is doubling every eight years. 3.) Even though it is best for children to walk—even a couple of miles to school each day, we bus them because it isn't safe to walk. We have provided no side walks, and with the speed and number of cars, even riding a bicycle is hazardous. 4.) And, last but not least, we kill more people in auto accidents than in war . . . Last year we killed 53,000; injured thousands more, and are now only minimally starting to talk about auto safety."

What can be done about this horror picture that we are making out of our environment? Udall, to use his own words, was "very blunt with the answers:"

"First," Udall said, "We must change our national policy which is now to encourage growth. We must stop the population explosion, and we must realize that we can continue to prosper without more people for whom we do not have room . . . Remember the nation with the best rate of growth of GNP, gross national product, has been Japan—and they have had an almost level population rate."

"Second," the former Secretary said, "We have to reorder our national priorities. We now spend $35 billion on getting a man to the moon $600 million for the SST, when it would take only a few million to gather together a NASA type team to develop a silent, pollution free engine . . . And it would take relatively little to make major strikes in water pollution—an area where we have done nothing for years."

"Of course I want my country to be strong," the speaker concluded, "but isn't it time we were a little less in space and in 130 other countries militarily and put a little more effort towards doing something about the quality of our own people's life here at home?"

Can the reader see why the speech was upsetting? Can you see why it made me—and I hope all of us—a bit of a fanatic on what we are doing, and are not doing, to our environment?

This isn't a subject we can pussy-foot around any longer. It must be met. And it must be met head on and now!

ENVIRONMENTAL PROBLEMS OF THE EARTH

Mr. MOSS. Mr. President, all Senators certainly have heard the saying—

Now is the time for all good men to come to the aid of their party.

I noticed an interesting play on these words in an advertisement published in Time magazine for November 14.

The ad, on behalf of the Leo Burnett Co., Inc., carried the headline "Now Is the Time for All Good Men To Come to the Aid of Their Planet." The ad, which ran more than a full page, contained an excellent, concise account of the environmental problems facing the entire earth.

The ad touches on pollution, overpopulation, urbanization, industrialization, poverty, and other problems. I compliment the Leo Burnett Co. for taking this most effective means once again to bring these problems to our attention. I ask unanimous consent that the contents of the ad be printed in the RECORD.

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

NOW IS THE TIME FOR ALL GOOD MEN TO COME TO THE AID OF THEIR PLANET

What we don't know about this earth we live on not only can hurt us—it can kill us.

What we don't know—or refuse to recognize—is that modern man has been altering his total environment so swiftly and suddenly that the whole "great chain of life" on this planet is endangered.

All of us live on a tiny space-ship which is hurtling through the universe at a speed 600 times faster than the fastest jet plane—carrying with it its own limited resources for sustaining life.

What we have now is all we will ever have to keep us alive. Having already set foot on the lifeless moon, we shall presumably find that we are the only creatures in our solar system. As lonely astronauts on our own ceaseless journey through space, what do we have as our basic equipment for survival?

Above us, a narrow band of usable atmosphere, no more than seven miles high, with no "new" air available to us.

Beneath us, a thin crust of land, with only one-eighth of the surface fit for human life.

And around us, a finite supply of "usable" water that we must eternally cleanse and re-use.

These are the elements of man's physical environment. This is the "envelope" in which our planet is perpetually sealed.

Together, and left alone, land, air, and water work well as an "eco-system" to maintain the great chain of life, and the delicate balance of nature from ocean depth to mountain top.

But man, since he first rose up on two legs, has been tampering with this system. He cannot help it. Everything we do alters our environment: the ways we grow food and build shelter and create what we call "culture" and "civilization."

Now, entering the last three decades of the 20th Century, we face the shocking realization that we have gone too far too fast and too heedlessly—and now we are forced to cope with some of the consequences of our "progress" as a species.

For, increasingly, all over the world scientists and statesmen and specialists in every field are coming to agree on the pressing paradoxes of our modern age:

That, as societies grow richer, their environments grow poorer.

That, as the array of objects expands, the vigor of life declines.

That, as we acquire more leisure to enjoy our surroundings, we find less around us to enjoy.

It is nobody's fault, and it is everybody's fault.

The real culprits are the three main currents of the 20th Century—Population, Industrialization, and Urbanization.

Together, these three swift and mighty currents of history have acted to foul the air, contaminate the land, pollute the waters—and to accelerate our mounting loss of beauty and privacy, quiet and recreation.

World population is growing at a rate that will double by the year 2000—only a brief three decades away—when nearly seven billion people will inhabit the earth.

Already, the poverty-stricken countries of Asia, the Near East, Africa, and Latin America contain 70 percent of the world's adults and 80 percent of its children. The most people are concentrated where the least food and goods are available.

Industrialization has added its own burden to the population pressure. The more we produce and consume, the more waste products we discharge into the air and water and land around us, where they do not "disappear," but last forever in one form or another.

Our natural resources—both renewable and non-renewable—are taxed to the utmost by industrialization. The U.S. water supply, for instance, remains at the same fixed level, but we are using four times as much per person as in 1900.

Yet, at the same time, the volume of waste waters discharged into our lakes, rivers, and streams has risen 600 percent so far in this century. Less than one-tenth of one percent of contaminating materials can kill fish life by consuming oxygen in the waters. (The de-salting of sea water for household and agricultural use on a large scale is a long way off.)

We now spew 150 million tons of pollutants into the atmosphere annually, and 90 percent of this consists of largely invisible but potentially lethal gases. This may reduce solar radiation, and raise the temperature at the earth's surface. Some predict that this could conceivably melt the polar ice cap, thus flooding the coastal cities of the world. Moreover, these contaminants are global in their effects; as the Bible tersely reminds us. "The wind bloweth where it listeth."

From the plains in Russia to the mountains of Switzerland, from the blue waters of the Pacific to the smokestacks of Chicago, the air is hazier, the smog is thicker, the sun dimmer. Throughout the world, the statistics are uniformly appalling—but the figures speak less vividly than the sad bewilderment of California school children who are now excused from outdoor games on those days when the atmosphere chokes their lungs.

Industrialization plagues the land as well as the air and waters. Our rise in synthetic technology has given us innumerable conveniences—but the roadsides are strewn with cans, bottles, and cartons, the dumps overflow, and in some cities it costs three times more to get rid of a ton of junk than to ship in a ton of coal.

Urbanization is perhaps the most menacing of the three converging trends that threaten our planet today.

In the U.S., land is being urbanized at the rate of 3,000 acres a day. One million Americans a year leave the rural areas for cities. Seventy percent of all Americans now live on 10 percent of the land; by the year 2000, some 85 percent will live in urban areas. And the same is happening all over the world. By the end of this century, most human beings—for the first time in history—will be born, live, reproduce, and die within the confines of an urban setting.

Each time we build a new highway, bulldoze a woods into a shopping center, or turn farmland into housing developments, we decrease the acreage that will grow food. Great progress is being made in the productivity of our soil, yet agriculture is now taking three to four million tons more nutrients from it than are being replaced each year.

The word "ecology" was devised exactly a hundred years ago—in 1869—to signify the study of the relationship between life systems and their environment. "Ecology" is what everybody on this planet must start thinking about—and quickly—if we are to avoid irreversible changes within the closed system of our space-ship.

For everything around is is tied together in a system of mutual interdependence. The plants help renew our air; the air helps purify our water; the water irrigates the plants. Man, as a part of nature, cannot "master" it; he must learn to work with it—and with his fellows everywhere—to ensure that we do not alter the environment so drastically that we perish before we can adjust to it.

Mankind as a species needs esthetic as well as physical values—sweet rivers to walk by in solitude and serenity, and pleasant prospects even in the midst of industrial affluence. The constant din of urban life assails the ears relentlessly, and noise contributes its own ugly obligato to the disharmony of our surroundings.

"The world is too much with us, late and soon," as Wordsworth prophetically put it more than a century ago, "Getting and spending, we lay waste our powers."

We have laid waste our powers for too long, not merely by ignoring the warnings of dead lakes and noxious air and ravaged countrysides, but also by periodically killing off of our bravest and our best in senseless warfare.

Now is the time for all good men to come to the aid of their planet.

We have the technical skill and resources. We have a common cause worth fighting for: a new kind of war to make the world safe for humanity against its own worst instincts.

Perhaps this mighty global struggle to restore the quality of our human environment may provide an effective and inspired substitute for national conflict and bloodshed.

Perhaps only a planetary view of man can guarantee our survival.

We have the weapons that enable us all to die together; can we not forge the tools that enable us all to live together?

IS SST A BAD IDEA THAT WON'T DIE?

Mr. NELSON. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Is SST a Bad Idea That Won't Die?" published in the Washington Sunday Star of November 16, and an article entitled "General Quesada Decried 'Forced' SST Project," published in the Washington Post of November 17. The latter article relates to suppressed testimony of the former head of the Federal Aviation Administration.

The questions raised by these two articles must be answered, and answered fully, before Congress appropriates any further funds for the SST.

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

[From the Washington (D.C.) Sunday Star, Nov. 16, 1969]

IS SST A BAD IDEA THAT WON'T DIE?

(By William Hines)

The proposition that nothing has quite the staying power of a bad idea has been proved repeatedly, but never with more dramatic force than in the case of the supersonic transport airplane.

The SST is a legacy of John F. Kennedy which promises in the long run to rank, in the hierarchy of fiascos, as the technological equivalent of the Bay of Pigs. If its advocates in and out of government were to seek an adequately descriptive name for the big bird today, six years after its hatching, they could do worse than consider "The Albatross."

The Albatross, or Boeing 2707 (to use its official designation), got its start in a commencement address to the class of '63 at the U.S. Air Force Academy when JFK almost offhandedly remarked:

"I am announcing today that the United States will commit itself to an important new program in civilian aviation. . . . It is my judgment that this government should immediately commence a new program in partnership with private industry to develop at the earliest practical date the prototype of a commercially successful supersonic transport superior to that being built in any other country . . ."

Kennedy predicted that the SST would be flying over international routes at the end of the 1960s. Today, with the beginning of the 70s only a few weeks off, the airplane is still on paper after having undergone an almost complete metamorphosis to correct what turned out to be an unworkable original design.

Six years after the academy speech at Colorado Springs, the SST was in limbo. Lyndon Johnson in almost his final official act, submitted a fiscal 1970 budget that contained no funds for carrying forward SST development. Johnson's aides explained that he was leaving the "go-no-go" decision to his successor, Richard Nixon.

Less than a month after taking office, Nixon appointed a panel of high-ranking government officials, called the SST Ad Hoc Review Committee, to study the program and prepare a report on which the new president could base a judgment about its future. The following month, when he submitted to Congress revisions to the Johnson budget, Nixon left the SST item blank.

For two months the Ad Hoc Committee looked at the SST from every angle, and then in April submitted to Transportation Secretary John Volpe a report that was clearly negative in tone. Volpe handed the report to Nixon along with his personal recommendation to forge ahead on the SST regardless.

As printed in the Congressional Record of Oct. 31 (pages 32599 to 32613), the report and supporting documents effectively knocked down all the tired old cliches and sales pitches offered in support of the SST by the aviation lobby, which is indistinguishable most of the time from the celebrated "Military-Industrial Complex."

Balance of payments? SST would probably do more harm than good. Return on the government's investment? It might not sell well enough to give Uncle Sam his seed money back, let alone return a profit. Bonanza for the airlines? Serious question that the SST could cut the mustard in commercial service unless subsidized.

Sonic boom? Intolerable and likely to remain so, with no scientific basis for hope that the problem can ever be licked. Noise near airports? Another black mark against the SST. Other environmental pollution? Serious, possibly with world-wide effects.

Job opportunities? Few if any for those who need them most, the inner-city poor. Effects on domestic economy? Serious danger of added inflationary pressures as a result of competition for skilled workers already employed.

American prestige abroad? This from U. Alexis Johnson, undersecretary of state: "It would not be proper to base the decision to go ahead with the project on any generalized concept of enhancement of U.S. prestige."

The most telling summary of arguments against the SST probably came from Nixon's science adviser, Dr. Lee A. Du Bridge:

"On the whole, I come out negative on the desirability for further government subsidy for the development of this plane. . . . Any technological benefits which would accrue from its further development, either for civilian or military purposes, would seem to be minimal.

"Granted that this is an exciting technological development, it still seems best to me to avoid the serious environmental and nuisance problems, and the government should not be subsidizing a device which has neither commercial attractiveness nor public acceptance."

On the basis of this sort of advice, President Nixon last September 23 made his decision. He elected to go ahead with prototype development of the SST.

[From the Washington (D.C.) Post, Nov. 17, 1969]

GENERAL QUESADA DECRIED "FORCED" SST PROJECT

A former head of the Federal Aviation Administration has gone on record as opposing Nixon administration plans to push development of a supersonic transport.

Rep. Henry S. Reuss (D-Wis.), a leading critic of the SST, yesterday released testimony given by Lt. Gen. Elwood R. Quesada, FAA chief from 1958 to 1961 and now a director of American Airlines.

Reuss said the Department of Transportation denied the existence of the Quesada testimony, "but finally, after repeated requests, they were able to produce one copy. It had been found in a safe in the office of the Under Secretary of Transportation."

The battle over continued government funding of the SST program will center on the House floor next week when the administration's request for $96 million to develop the plane comes up as part of the department of transportation's appropriation bill.

The testimony produced by Reuss, which he said he would enter in the Congressional Record today, was given by Quesada last March before a presidential task force on the SST.

"I gag a little bit at what I observe to be a tendency to put the supersonic transport program under the aegis of the federal government," Quesada testified. "And more important, sir, I gag at what has been, at least I have observed, an apparent desire to develop this airplane under forced draft; and in my opinion false goals have been established in terms of time."

CONSERVATION IN THE USE OF COAL

Mr. BURDICK. Mr. President, as each passing day brings to light new threats to the quality of our environment, I become more aware of how fortunate I am to be a citizen of North Dakota, where the air is cleaner. However, North Dakota is also being touched by industrialization and must face the attendant problem of environmental pollution.

Since January 1966, the Basin Electric Power Cooperative has operated the 216,000-kilowatt lignite-fueled Leland Olds Station near Stanton, N. Dak. This was the first large lignite-fueled unit in the United States and Canada. One does not have to be an expert in environmental quality control to appreciate the environmental havoc this could have created.

This was not allowed to happen, however. From the outset, the foresighted Basin Electric membership and board of directors established a policy of reducing the adverse effects on the environment of its plant operations. James Grahl, general manager of the Basin Electric Power Cooperative, outlined Basin Electric's program at a recent speech before the Montana Coal Symposium in Billings, Mont.

I ask unanimous consent that Mr. Grahl's statement be printed in the RECORD.

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

CONSERVATION IN THE USE OF COAL

(Presented by James Grahl, general manager, Basin Electric Power Cooperative, at the Montana Coal Symposium, Billings, Mont., Nov. 7, 1969)

Basin Electric Power Cooperative as a wholesale power supplier for rural electric cooperatives located in eight states of the Missouri Basin, including Montana, is presently operating the 216,000 KW lignite-fueled Leland Olds Station near Stanton, N.D. This first large lignite-fueled unit in the U.S. and Canada has been operating since January, 1966. It is fulfilling very successfully its purpose of a low-cost kilowatt-hour factory for the cooperatives.

Because it has a fuel cost of about 1.5 mills/kwh, it is a base load plant, and we burn about 1.2 million tons of lignite per year.

From the beginning, the Basin Electric membership and Board of Directors, as established policy, have tried to reduce the adverse effects on the environment of our plant operations.

However, given the present technology, there is no way of producing the thermal electric power our society requires without affecting our environment adversely. The plants fueled with coal and lignite produce waste heat and ashes, and result in the strip-mining of land. Atomic power plants discharge even larger amounts of heat and result in substantial quantities of radioactive wastes.

A power producer at present has no choice but to build one of the types of plants now available, despite its effects on the environment, but we can do our best to reduce these effects.

Basin Electric has been making such efforts. For example, we have attempted to do something about water pollution. When we started design of our plant, North Dakota had no anti-water pollution law and we could have dumped our ashes (about 60,000 tons per year) into the Missouri River as far as state law was concerned. We do not do that, but impound them in a lagoon and return clean, effluent water to the river. More significantly, we were the only industrial organization, to my knowledge, to support the enactment of the model anti-water pollution law by the North Dakota legislature in 1967.

Our plant does discharge waste heat into the Missouri River. However, at this stage of development along the River, we have been advised by the State environmental health officer that the heat discharged is probably beneficial because it keeps a stretch of the River open during the winter and thus increases oxygenation.

With respect to air pollution, power plants have a problem with the Western coals. Their low sulfur content is desirable because it reduces air pollution by oxides of sulfur, but electrostatic precipitators, designed to remove 96–99% of the fly ash from stack gas, apparently do not work well with low-sulfur ash.

Basin Electric is going to participate with a major equipment manufacturer and the U.S. Bureau of Mines laboratory in Grand Forks in a research program with a large pilot unit to try to develop improved techniques and equipment and more efficient ash removal by electrostatic precipitators when used with plants burning Western coals. The immediate objective will be an improved and more efficient electrostatic precipitator in our second generating unit, of 400,000 KW, to be built at the Leland Olds Station by 1974–75. This research is of especial importance, we believe, because enormous amounts of these Western coals are destined to be burned in power plants in the years ahead. We hope through this joint effort to help minimize the air pollution which this coming development otherwise will cause.

Basin Electric also advocated state legislation controlling air pollution, and such a law was enacted in 1969.

With respect to fly ash, Basin Electric has supported research on the uses of fly ash at the University of North Dakota for several years, by Dr. Oscar Manz. This research already has paid off. As the result of work by Dr. Manz and the North Dakota highway department, lignite fly ash was specified last spring as an acceptable mineral filler for asphalt paving. Several thousand tons of Basin Electric fly ash were used in highway construction this summer, and we expect much more to be used in the future.

I believe we were the first power producer in the Missouri Basin voluntarily to require our coal supplier to grade the spoil banks so as to return them to the "contours of rolling countryside", and to participate with us in experimental plantings. The mining company estimates that the grading adds about 1.5 cents per ton to the price we pay for lignite. Out of an annual fuel bill of about $2 million, we pay about $17,000 for grading the spoil banks so that they look similar to the landscape before it was strip-mined. The planting of trees, shrubs and grasses is still experimental.

Consequently, we can say that spoil banks can be graded so that they are not eyesores, and are passable by vehicles as well as on foot, without unacceptable expense to the consumer of electricity.

Finally, we also have tried to make our power plant an attractive part of the landscape. How to do this puzzled us at first, as it seemed that any large industry facility would stick out like a sore thumb in the open North Dakota prairie. However, it was suggested that the main feature of the landscape was the blue sky. We accordingly used shades of blue for the plant, and Consolidation Coal Company used a matching color scheme for its conveyors and crushing plant. This color scheme worked out just the way we hoped it would. My wife contributed the original suggestion, illustrating that it is sometimes worthwhile to talk about these problems at home.

I have reviewed Basin Electric's efforts in behalf of the environment not to brag but to illustrate that industry can do quite a bit to ameliorate its disturbing effects on the environment with a reasonable degree of effort and at acceptable expense, compared to the total costs of doing business. One reason for our efforts has been to demonstrate this fact, to encourage the relatively undeveloped states of the Missouri Basin to enact regulatory legislation before the industrialization that is coming pollutes the air and water and ravages the landscape to the degree that has happened in other parts of the country.

Montana, with its enormous resources, should make sure it has legislation to require new industrial plants to minimize air and water pollution to the extent technically and economically feasible, and to do a reasonable amount of rehabilitation work on spoil banks. There is no use depending upon voluntary action. It is not reasonable to expect industry to do these things voluntarily, because they do cost money. In competitive enterprises, individual companies will not spend money to reduce damage to the environment when they know their competitors may not do so. If the law requires all to do so, however, then all must operate according to the same ground rules.

Basin Electrics experience is illustrative in this regard. We wanted to install an electrostatic precipitator in our first unit, to take our 96% of the fly ash instead of the 85% which our mechanical collector removes. However, our banker (REA) could not justify the additional investment because it was not required by either State or Federal law. As a consequence, our first unit has the less efficient equipment, as do two subsequent plants built by others.

In contrast, when we included funds for an electrostatic precipitator in our loan estimate for our second unit (of 400,000 KW), the substantial additional cost was approved because it was evident by that time that State and Federal legislation would be enacted which probably would require this increased protection of the atmosphere.

Obviously, it is better and cheaper to install such equipment when a plant is built than to have to modify the plant later or else live with continuing pollution which could have been prevented.

Efforts to minimize adverse effects on the environment are extremely important, but they nevertheless represent a "band-aid" approach compared to what needs to be done if our environment is to be protected to the extent necessary.

To protect effectively our resources and our environment, in view of the great expansion in coal-fired power production in this region in the next twenty years, we need to develop a technology deliberately designed to conserve our fuel supplies, in the case of generating plants, and to minimize the damage done to our air, land and water.

The present technology is not designed for these purposes. For example, coal-burning power plants waste about 65–70% of the heat in the coal. This waste heat has no place to go except into the environment, into bodies of water and the air. There is little at present that a power producer can do about this because it is the only type of plant available. The nuclear-powered plants are even worse and waste a much larger percentage of the heat of fission, again discharging it to the environment.

So one program urgently needed is the development of far more efficient and less primitive methods of converting coal to electric energy. The process termed magneto-hydro-dynamics has a theoretical efficiency of 65%, about twice that of present coal-fired plants, and the solid fuel cell has a theoretical efficiency of about 80%. If we could build power plants with 60–70% efficiency, we then would have to mine only half as much coal to get the same amount of electricity, strip only half as much land, produce only half as much ashes, and discharge to the air and water only half as much waste heat as we do with our present technology.

Such a development would do more to protect the environment that any alternative program. It also would save billons of tons of irreplaceable coal resources.

A second basic step is to find ways to reach more rational judgments about what we use our resources for. At present, the nations of the world devote much of their resources to military purposes. They are providing themselves with weapons of annihilation at a cost of almost 200 billion dollars per year. This annual expenditure represents a huge non-productive consumption of natural resources, and a great deal of air pollution, water pollution, strip mining and other side benefits of industrial and military activity. Man could reduce damage to his environment enormously just by deciding that, with weapons on hand more than sufficient to destroy civilization, production for military purposes can be sharply reduced.

Without water, and the Earth's thin layer of topsoil and thin envelope of air, human life could not survive. Our technological society could not exist without continuing supplies of minerals and chemicals. As far as we know, Earth is the only planet in the Universe on which life is possible.

Our natural resources therefore are precious beyond measuring if we place special value on human life. Since society often places a very low value on human life, it is not surprising that we also have been incredibly unintelligent in selecting the purposes for which we expend our natural resources.

Although organizations like ours should continue to support good conservation practices, we face the fact that our activities in the end will be woefully inadequate unless mankind soon resolves to decide far more wisely and rationally the major purposes for which our resources are used, and to develop technologies for using them far less wastefully.

ENVIRONMENTAL QUALITY: THE ATOMIC ENERGY COMMISSION, CALVERT CLIFFS, AND TRITIUM

Mr. TYDINGS. Mr. President, the decision of the Baltimore Gas & Electric Co. to locate a nuclear powerplant at Calvert Cliffs has generated considerable controversy.

Last May, I submitted a statement on this facility to the Atomic Energy Commission for their hearings in Prince Frederick, Calvert County, Md. In August, the Commission replied to my statement and, at my request, commented on the problem of tritium releases, a problem raised by several members of the Johns Hopkins University faculty.

I, in turn, sent the AEC documents to several distinguished Maryland scientists: Dr. L. Eugene Cronin, director of the Chesapeake Biological Laboratory of the Natural Resources Institute, University of Maryland; Dr. Roland F. Beers, Jr., professor of radiological science at the School of Hygiene and Public Health, the Johns Hopkins University. I asked these gentlemen if they would review the AEC responses and report back to me. This, they kindly agreed to do.

Dr. Merz sent me a paper outlining an experiment he had performed concerning tritium. I passed this on to the AEC a few weeks ago with at least one result being an article in the Baltimore Sun entitled "Radiologist Wins His Point on Possible A-Plant Peril."

Dr. Cronin sent me a paper commenting critically on the AEC papers and enclosing a report that he and Dr. Donald W. Pritchard, director of the Chesapeake Bay Institute, the Johns Hopkins University prepared for the Maryland Board of Natural Resources. I feel that Dr. Cronin makes some extremely good points.

Dr. Beers sent me an analysis of the Commission's papers which take issue with some of the conclusions drawn by the AEC. Dr. Beers' paper is most provocative.

I have passed on the recently received comments of Dr. Cronin and Dr. Beers to the Commission and requested a reply both to myself and the authors. Additionally, I have asked the AEC to send copies to Dr. William W. Eaton, chairman of the Maryland Governor's Nuclear Power Plant Study Commission.

In order to make this information a matter of public record, Mr. President, I ask unanimous consent that the following be printed in the RECORD: First, my statement to the AEC hearing in Prince Frederick; second, a cover letter to me dated August 8, 1969, from AEC Chairman, Dr. Glenn Seaborg, along with the three AEC enclosures; third, the October 14, 1969, story from the Baltimore Sun that I mentioned in regard to Dr. Merz's report; fourth, the comments of Dr. Cronin dated October 14 in a letter to me with attachments; and fifth, the comments of Dr. Beers dated September 10 also in a letter to me with attachments.

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

STATEMENT OF SENATOR JOSEPH D. TYDINGS, SUBMITTED TO THE ATOMIC ENERGY COMMISSION HEARINGS ON THE PROPOSED CALVERT CLIFFS NUCLEAR ELECTRIC POWER GENERATING FACILITY, PRINCE FREDERICK, CALVERT COUNTY, MD., MAY 12, 1969

The Baltimore Gas and Electric Company's planned nuclear power station at Calvert Cliffs will be a two unit, 1.6 million kilowatt facility. It will use 5,000 cubic feet of water per second for cooling purposes. This water will be returned to the Chesapeake Bay at a higher temperature than that withdrawn.

The Calvert Cliffs plant will be in full operation by 1974. It will then be the tenth largest power facility in the nation.

The need for this plant cannot be doubted. Our nation has almost insatiable appetite for electricity. Since World War II production of electricity has doubled every ten years. This trend is expected to continue. Our nation's growth depends on an ample power supply being readily available.

This is particularly true for the Baltimore area which in the next decade will experience considerable growth. The Calvert Cliffs plant is designed to serve this area.

Yet with progress comes problems. The discharge of the cooling water affects the ecology of the receiving waters. Scientists consider temperature the primary control of life and report that fish are especially sensitive to changes in the thermal environment. They and other forms of marine life are often unable to adjust to even the most limited changes in temperature.

"For this reason there is growing concern among ecologists about the heating of aquatic habitats by man's activities. In the U.S. it appears that the use of river, lake, and estuarine waters for industrial cooling purposes may become so extensive in future decades as to pose a considerable threat to fish and to aquatic life in general." So writes John R. Clark in the March, 1969 issue of the *Scientific American*.

Thermal pollution must thus be recognized as an important problem, one which may block our achieving a quality environment.

By 1980, the electric power industry will use one-fifth of the total fresh water runoff of the U.S. for purposes of cooling. The scope of this potentially dangerous thermal discharge is therefore large.

The Chesapeake Bay is an invaluable natural resource of Maryland. Its quality cannot be tampered with. The AEC, the business community, and the state and local agencies involved must recognize the great importance of the Bay to the people of our state.

Thermal pollution simply must not be permitted to abuse its water quality.

The proposed facility at Calvert Cliffs will be nuclear powered. Atomic energy has been shown to be a safe and efficient source of future potential energy.

The Atomic Energy Commission proceeds with extreme caution when licensing atomic reactors. It is of course proper that they do so. I am confident that the Commission will exercise considerable and great care with the Calvert Cliffs reactor and that, upon their final approval, the facility will pose no danger of a nuclear nature to the area.

The responsibility of the AEC, however, extends only to issues of national security and health and safety. It has no jurisdiction over concerns of environmental quality. A January 13, 1969 ruling of the U.S. Court of Appeals for the First Circuit affirmed a lower court decision that the AEC did not err in refusing to consider the possibility of thermal pollution from a nuclear power facility. The Court held that the Commission simply did not have the necessary jurisdiction to involve itself in such an area.

This is a serious gap in the legislative authority of the AEC. I respectfully urge the Commission, on is own, to seek redress before the Congress. Thermal pollution is too serious a threat to permit an inactive position on the part of the AEC. Additionally, I urge the Commission to upgrade its informal, advisory contacts with the Department of the Interior in order to insure maximum use of available expertise within that Department.

For my own part I am cosponsoring legislation, the Water Quality Improvement Act of 1969, which in part directs itself to this problem of thermal discharges by requiring certification, consistent with established water quality standards, of permits required for water withdrawals affected with a federal interest.

As a regulated public utility the Baltimore Gas and Electric Company has the responsibility to meet the present and future power needs of well over a million Marylanders. In general the company has served the people well. Their desire to build a plant at Calvert Cliffs reflects their awareness of future power demands in the Baltimore area.

The company has often expressed their willingness to preserve and protect the Chesapeake Bay. I have no doubt of their sincerity and am aware of steps taken by Baltimore Gas and Electric to transform this willingness to action. One particular step that is significant is the extensive consultations that have taken place between the company and concerned state officials. These have resulted in design alterations which lessen the impact of plant operations on the cooling and receiving waters. Such action can only be applauded and recognized as an absolute necessity in the future.

There are, however, two disturbing aspects to this project. The first is the absence of public research on the environmental impact of the Calvert Cliffs facility. The state and the Atomic Energy Commission should not have to rely on company sponsored studies, with or without access to their data. They should be provided with the capacity to conduct independent studies of their own. My second concern involves the simultaneous nature of the research undertaken and actual construction at Calvert Cliffs. The latter suggests that the site is an accomplished fact and that no evidence brought forward by any research will alter it. Additionally, as the Washington Post suggests in a May 8 editorial, this lessens the importance of these hearings and lends credence to those who argue that local interests are in fact being overlooked.

An additional problem raised by the construction of new electric power generating stations is the routing of power lines. It is a problem here, as the B.G. & E. lines must go northwest to the Baltimore area, and elsewhere. Present technology does not permit such high voltage lines to be placed underground.

The industry as a whole must recognize that it has an obligation to minimize the environmental impact of these lines, and that this will cost considerable money. Power lines no longer can simply be strung in a straight path, representing the shortest distance between two points. Concern for aesthetics and history must be programmed into the routing. We do not need another Antietam affair. The industry must recognize that the additional expense incurred must be borne as a regular cost of doing business. The public interest does not ask the industry to do this. It demands it, and expects that it will be done.

In concluding, I would like to state that I believe that the proposed nuclear power plant at Calvert Cliffs is needed if Maryland's future electric demands are to be met. Equally necessary, however, is the responsibility of all of us to preserve and protect the Chesapeake Bay. The threat to the Bay from thermal pollution is a real one. To argue that all the nuclear facilities now in existence would raise the temperature of the Bay only one or two degrees is misleading. Thermal discharges are like some poisons: In small dosages they can be lethal. The overall temperature at the Bay may be only slightly affected but a specific portion, the receiving waters, may be severely damaged. I do not think we can be too careful.

We need electric power; we need environmental protection as well.

It is imperative that the appropriate state agencies act now to institute objective, State-sponsored scientific studies of each area of the Bay and its tributaries proposed to be used as a site for a power generating station during the next 20 years. We should determine long before construction plans are finalized whether the site selected by the power company is desirable from a conservation point of view. The study should determine further which areas of the Bay are best suited to absorb thermal discharges without injury to the ecology of the estuary.

[From the Washington Post, May 8, 1969]

NUCLEAR POWER AND THE PUBLIC INTEREST

The storm that has blown up in Southern Maryland over the proposal to locate a nuclear power plant on the Calvert Cliffs at Lusby, Calvert County, is typical of many that will be brewing in the months and years ahead. People who live in the area are worried about the possibility of radiation and heat pollution in the Chesapeake Bay. Others are deeply concerned about the clutter of towers and wires that will be necessary for the transmission of 1,600,000 kilowatts of power to Baltimore. And many others whose lives will not be immediately affected see in this project an unwarranted assault on our natural environment.

As Hal Willard noted in an illuminating discussion of the problem in our Panorama Section on Thursday, 11 nuclear power plants are already under construction or in operation along the Atlantic Coast. Every one has been controversial, and the controversy is certain to mount as additional plants of this kind are planned and constructed. The outcome may cast a long shadow over the future.

It is not a question of whether or not the power companies are planning wisely. Calvert Cliffs, for example, was selected by the Baltimore Gas and Electric Co. from about 50 potential sites. Possibly it is the best location for a nuclear power plant that can be found in the area. It is also clear that elaborate precautions will be taken to make the plant safe and to minimize its impact on wildlife in the area, especially the fish in the Chesapeake Bay. Yet some vital changes in the environment will be unavoidable, and the results of these changes cannot now be fully known.

There is not much comfort in the assurance of one company official that if studies now being undertaken show that "the plant will have significant effects on the Bay then we will have to try to do something about it." When the plant is built and in operation, it will be too late to turn back. Some responsible body ought to be determining before the die is cast, whether the risk is tolerable and if so where the plant can be best located in the public interest.

It is interesting to note that the first public hearing on this project will be held by the Atomic Energy Commission on May 12, although excavation for the plant has been completed and the company has spent millions of dollars for right-of-way, equipment and so forth. The hearing will have the appearance of a mere ratification proceeding for a fait accompli. The company must also obtain a certificate of convenience and necessity from the Maryland Public Service Commission, but this too will seem to be a mere formality. Fortunately, the Maryland regulations will require site approval before construction of another such project can begin, but that does not change the unpalatable facts in the present situation.

The least the country can ask, in venturing into a new field of this kind which may vitally affect the environment, is that a competent and disinterested public body take a careful look at all the available facts before the leap is taken The location of such plants ought to be a major issue before a Council on Environmental Quality, such as Senator Jackson has proposed The hope for cheaper nuclear power must be weighed against long-range risks to all forms of life, and no private enterprise is competent to make such determinations by itself.

U.S. Atomic Energy Commission,
Washington, D.C., August 8, 1969.

Hon. Joseph D. Tydings,
U.S. Senate.

Dear Senator Tydings: I am pleased to enclose for your review, information which we believe will answer some of the concerns expressed in your statement of May 12, 1969, regarding the projected Calvert Cliffs nuclear power plant and its possible effects on the Chesapeake Bay.

At the public hearing held in connection with the application by the Baltimore Gas and Electric Company for a construction permit for this facility, a statement was introduced by several scientists from Johns Hopkins University entitled, "Effects of Nuclear Power Plants on the Chesapeake Bay from an Environmental and Public Health Point of View." In view of the concerns expressed by those scientists about the effects that might result from releases of small quantities of tritium into the Bay during routine plant operation, I am also enclosing two AEC commentaries on several statements made in their testimony on this subject. The first paper presents AEC comments on expected tritium releases from the proposed Calvert Cliffs nuclear power plant in non-technical terminology. The second is a technical discussion of the same subject, and serves as a basis for the AEC comments on tritium.

I hope you will find this information useful. If we can provide any further information on these matters, please let me know.

Cordially,

Glenn Seaborg,
Chairman.

AEC Comments on Senator Tydings' Statement Regarding the Calvert Cliffs Nuclear Power Plant

The following information is submitted with reference to the statement made by Senator Tydings on May 12, 1969, regarding the Calvert Cliffs Nuclear Power Plant.

"This is a serious gap in the legislative authority of the AEC. I respectfully urge the Commission, on its own, to seek redress before the Congress. Thermal pollution is too serious a threat to permit an inactive position on the part of the AEC."

The Commission recognizes the desirability of controlling thermal effects of released heated water on the environment, and has examined a number of proposed legislative solutions to this problem over the past few years. The AEC favors legislation in this area along the lines of the proposed Water Quality Improvement Act of 1969, introduced in the Senate as S. 7 by Senator Muskie for himself, Senator Tydings, and others. This legislation would require applicants for federal licenses to obtain advance certification from state water pollution control agencies with respect to compliance with applicable state water quality standards, and the AEC would be precluded from issuing any license or construction permit until this precondition had been met. AEC Commissioner James T. Ramey appeared before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works on March 3, 1969, where he testified that the Commission was pleased to support this proposed legislation, subject to certain technical modifications.

The AEC presently lacks authority to impose restrictions regarding the thermal effects of discharges from licensed nuclear facilities. Licensing by the AEC, however, does not relieve the applicant from being subject to the appropriate jurisdictions in other areas which would also be involved if the plant were fueled by coal, oil, or other nonnuclear means. Each state, of course, has the same authority to deal with thermal effects from nuclear power plants as it does from fossil fueled power plants unless in some way restricted by state law. In this connection, the AEC keeps interested state and local officials informed of applications received and licensing actions taken on the proposed nuclear projects.

The Commission recently surveyed the New England utilities that were constructing or operating nuclear power facilities, and found that they all had extensive environmental studies in progress to determine the potential thermal effects of the operation of their facilities. In addition, the AEC is now conducting a survey of all applicants and licensees to obtain detailed information concerning their studies relating to possible thermal effects on the environment.

"Additionally, I urge the Commission to upgrade its informal, advisory contacts with the Department of Interior in order to insure maximum use of available expertise within that Department."

The Commission is cognizant of the Department of the Interior's interest in the thermal effects of such discharges under the Fish and Wildlife Coordination Act and the Federal Water Pollution Control Act, as amended. Under a 1964 Memorandum of Understanding between the Atomic Energy Commission and the Department of the Interior, the AEC routinely obtains expert advice and recommendations on all projected nuclear power facilities from appropriate agencies of the Department. This practice involves the U.S. Geological Survey, the U.S. Fish and Wildlife Service, and more recently, the Federal Water Pollution Control Administration. In addition to comments on the radiological health and safety aspects of the proposed facility, the Fish and Wildlife Service report (which includes FWPCA's comments) also makes recommendations on nonradiological matters, including the thermal effects of the discharge of coolant water in the marine environment. A copy is sent to the applicant, calling attention to the Service's recommendations concerning potential nonradiological effects and urging cooperation with the appropriate federal and state agencies. These reports are also made public and are forwarded to the state and local agencies that may have an interest for their information and use. As indicated above, the Commission is conducting a survey of all AEC licensees to determine the extent of their cooperation, and our information to date indicates that the utilities are cooperating in resolving the various environmental problems that might be associated with the construction and operation of these large facilities.

"There are, however, two disturbing aspects to this project. The first is the absence of public research on the environmental impact of the Calvert Cliffs facility. The State and the Atomic Energy Commission should not have to rely on company sponsored studies, with or without access to their data. They should be provided with the capacity to conduct independent studies of their own. My second concern involves the simultaneous nature of the research undertaken and actual construction at Calvert Cliffs. The latter suggests that the site is an accomplished fact and that no evidence brought forward by any research will alter it."

The AEC has been very conscious of the possible impact of radioactivity in the environment and, realizing that radionuclides released to the environment might find their way back to man through food chains, has for over 20 years funded research programs in this area. The program supports work by many of the Nation's leading scientists, and includes studies of rivers, streams, lakes, and bays throughout the Nation. During the past 12 years about $70,000,000 has been expended in this program, and in our 1969 budget over $9,000,000 is included.

For several years, the AEC has supported research by scientists at Johns Hopkins University on the ecology and movement of water in the Chesapeake Bay. Three contracts for research are now in force. One is for ecological studies of the Bay, from the Susquehanna River to near the south end of the Bay, from the Susquehanna River to near the south end of the Bay. Another is for a study of plankton and other small organisms in the Bay. The third is for dye studies of the dispersion of plumes in the near-shore environment (which have been in progress since 1962). This work is designed to predict the dispersion of both heat and radioactivity in the Bay. The total expenditure on these contracts, including money for 1969, is about $1,590,000.

Much of the work on behavior and fate of radionuclides in the environment will become available in a new book by the National Academy of Sciences—National Research Council entitled *Radioactivity in the Marine Environment*. This volume, sponsored by AEC, will be published early in 1970, and will summarize knowledge gained from studies of nuclear tests, nuclear reactor effluent in the environment, and natural radioactivity. Nearly all of the work on behavior, fate, and effects of radionuclides on the environment is also published in the open scientific literature.

The AEC also has been supporting research in thermal effects. The Research, Development and Demonstration Subcommittee of the Federal Council for Science and Technology's Committee on Environmental Quality is currently making a study of Federal Government activities in this field. Their data show that of $867,000 committed to thermal pollution research in 1969, 54 percent ($471,000) is being provided by the AEC.

The second concern "involves the simultaneous nature of the research undertaken and actual construction at Calvert Cliffs. The latter suggests that the site is an accomplished fact and that no evidence brought forward by any research will alter it."

It was noted above that much research by many qualified biologists and ecologists in many areas of the Nation has been and still surveys in the vicinity of reactors now in operation—both power reactors and AEC-owned reactors—have shown no deleterious effects on the environment. In a recent survey by the U.S. Public Health Service in the vicinity of the Dresden nuclear power plant in Illinois, for example, it was found that radioactivity levels contributed by the Dresden plant were so low that it was difficult to distinguish the levels either from natural background radioactivity or from fallout.

As to the relation between research and actual construction at the site, the research and experience mentioned above were taken into account by the AEC regulatory staff in its consideration of the site and of the proposed plant. The staff's position set forth at the public hearing was based on this research and on the knowledge that environmental effects can be controlled by limiting the radioactive effluents. Specific limits for such effluents will be incorporated in any operating license which may be issued for the facility; nonetheless, the AEC's Division of Biology and Medicine is currently negotiating with the University of Maryland for a comprehensive ecological study in the vicinity of Calvert Cliffs. This study is part of a planned program for in-depth study of typical power plant sites, Calvert Cliffs being representative of a bay site. It should be noted that the Calvert Cliffs Unit 1 is not scheduled for operation before January 1973, and Unit 2 not before January 1974. If an operating license is issued, the licensee will be required to monitor effluent releases to assure that radioactivity in such releases from the facility are within limits prescribed in the license and AEC regulations. The licensee will also make periodic radiological surveys of the environment in the vicinity of the site in order to detect any significant increase in radioactivity and assure that exposures of the public that may result from releases are well within radiation protection guides.

The Commission understands that Baltimore Gas and Electric Company has also initiated three basic studies relevant to the question of thermal effects on Chesapeake Bay. The first of these involves general oceanographic studies being carried out by Sheppard T. Powell Associates to assemble data on the physical characteristics of the Bay at the Calvert Cliffs site to obtain basic information such as depths, flow, temperatures, salinity concentrations and tide levels.

The second program involves model studies of the Bay being carried out by the Alden Research Laboratories of Worcester Polytechnic Institute. A scale model of a 34-mile stretch of the Bay has been utilized for some time to study the thermal dispersion of cooling water leaving the plant. The stated objective of these studies is to provide information for appropriate design of the intake and discharge structures to minimize thermal effects in the Bay. These model studies are being followed by a model advisory committee appointed by the Board of Natural Resources of the State of Maryland. The committee, which consists of three states representatives and three company representatives, is expected to report on the results in the near future.

Baltimore Gas and Electric Company's third program is being conducted by the Academy of Natural Sciences of Philadelphia to obtain base line information on aquatic life in the vicinity of the plant site. This broad program involves accumulation of information on physical, chemical and bacteriological characteristics of the water, plankton studies, and population and reproduction studies of fish and shellfish species of importance in the Bay. The general objective of the work by the Academy is to establish a basis for comparison with corresponding data obtained after the plant may be placed in operation.

The Baltimore Gas and Electric Company has indicated that it will design and operate the plant in such a manner that the water quality standards of the State of Maryland are met. From the standpoint of thermal effects, this involves provisions in the design and operation of the condensers such that the temperature elevation would not exceed 10° F above natural water temperature. In addition, a limit of 90° F would be set for cooling water discharges, taking into account a small mixing zone to be specified by the Department of Water Resources of The State of Maryland.

It is the understanding of the Commission that the State Department of Water Resources has authority to decide whether Bay water may be used for cooling purposes, and that the Company will file an application in the near future with that Department seeking authorization to use Chesapeake Bay water for cooling purposes.

"Additionally, as the Washington Post suggests in a May 8 editorial, this lessens the importance of these hearings and lends credence to those who argue that local interests are in fact being overlooked."

Sites for nuclear power plants are selected by the utility which proposes to build such facilities, and the AEC's jurisdiction in this respect is limited to consideration of the suitability of the site and the other features of the proposed reactor that have a bearing on radiological health and safety. Insofar as the local interests are related to matters such as zoning, aesthetics, and land acquisition, the AEC has no regulatory authority to deal with them. These matters, however, are traditionally considered by state and local jurisdiction.

With respect to matters within the AEC's jurisdiction, excavation work and some concrete construction had been done at the Calvert Cliffs site prior to the public hearing. Under the AEC's regulations, site preparation is permitted, and in certain circumstances limited construction may take place under exemptions as provided in the regulations; however, all such work done prior to the issuance of a construction permit represents only a very small fraction of the total cost of the facility and is done wholly at the risk of the applicant. The fact that such work is permitted does not mean that a construction permit will be issued. For example, the regulatory staff recommended against the construction of a nuclear power plant by Pacific Gas and Electric Company at Bodega Bay, and the Company withdrew its application after the expenditure of several million dollars in work on the site.

AEC COMMENTS ON TRITIUM RELEASES FROM THE PROPOSED CALVERT CLIFFS NUCLEAR POWER PLANT [1]

Public hearings were held in May, 1969, on the proposal to build a nuclear electric power plant at Calvert Cliffs on the Chesapeake Bay. At these hearings concern was expressed by interested citizens as to the possible environmental effects that might result from routine releases of low levels of radioactive hydrogen (tritium) into the Bay. A careful review of the information available on this question leads to the general conclusion that the resulting radiation exposures to members of the public who would come into contact with Bay waters or with food from the Bay would be a very tiny fraction (not more than a few millionths) of levels considered acceptable by national and international advisory groups (the International Commission on Radiological Protection, National Council on Radiation Protection and Measurements and the Federal Radiation Council). The biological effects, if any, of exposures to such a low level would be too small to be detected, even if very large populations were exposed, and would have no ecological significance. In deriving limits for tritium applicable to members of the general public, these expert groups have taken into account the unique energy and absorption properties of tritium as they relate to distribution of the dose in body tissue.

Tritium is a form of hydrogen, with chemical behavior very similar to ordinary hydrogen. Water containing tritium acts chemically like ordinary water; most of it passes through the human body very rapidly. More than half of the tritium taken up by the body is passed on within three to ten days; practically all remaining molecules of water containing tritium are gone within sixty days. It is this rapid turnover that has made tritium a valuable research and diagnostic tool to doctors and radiobiologists.

The only radiation exposures from tritium of interest are exposures that would result from the small amount that would be taken into the body by absorption or through contact with Bay water or eating food from the Bay over extended periods of time. The external exposure to the very low energy radiation from tritium is of no interest since it is absorbed harmlessly in the insensitive outer layer of skin.

To bring the exposures to tritium from the Calvert Cliffs reactor into perspective, consider an extreme case. Assume that an individual obtains his drinking water from a water supply containing the same concentration of tritium as the coolant water proposed to be discharged from the Calvert Cliffs plant before dilution in Bay water. Assume also that he obtains his entire food supply from aquatic plants and animals growing in the same water supply.

The resulting annual radiation exposure that this individual would be expected to receive from tritium contributed by the reactor could not exceed one millirem per year to the whole body. This amount of exposure is about one five hundredths (1/500) of the exposure considered acceptable for individuals in the general public and one one hundredth (1/100) of what a person in this area receives every year from natural sources.

In the Calvert Cliffs situation, however, possible exposures involved would be at least a thousand times lower, less than 0.001 (1/1,000) millirem per year, for the following reasons. Water in the Bay is not used for drinking. In addition, the water discharged from the plant will be diluted many fold by the water in the Bay. Furthermore, of course, it is doubtful that many persons would obtain more than half of their protein from the Bay.

What is known about the relative biological importance of this small an exposure? In this regard, a large number of research programs on these subjects have been and are being undertaken. The results of this research on biological and environmental effects of radiation provide a solid background against which to consider this question. In particular, there is much known about the biochemical behavior and effects of tritium. For example, a report by L. E. Feinendegen, "Tritium-Labeled Molecules in Biology and Medicine", Academic Press, 1967, provides a mass of sound information on the questions raised and includes references to approximately 1,000 experimental studies of the behavior of tritium in the body, more than 100 studies of its effects on the body, and nearly 400 articles on experimental techniques. The probability of effects from exposures of 0.001 millirem per year is extremely small. This is far below the level where even minimal effects have been observed. Even so, in developing radiation protection standards, it has been assumed, as a matter of prudence, that there may be some risk associated with any exposure, however small.

It can be stated with confidence that the effects, if any, of an exposure of 0.001 milli-

[1] The quantities of tritium that would be released from the Calvert Cliffs Nuclear Power Plant discussed in this paper refer to releases expected from one nuclear unit of 2700 thermal megawatts capacity as described in the construction permit. It is noted that the Baltimore Gas and Electric Company has construction permits for two such units—one scheduled for operation not before January 1973, and the other scheduled for operation not before January 1974. The quantities of tritium that would be released from the second unit would be approximately the same as from the first unit.

rem from tritium will not differ substantially from those that might result from an exposure of a similar level to radiation from natural sources. We have been unable to detect any biological effects due to natural background levels of radiation (natural background in most sea level regions averages 100 millirems/year; which is 100,000 times larger than the exposure that would result from the tritium from the Calvert Cliffs reactor).

To put an annual exposure rate of 0.001 millirem per year into perspective in day-to-day terms, it can be compared to variations in background radiation levels from place to place. For example, if a person living in Baltimore moves to Cumberland, Maryland, his average annual exposure rate from natural background cosmic radiation alone would be increased by approximately 3 millirems per year. This difference is about 3,000 times any exposure that might be expected to result from eating Chesapeake Bay fish and shellfish containing tritium from the Calvert Cliffs reactor.

There has been a suggestion that the exceedingly dilute concentrations of tritium might become concentrated by processes in nature. For some elements this can and does happen. But there is no theoretical or experimental support for a conclusion that significant separation of tritium from hydrogen can occur by natural chemical or biological means. These properties of tritium tend to prevent concentration of tritium by biological processes, for example, in the food chain.

Concentrations of tritium in the cells of an animal feeding on aquatic organisms cannot be higher than the concentration in the water where the aquatic organisms live, unless there are biological processes which concentrate the tritium relative to hydrogen. A great deal is known about the biological behavior of tritium. There is no evidence for a biological mechanism capable of incorporating the tritium in water into tissue at substantially higher concentrations than were originally present in the water. Experimental studies indicate that, on the average, there will be substantially the same ratio of tritium to ordinary hydrogen in the animal using the water, as was present in the water itself.

A portion of an individual's diet, let us say, consists of fish from the Chesapeake Bay which contains a minute increase in tritium concentrations (above that from natural background) as a result of the operation of the proposed nuclear plant. The tissues of the fish would have a tritium concentration comparable to that present in the Bay. In the normal process of digestion, some organic molecules (building blocks) may be incorporated directly into new tissues. This new tissue then would have a tritium concentration comparable to that present in the fish. This conclusion applies to all tissue cells, including those of genetic concern. Hence, the suggestion of a concentration mechanism for tritium in nature of any importance is unsupported by either theoretical or experimental considerations.

AEC TECHNICAL DISCUSSION ON TRITIUM RELEASES FROM THE PROPOSED CALVERT CLIFFS NUCLEAR POWER PLANT

The following discussion is addressed primarily to one question: Can tritium released as T_2O or HTO into the Chesapeake Bay from the proposed Calvert Cliffs reactor become more concentrated or, with respect to hydrogen, more enriched as it moves along natural food webs to man? The answer arrived at is *no*. In addition, based upon information furnished to us on tritium release rate, bay size and flush time, we have assumed a simple model and estimated the equilibrium concentration for reactor-produced tritium in the bay and the resultant dose rate.

The suggestion has been made that tritium will concentrate significantly in organic compounds as it moves upward through a food web and that higher concentrations, particularly in genetic material, could ultimately be achieved in man. We know of no mechanism that would tend to support this suggestion. Organisms living in the bay should ultimately have the same ratio of tritium to hydrogen (T/H)[1] in their organic molecules as the T/H ratio in the water in which they grow. This equilibrium will be reached slowly on the order of a few years.

Any presumed biological concentration of tritium would have to result from differences in rates of chemical reactions involving the heavier tritium atom as compared to the lighter hydrogen. In general, the compounds in living organisms are present in concentrations which result from the steady state processes of formation and destruction. There is a tendency for tritium to remain behind in those reactions involving transfer of hydrogen (which must initially come from H_2O) *to* a compound, but there is also a tendency for tritium to remain behind in reactions transferring hydrogen *away* from the organic compound. The net effect of these two opposing processes is to keep the T/H ratio approximately the same as in the ambient water once this ratio has been closely approached.

The statement that tritium decay within the cell nucleus is particularly hazardous simply paraphrases the well-known fact that the nucleus of the cell is more radiosensitive than is the cytoplasm. This is true whether the ionization be from X-rays, gamma rays, or radioactive isotopes. This fact, in conjunction with the supposition that tritium concentrates to a high degree locally in the cell nucleus and deposits the energy resulting from its decay in this more radiosensitive volume leads to an implication that tritium is uniquely hazardous. But, as pointed out above, there is little reason to assume that such localization occurs; and since the volume of the cytoplasm is about 10–30 times larger than the volume of the nucleus, homogeneously distributed tritium atoms would expend their energy proportionately more frequently in the cytoplasm. Such irradiation of the cytoplasm contributes little to lethality or to mutations.

The point has been made that the concentration of tritium in specific portions of the cells of people eating seafood from the bay could become substantially higher than that predicted from the concentration of tritium in the water in which the marine life lived. In particlular there is concern that tritium might accumulate in deoxyribonucleic acid (DNA), the genetic material of the cell. DNA is a polymer that is synthesized from building blocks of purine and pyrimidine nucleotides. Higher organisms such as man obtain these building blocks from their diet and through biosynthesis from more elementary cell constituents.

With regard to the present matter the worst case would be if all of the building blocks came from the diet. Then, all of the newly formed DNA would have the same tritium concentration as that of the seafood ingested. The tritium concentration of these building blocks from the diet, however, could be no higher than that of the water in which the organisms lived. Calculations to be presented later show that even this level would represent a small addition to the present tritium background.

Higher organisms such as man also synthesize their own purine and pyrimidine nucleotide building blocks. The tritium concentration of these molecules will depend on the tritium concentration of dietary water. So to the extent that other sources of water are part of the diet the tritium concentration of these building blocks would be accordingly reduced. From either consideration the tritium concentration in the DNA in cells of people would not be higher than that of the seafood they ingest and the expectation is that it would be far less.

Extensive measurements of tritium concentrations in animals from the Nevada Test Site and the Savannah River Project, where ambient tritium levels in certain areas are far higher than those anticipated near the Calvert Cliffs reactor, confirm the above assertion that there is no evidence for concentration of tritium in organic molecules as tritium passes up through the food web.

As indicated earlier, we have calculated very roughly the anticipated equilibrium concentration of tritium in the bay and the radiation dose rate to the bay water from this concentration. The calculations are based on the following assumptions:

1. 2,910 curies of tritium released per year and uniformly distributed in the bay[2]
2. A physical half-life of tritium of 12.3 years; therefore, a mean life of 17.7 years
3. A bay volume of 6.4×10^{12} cubic feet (1.8×10^{11} cubic meters)
4. Mean residence time ("Flush" time) of water in the bay is 2.3 years, and the bay is considered to be a homogeneous well-mixed reservoir having a rate of discharge that is proportional to its volume. We think that this value is conservative because it does not consider tidal action. A more realistic value would be about one year.

Using these assumptions, the equilibrium concentration would be 3.3×10^{-8} microcuries of tritium per cubic centimeter (a T/H ratio of about 10^{-17}) and the radiation dose rate would be 4.0×10^{-7} millirad per hour or about 3.6×10^{-3} millirad per year. This dose rate represents about 1/30,000th of natural background radiation. One might also compare the value of 3.6×10^{-3} millirad per year with the larger whole-body radiation dose rates of about 19 and 1 millirad per year, which man continuously receives from the decay of naturally occurring ^{40}K and ^{14}C, respectively. The dose rate from all sources of natural background is roughly 100 to 150 millirad per year but may vary considerably depending on numerous factors such as altitude, geography, and shelter construction. We fully realize that the current philosophy of radiation protection does not recommend unnecessary additions to background radiation-dose rates; the values are used for illustrative and comparative purposes and show that the dose rate from reactor-produced tritium is small compared with dose-rates associated with natural sources.

The foregoing calculation is more applicable to sites near the head of the bay. The assumption that the tritium will distribute throughout the entire volume of the bay is perhaps invalid because the reactor is not sited at the head of the bay. Because Calvert Cliffs is part way down the bay, the "flush" time will be shorter than the one assumed and the "flush" time is the

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[1] As used throughout this discussion, the ratio of tritium to all hydrogen isotopes (T/H) is the specific activity of tritium. The standard tritium ratio (TR), previously called a tritium unit (TU), is defined as a tritium-to-hydrogen ratio of 10^{-18} (i.e., one atom of tritium per 10^{18} atoms of hydrogen). On a water concentration basis, a TR of 1.0 is $3. \times 10^{-9}$ microcurie per cubic centimeter.

[2] The quantities of tritium that would be released from the Calvert Cliffs Nuclear Power Plant discussed in this paper refer to releases expected from one nuclear unit of 2700 thermal megawatts capacity as described in the construction permit. It is noted that the Baltimore Gas and Electric Company has construction permits for two such units—one scheduled for operation not before January 1973, and the other scheduled for operation not before January 1974. The quantities of tritium that would be released from the second unit would be approximately the same as from the first unit.

most important single factor determining equilibrium concentrations.

It is recognized that the tritium releases may vary in magnitude at different times and that back waters may accumulate higher concentrations in limited volumes of bay water. However, the radiation dose would still be small, about 1% of natural background, even if these local concentrations reach 300 times the anticipated average. Furthermore, the population of bay organisms exposed to these higher concentrations would necessarily be smaller and hence quantitatively less important as regards human consumption.

Because biological enrichment of tritium relative to hydrogen is not known to occur, the equilibrium concentration and dose rates calculated above would apply to a human cell and to the nucleus of a human cell. There are about 1.57×10^{11} hydrogen atoms in the DNA of the mammalian cell nucleus. Thus, using an estimate of 5×10^{-16} for the *current* T/H ratio, a total of 8×10^{-5} tritium atoms would be expected in the DNA of a cell. Put another way, 80 cells per 10^{6} cells would have a tritium atom associated with its DNA. Recent unpublished data from the USPHS give T/H ratios of $1\text{–}2 \times^{-16}$ for water in the Susquehanna and Potomac Rivers in the spring of this year.

By comparison the T/H equilibrium ratios of roughly 10^{-17} to be reached in the bay water from reactor-produced tritium alone would produce an additional 1.6×10^{-6} tritium atoms in the DNA of a cell. That is, another 1.6 cells per 10^{6} cells would have a tritium atom associated with its DNA.

RADIOLOGIST WINS HIS POINT ON POSSIBLE A-PLANT PERIL

(By Jerry Stilkind)

ANNAPOLIS, October 13—Dr. Timothy Merz, a radiologist at the Johns Hopkins University, was unsatisfied back in May, when scientists for the Atomic Energy Commission (AEC) denied there would be danger from radioactive by-products of the proposed Calvert Cliffs nuclear power plant.

So, early in the summer, he ran some simple experiments using the kind of fish and tanks common in many homes. What he found was stunted, radioactivity-harmed fish.

He told Senator Joseph D. Tydings (D., Md.) about his experiment with the radioactive isotope known as tritium. The senator spoke to the AEC, and last month, Dr. Merz said, he got a telephone call from a commission scientist.

Then, and only then was he told that the AEC knew of previous experiments which had indicated tritium could get into the genetic cells of plants and animals and create havoc.

"The real immorality of the AEC is that information is not readily available. They are not being flat-out truthful, . . . with the public," Dr. Merz said today.

Dr. Merz is concerned about the nuclear plant being built at Calvert Cliffs because he is certain more such plants are planned and that no one really knows how dangerous tritium may be.

"A single plant in this single location is no problem. But this is an industry, a commitment to a way of life. Three nuclear units are being built on the Susquehanna River (which empties into the Chesapeake Bay) and one on the James River. Baltimore Gas and Electric (which is building the Calvert Cliffs plant) owns two more sites on the bay," he asserted.

Tritium, a radioactive isotope of hydrogen, normaly is found everywhere on earth in tiny amounts so small as to present no danger to living things, the Hopkins sicentist said.

"But it becomes 1,000 times more dangerous inside the cells of plants and animals, according to recent experiments," Dr. Merz said.

He fears that tritium may produce leukemia in those who get heavy doses of the radioactive substance, and that it may cause mutations in the genes, resulting in deformed offspring.

Dr. Merz was one of a small group of faculty members from the Hopkins School of Hygiene and Public Health at a public hearing held last May by the AEC on the application of Baltimore gas to build the plant. The AEC later granted the permit.

"The entire safety reactor board of the AEC was there. Baltimore Gas had is engineers and consultants and equipment manufacturers had their engineers there. They said there was no reason to expect any danger of tritium getting into the genetic material through the food chain," Dr. Merz said.

The power company said its plant would produce about 5,800 curies of tritiated water a year, far below the AEC's maximum allowance of about 12 million curies a year, he said.

The cooling process in the plant would produce the isotope tritium instead of normal hydrogen, which then combines with oxygen to form water.

Dr. Merz went back to his laboratory, and, working with James D. Shaeffer, a graduate student in radiation biology, he set up three fish tanks. In one they placed heavily tritiated water, algae, other plants, snails and black mollies. The fish and snails fed on the algae and the snails on the other plant life as well.

In a second tank they placed all of the above except algae. The fish had to depend on food fed to them by the experimenters.

"In five days there was radioactive material in the snails and fish.

"The question was whether tritium, simply because it was in the water, would get in the genetic material of the fish and snails.

"It does," Dr. Merz concluded.

A third tank was filled with regular water, and the fish thrived as much as those cared for in any home.

Re Proposed Calvert Cliffs Nuclear Power Plant.

UNIVERSITY OF MARYLAND,
NATURAL RESOURCES INSTITUTE,
Solomons, Md., October 14, 1969.

Hon. JOSEPH D. TYDINGS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: In response to your request, I am enclosing comments on the Atomic Energy Commission report to you on the proposed Calvert Cliffs Nuclear Power Plant. I regret some delay in this response but ot her obligations have been unusually demanding in the last month.

I have made rather detailed comments on the first report from AEC, that dealing with general characteristics and procedures in the Calvert Cliffs matter. These are intended to clarify the situation for your information and to provide certain suggestions.

My general feeling at this point in time is that a very large environmental change is being created in the Chesapeake and our information is not sufficient to provide a firm basis for reasonably accurate prediction of the effects. This, in my opinion, is a dangerous way to proceed although I recognize that the Baltimore Gas and Electric Company has made unusual efforts to take as much advantage as possible of present technology and knowledge. The question is not, however, whether or not they are earnest. The question is whether or not such information is adequate. Frequently, it is not.

I have limited my comments almost entirely to the procedure and to thermal effects. I am not expert in nuclear effects and can provide no specific analysis of the reports which they have given you dealing with tritium and its possible effects in the Bay. As you know, a group of radiological scientists at Hopkins have expressed considerable concern about this matter but I have not added to their comment. Again, I have the impression that this quantity of material in this form presents a new problem when it is introduced into a rich estuarine system. Some predictions are available but they really are not all that should exist before such a change.

It seems to me that we urgently need clear and conservative polices on such changes in the Bay, that we must greatly increase our knowledge and understanding of the areas of the Bay which are subject to high danger and those which are usable for industrial purposes, that broad consideration at the beginning of such developments should involve the State in questions of siting, sizing, cooling techniques, the fuel to be used, and that alternate methods of cooling power plant heat wastes should be more rigorously examined.

Recently, Dr. Pritchard and I developed a statement on research requirements which I am enclosing for your information.

Thank you for your interest in and concern about these important matters.

Cordially,

L. EUGENE CRONIN,
Research Professor and Director.

THE JOHNS HOPKINS UNIVERSITY,
SCHOOL OF HYGIENE AND HEALTH,
Baltimore, Md., September 10, 1969.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR MR. TYDINGS: I have reviewed the AEC documents and submit the following comments:

(1) In the general report and the technical report the issue of concentration of tritium by living organisms is raised as a potential hazard and correctly dismissed. No studies have demonstrated any marked capacity of any living organism to concentrate preferentially tritium in the manner described for zinc in oysters and other shell fish. On the other hand, none of the qualified critics of the tritium standards have considered this to be a valid issue. Consequently, a great deal of discussion and argument has been generated by both the AEC and the Baltimore Gas and Electric Company on what is in my opinion essentially a red herring. Hopefully, this issue can be truly dismissed and not brought up again for further discussion.

(2) The statement on page 1 of the general report with respect to the public hearings cannot be substantiated and is, in fact, an extrapolation rather than a factual observation. Specifically,

"A careful review of the information available on this question (environmental effects) leads to the general conclusion that the resulting radiation exposures to members of the public who would come into contact with Bay waters or with food from the Bay would be a very tiny fraction (not more than a few millionths) of levels considered acceptable by national and international advisory groups (the International Commission of Radiological Protection, National Council on Radiation Protection and Measurements and Federal Radiation Council)."

This raises the serious question of whether such organizations have established proper standards. If the wisdom and knowledge of the experts were infallible and these statements could be accepted at their value then there would be no argument. It is precisely the disagreement with such organizations that has led to the current controversy.

"The biological effects, if any, of exposures to such a low level would be too small to be detected, even if very large populations were exposed, and would have no ecological significance."

These are opinions and not facts. The question of detection is dependent to a large degree upon the sensitivity of the method of detection. At this University by the use of highly sensitive cytogenetic techniques previously undetected radiological effects have been observed on children's blood forming tissue exposed to diagnostic levels of x-rays. Rats receiving radioactive calcium (Ca-45) deposited in their bone show profound chromosomal changes at levels of Ca-45 which approach those levels now considered safe for clinical diagnostic studies in children. In other words, in reference to the previous statement, the standards set by the various commissions are probably too lax, especially when these standards are applied to the entire population rather than to just a select group.

"In deriving limits for tritium applicable to members of the general public, these expert groups have taken into account the unique energy and absorption properties of tritium as they relate to distribution of the dose in body tissue."

If the true biological effects of tritium were taken into consideration these experts would have to account for the fact that one tritium atom can produce a mutation when it is at the right spot, can kill one bacterial cell (equivalent to 200 rads) and, in general, does not display the simple dose-response curves observed with x-rays and other high energy radiation that distributes its energy along a diffuse path.

"Tritium is a form of hydrogen, with chemical behavior very similar to ordinary hydrogen. Water containing tritium acts chemically like ordinary water; most of it passes through the human body very rapidly. More than half of the tritium taken up by the body is passed on within three to ten days; practically all remaining water molecules of water containing tritium are gone within sixty days. It is this rapid turnover that has made tritium a valuable research and diagnostic tool to doctors and radiobiologists."

As long as tritium remains as water this conclusion is essentially correct. However, it is quite erroneous to dismiss the residual that does not remain as water. It is in an organic form which, depending upon its location, can produce small or major cytological damage. Tritium as a diagnostic tool is in my opinion potentially a very hazardous one. At one time, for example, thorotrast was a favorite radiopaque material to use for contrast in x-ray studies, until the observation was made clinically of an alarmingly high incidence of leukemia and other malignancies in patients who had received injections of thorotrast for angiograms and other vascular studies. Furthermore, diagnostic studies are designed for ill persons who have need of information from such studies and therefore must accept such risks. The population at large does not need to be and must not be required to accept such risks.

The statements on page 2, paragraphs 2 and 3, and page 3, paragraphs 1 and 2, again ignore the qualitative difference between radiation of tritium, ingested in a form that renders its deposition in the body relatively permanent, and external radiation. One cannot talk rationally about millirems of radiation from tritium and compare this with millirems of x-rays.

The reference to the volume by Feinendegen in paragraph 3 of page 3 is a paradoxical inclusion in the report insofar as answers to questions about the adverse effects of tritium are concerned. The author cites 350 references on the subject of the incorporation of exogenous precursors of tritium (chapter 5) and only 128 references on the toxicity of tritium (chapter 6). There are some statements of his on toxicity that bear quoting:

p. 317: "It is, however, obvious that a single maximum permissible burden of tritium (or tritium labeled compound) in an organism cannot be recommended as generally valid for all labeled compounds. An extreme example is the comparison of toxicity of tritiated water and H^3-thymidine. The latter being concentrated in the cell nucleus was found to be about 1000 times more toxic than tritiated water in comparable doses in HeLa cells in culture. It has been estimated that under various conditions in the total animal body H^3-thymidine, because of its selective incorporation into DNA, may deliver a dose to the chromosomes of proliferating cells from 50 to 50,000 times greater than that delivered from tritiated water administered to the animal in equal amount of microcuries."

p. 317: "Conclusion. Since the radiation absorbed from the tritium beta particle cannot be expressed easily in most instances in conventional terms of comparative dosimetry, predictions as to the degree of toxicity to be expected from a certain dose of tritiated compound are frequently vague. Radiation effects from tritium in living systems must be determined experimentally for each class of tritiated compound."

p. 343: "The information on tritium toxicity in higher cells thus far is incomplete for expressing the effect as a function of either the number of tritium disintegrations per target or of absorbed dose. For the latter the geometry of the source with respect to the target must be known."

P. 345. "Considering the accumulation of tritiated metabolites in cells, especially that of H^3-thymidine in DNA with the concomitant possibility of late somatic and genetic effects, tritium-labeled compounds should not be given as tracers to man, unless the life expectancy is limited and fertility is excluded. Further data on long-term experiments are needed to better asses the mutagenic and carcinogenia properties of H^3-thymidine and other tritiated precursors until valid recommendations as to permissible dose are possible.

These statements hardly support the rather confident statement of the AEC report. The statement on page 4, "It can be stated with confidence that the effects, if any, of an exposure of 0.001 millirem from tritium will not differ substantially from those that might result from an exposure of a similar level to radiation from natural sources."—is in view of the quotations above quite false. And the next statement in the same paragraph:

"We have been unable to detect any biological effects due to natural background levels of radiation (natural background in most sea level regions averages 100 millirems/year; which is 100,000 times larger than the exposure that would result from the tritium from the Calvert Cliffs reactor)."—is equally irrelevant, both because the detection methods are not specified and background radiation and tritium radiation cannot be compared on the basis of simple dosimetry (rad or rem).

The AEC and the Baltimore Gas and Electric Company are asking that the population of Maryland accept a "tracer" dose of tritium as a price for electrical power. The AEC uses the authority of Feinendegen to support this position, despite his statement on page 345 (quoted above).

(3). The "technical" report adds little, chiefly because of the first sentence:

"The following discussion is addressed primarily to one question: Can tritium released as T_2O or HTO into the Chesapeake Bay from the proposed Calvert Cliffs reactor become more concentrated or, with respect to hydrogen, more enriched as it moves along natural food webs in man?"

Most of the discussion that follows is either a reply to this question or amplification of it. However, on page 2 is the statement:

"there is little reason to assume that such localization occurs;"

There is ample evidence for such localization, depending upon the tritium labeled precursor. Tritiated thymidine goes to the DNA. The extent of incorporation into DNA is dependent upon the rate of replication of DNA which in turn is a function of the rate of cell division. Thus, any tissue undergoing rapid growth will incorporate tritiated thymidine perferentially over tissue not growing rapidly. Children will incorporate more tritium under these conditions than adults, as will fetuses of pregnant women, etc. Most important from the standpoint of the genetic pool is the rate of incorporation into the germ cells of growing children, the oogonia and spermatogonia. These rapidly dividing cells will selectively pick up more tritium through the selected precursors than, say, bone or brain tissue or the body as a whole. This does not mean that the tritium would be concentrated or enriched at levels higher than those observed in the "environment" or the food chain. It simply means that the distribution in the organism will be unequal, depending upon the relative growth rates, metabolism of the tissues and the form of the tritium precursor.

(4). Considerable attention has been given to refuting the hazards of tritiated water (see above quotations), but the major hazard lies in the form of tritium existing in the food chain, a point which Dr. Merz has emphasized in his discussion with you. This goes directly to the ecological problem itself, both with respect to the distribution of tritium in the food chain and the effects of tritium on the food chain. The latter can be either lethal, non-lethal (somatic) or genetic. They can be observed very early or perhaps not for ten or fifteen years or longer: hence, the reasons for refuting any statement that no ecological effects have been observed. We have had too many examples of accepting such blanket statements, that is, until Rachel Carson appeared on the scene.

(5). A point not touched in the AEC report, but one which overrides all others, is the cumulative effect of a proliferation of nuclear power plants. In other words, we may be able to tolerate one Calvert Cliffs plant with the present standards but there is little evidence to support the conclusion that we as a nation can tolerate 100 or even 50 with the present standards. It is this prospect more than anything else which generates the great source of concern amongst the physicians, biologists and ecologists. Rather than elaborate on this point in this letter, however, I am enclosing some recent statements relating to the over-all picture of nuclear power generation that have been or will be published in the Baltimore Sun.

I trust these remarks will be of some value to you.

Sincerely,

ROLAND F. BEERS, Jr., M.D., Ph. D.,
Professor of Radiological Science.

REVIEW AND COMMENTS ON REPORTS DEALING WITH PROPOSED CALVERT CLIFFS NUCLEAR POWER PLANT

(By L. Eugene Cronin, Director, Natural Resources Institute, University of Maryland, October 8, 1969)

Reference 1: AEC comments on Senator Tydings' statement regarding the Calvert Nuclear Power Plant.

Special comments (see marginal numbers on attached copy of Reference 1):

1. The prior approval by Maryland agencies which AEC favors has not, in this case, been given. Therefore, in AEC's opinion, we are operating in a sequence which is undesirable.

2. and 3. The apparent limitation of AEC's responsibility to radiological effects has long disturbed me. Many states are not yet ready to deal competently with thermal problems many times as large as any previous experience. In addition, there is apparently no regional or national review and control of the location and magnitude of large nuclear plans nor of large fossil fuel plants. The type of control which the Federal Power Commission exerts over hydroelectric plants might be desirable for these.

4. Here is a damming comment. Extensive environmental studies should be completed prior to decision that such a large environmental force as a nuclear power plant will be constructed. The Commission reports that

studies are being made during construction or operation—therefore after commitment. This is near the crux of our Maryland problem and parallels precisely the procedure by Baltimore Gas and Electric and others. Such studies are made too late to protect public options, and are almost certain to be used defensively by the utility rather than objectively.

5. I suggest that you obtain the reports and recommendations on Calvert Cliffs by the U.S. Fish and Wildlife Service and the Federal Water Pollution Control Administration. I have seen the latter and the central comment is "The lack of specific information in the Preliminary Safety Analysis Report on hydrological and biological environment in which the plant is to be constructed has precluded our reaching definite conclusions as to the probable effects of the plant on Chesapeake Bay." We share this opinion.

They, and we, recommend thorough study of the area and, at least, objective monitoring of the effects.

6. and 7. How well are utilities complying with the recommendations of the Service? ". . . our information to date indicates . . ." is not a very strong statement on important environmental improvement.

8. These studies are good ones, and partially pertinent to Calvert Cliffs.

9. Only a small portion of the research completed deals with estuaries, and we have found no reports of adequate study of the effects on the environment in estuaries.

10. We are about ready to submit our proposal, and hope that it will be fully funded.

11. Observations by the licensee (Baltimore Gas and Electric Company) must be complemented by objective study, designed to test compliance, to learn of unexpected effects, and to guide future improvement in design and regulation.

12. These studies did not begin until late 1967 or early 1968, and are too brief for proper interpretation of the seasonal and annual variations which occur in the Bay.

13. The hydraulic model (for which I serve on the Advisory Committee) is helpful in making certain gross estimates of warmed water under certain conditions. We are limited to examining effects with a flow of 5400 cubic feet per second and a rise of 10° F. The predictions of thermal distribution from such a model have never, as far as we can determine, been adequately field tested. They do not test any biological effects. The model is, therefore, of limited value.

14. On the Model Advisory Committee, three members are appointed by the Company and three by Secretary Tawes (Dr. Pritchard, Mr. McKee, and me).

15. The biological studies by the Academy of Natural Sciences are superficial, contain serious errors, and lend themselves to nebulous interpretation. They should not be relied upon to protect the public interest.

16. At Morgantown on the Potomac, the Department of Water Resources has permitted PEPCO to heat water above 90° and bring additional water into the effluent canal to cool the effluent. This is a dangerous precedent and should not be followed at Calvert Cliffs.

17. Utilities (1) select the site, (2) decide the size of the plant, (3) choose the fuel to be used, and (4) decide to use the public waters as their coolant. The public agencies have few options left. The State should take the initiative in all of these decisions and avoid the repeated defensive review of company decisions.

18. I agree that these are traditional state and local responsibilities. Unfortunately, they are sometimes poorly met.

Reference 2: AEC comments on tritium releases from the proposed Calvert Cliffs nuclear power plant.

We have no comment on this report. The staff of AEC has excellent access to available knowledge on such subjects, and we have no basis for doubting their comments or conclusions.

AEC COMMENTS ON SENATOR TYDINGS' STATEMENT REGARDING THE CALVERT CLIFFS NUCLEAR POWERPLANT

The following information is submitted with reference to the statement made by Senator Tydings on May 12, 1969, regarding the Calvert Cliffs Nuclear Power Plant.

"This is a serious gap in the legislative authority of the AEC. I respectfully urge the Commission, on its own, to seek redress before the Congress. Thermal pollution is too serious a threat, to permit an inactive position on the part of the AEC."

1. The Commission recognizes the desirability of controlling thermal effects of released heated water on the environment, and has examined a number of proposed legislative solutions to this problem over the past few years. The AEC favors legislation in this area along the lines of the proposed Water Quality Improvement Act of 1969, introduced in the Senate as S. 7 by Senator Muskie for himself, Senator Tydins, and others. This legislation would require applicants for federal licenses to obtain advance certification from state water pollution control agencies with respect to compliance with applicable state water quality standards, and the AEC would be precluded from issuing any license or construction permit until this precondition had been met. AEC Commissioner James T. Ramey appeared before the Submittee on Air and Water Pollution of the Senate Committee on Public Works on March 3, 1969, where he testified that the Commission was pleased to support this proposed legislation, subject to certain technical modifications.

2 and 3. The AEC presently lacks authority to impose restrictions regarding the thermal effects of discharges from licensed nuclear facilities. Licensing by the AEC, however, does not relieve the applicant from being subject to the appropriate jurisdictions in other areas which would also be involved if the plant were fueled by coal, oil, and other nonnuclear means. Each state, of course, has the same authority to deal with thermal effects from nuclear power plants as it does from fossil fuel power plants unless in some way restricted by state law. In this connection, the AEC keeps interested state and local officials informed of applications received and licensing actions taken on the proposed nuclear projects.

4. The Commission recently surveyed the New England utilities that were constructing or operating nuclear power facilities, and found that they all had extensive environmental studies in progress to determine the potential thermal effects of the operation of their facilities. In addition, the AEC is now conducting a survey of all applicants and licensees to obtain detailed information concerning their studies relating to possible thermal effects on the environment.

"Additionally, I urge the Commission to upgrade its informal, advisory contacts with the Department of Interior in order to insure maximum use of available expertise within that Department."

5 and 6. The Commission is cognizant of the Department of the Interior's interest in the thermal effects of such discharges under the Fish and Wildlife Coordination Act and the Federal Water Pollution Control Act, as amended. Under a 1964 Memorandum of Understanding between the Atomic Energy Commission and the Department of the Interior, the AEC routinely obtains expert advice and recommendations on all projected nuclear power facilities from appropriate agencies of the Department. This practice involves the U.S. Geological Survey, the U.S. Fish and Wildlife Service, and more recently, the Federal Water Pollution Control Administration. In addition to comments on the radiological health and safety aspects of the proposed facility, the Fish and Wildlife Service report (which includes FWPCA's comments) also makes recommendations on nonradiological matters, including the thermal effects of the discharge of coolant water in the marine environment. A copy is sent to the applicant, calling attention to the Service's recommendations concerning potential nonradiological effects and urging cooperation with the appropriate federal and state agencies. These reports are also made public and are forwarded to the state and local agencies that may have an interest for their information and use.

7. As indicated above, the Commission is conducting a survey of all AEC licensees to determine the extent of their cooperation, and our information to date indicates that the utilities are cooperating in resolving the various environmental problems that might be associated with the construction and operation of these large facilities.

"There are, however, two disturbing aspects to this project. The first is the absence of public research on the environmental impact of the Calvert Cliffs facility. The State and the Atomic Energy Commission should not have to rely on company sponsored studies, with or without access to their data. They should be provided with the capacity to conduct independent studies of their own. My second concern involves the simultaneous nature of the research undertaken and actual construction at Calvert Cliffs. The latter suggests that the site is an accomplished fact and that no evidence brought forward by any research will alter it."

The AEC has been very conscious of the possible impact of radioactivity in the environment and, realizing that radionuclides released to the environment might find their way back to man through food chains, has for over 20 years funded research programs in this area. The program supports work by many of the Nation's leading scientists, and includes studies of rivers, streams, lakes, and bays throughout the Nation. During the past 12 years about $70,000,000 has been expended in this program, and in our 1969 budget over $9,000,000 is included.

8. For several years, the AEC has supported research by scientists at Johns Hopkins University on the ecology and movement of water in the Chesapeake Bay. Three contracts for research are now in force. One is for ecological studies of the Bay, from the Susquehanna River to near the south end of the Bay. Another is for a study of plankton and other small organisms in the Bay. The third is for dye studies of the dispersion of plumes in the near-shore environment (which have been in progress since 1962). This work is designed to predict the dispersion of both heat and radioactivity in the Bay. The total expenditure on these contracts, including money for 1969, is about $1,590,000.

9. Much of the work on behavior and fate of radionuclides in the environment will become available in a new book by the National Academy of Sciences—National Research Council entitled *Radioactivity in the Marine Environment*. This volume, sponsored by AEC, will be published early in 1970, and will summarize knowledge gained from studies of nuclear tests, nuclear reactor effluent in the environment, and natural radioactivity. Nearly all of the work on behavior, fate, and effects of radionuclides on the environment is also published in the open scientific literature.

The AEC also has been supporting research in thermal effects. The Research, Development and Demonstration Subcommittee of the Federal Council for Science and Technology's Committee on Environmental Quality is currently making a study of Federal Government activities in this field. Their data show that of $867,000 committed to thermal pollution research in 1969, 54% ($471,000) is being provided by the AEC.

The second concern "involves the simultaneous nature of the research undertaken and actual construction at Calvert Cliffs. The latter suggests that the site is an accomplished fact and that no evidence brought forward by any research will alter it."

It was noted above that much research by many qualified biologists and ecologists in many areas of the Nation has been and still is going on; furthermore, environmental surveys in the vicinity of reactors now in operation—both power reactors and AEC-owned reactors—have shown no deleterious effects on the environment. In a recent survey by the U.S. Public Health Service in the vicinity of the Dresden nuclear power plant in Illinois, for example, it was found that radioactivity levels contributed by the Dresden plant were so low that it was difficult to distinguish the levels either from natural background radioactivity or from fallout.

10. As to the relation between research and actual construction at the site, the research and experience mentioned above were taken into account by the AEC regulatory staff in its consideration of the site and of the proposed plant. The staff's position set forth at the public hearing was based on this research and on the knowledge that environmental effects can be controlled by limiting the radioactive effluents. Specific limits for such effluents will be incorporated in any operating license which may be issued for the facility; nonetheless, the AEC's Division of Biology and Medicine is currently negotiating with the University of Maryland for a comprehensive ecological study in the vicinity of Calvert Cliffs. This study is part of a planned program for in-depth study of typical power plant sites, Calvert Cliffs being representative of a bay site. It should be noted that the Calvert Cliffs Unit 1 is not scheduled for operation before January 1973, and Unit 2 not before January 1974.

11. If an operating license is issued, the licensee will be required to monitor effluent releases to assure that radioactivity in such releases from the facility are within limits prescribed in the license and AEC regulations. The licensee will also make periodic radiological surveys of the environment in the vicinity of the site in order to detect any significant increase in radioactivity and assure that exposures of the public that may result from releases are well within radiation protection guides.

12. The Commission understands that Baltimore Gas and Electric Company has also initiated three basic studies relevant to the question of thermal effects on Chesapeake Bay. The first of these involves general oceanographic studies being carried out by Sheppard T. Powell Associates to assemble data on the physical characteristics of the Bay at the Calvert Cliffs site to obtain basic information such as depths, flow, temperatures, salinity concentrations and tide levels.

13. The second program involves model studies of the Bay being carried out by the Alden Research Laboratories of Worcester Polytechnic Institute. A scale model of a 34-mile stretch of the Bay has been utilized for some time to study the thermal dispersion of cooling water leaving the plant. The stated objective of these studies is to provide information for appropriate design of the intake and discharge structures to minimize thermal effects in the Bay.

14. These model studies are being followed by a model advisory committee appointed in part by the Board of Natural Resources of the State of Maryland. The committee, which consists of three state representatives and three company representatives, is expected to report on the results in the near future.

15. Baltimore Gas and Electric Company's third program is being conducted by the Academy of Natural Sciences of Philadelphia to obtain base line information on aquatic life in the vicinity of the plant site. This broad program involves accumulation of information on physical, chemical and bacteriological characteristics of the water, plankton studies, and population and reproduction studies of fish and shellfish species of importance in the Bay. The general objective of the work by the Academy is to establish a basis for comparison with corresponding data obtained after the plant may be placed in operation.

16. The Baltimore Gas and Electric Company has indicated that it will design and operate the plant in such a manner that the water quality standards of the State of Maryland are met. From the standpoint of thermal effects, this involves provisions in the design and operation of the condensers such that the temperature elevation would not exceed 10°F above natural water temperature. In addition, a limit of 90°F would be set for cooling water discharges, taking into account a small mixing zone to be specified by the Department of Water Resources of The State of Maryland.

It is the understanding of the Commission that the State Department of Water Resources has authority to decide whether Bay water may be used for cooling purposes, and that the Company will file an application in the near future with that Department seeking authorization to use Chesapeake Bay water for cooling purposes.

"Additionally, as the Washington Post suggests in a May 8 editorial, this lessens the importance of these hearings and lends credence to those who argue that local interests are in fact being overlooked."

17. Sites for nuclear power plants are selected by the utility which proposes to build such facilities, and the AEC's jurisdiction in this respect is limited to consideration of the suitability of the site and the other features of the proposed reactor that have a bearing on radiological health and safety. Insofar as the local interests are related to matters such as zoning, aesthetics, and land acquisition, the AEC has no regulatory authority to deal with them.

18. These matters, however, are traditionally considered by state and local jurisdiction.

With respect to matters within the AEC's jurisdiction, excavation work and some concrete construction had been done at the Calvert Cliffs site prior to the public hearing. Under the AEC's regulations, site preparation is permitted, and in certain circumstances limited construction may take place under exemptions as provided in the regulations; however, all such work done prior to the issuance of a construction permit represents only a very small fraction of the total cost of the facility and is done wholly at the risk of the applicant. The fact that such work is permitted does not mean that a construction permit will be issued. For example, the regulatory staff recommended against the construction of a nuclear power plant by Pacific Gas and Electric Company at Bodega Bay, and the Company withdrew its application after the expenditure of several million dollars in work on the site.

RESEARCH REQUIREMENTS RELATED TO THE ENVIRONMENTAL EFFECTS OF POWERPLANTS IN MARYLAND

(Report to the Maryland Board of Natural Resources, May 26, 1969, by L. Eugene Cronin, director, Natural Resources Institute, University of Maryland and Donald W. Pritchard, director, Chesapeake Bay Institute, the Johns Hopkins University)

SUMMARY

Maryland must rapidly increase its understanding of the possible effects of large powerplants which use cooling water from the Chesapeake Bay and its tributaries if the State is to meet its heavy responsibilities for approval of sites for power plants and for properly controlling their environmental effects. The specific environmental problems which must be answered are stated and involve the physical, chemical, biological, geological and radiological characteristics of the Bay and the effects of power plants on these characteristics.

A research program is outlined, including base-line studies to learn natural conditions and identify serious problems at each site, research to permit seasonable prediction of the effects before approvals are given, and monitoring surveys to assist in continuous improvement of regulations and of engineering design. Comment is included on research directed toward constructive uses of heat from such sources.

Several suggestions are provided for effective coordination and supervision of the research program in order to assure its adequacy, prevent duplication, and take full advantage of all available research agencies and sources of support.

The demand for electrical supply is rapidly rising in Maryland and nearby areas as the result of population increases and growing industrial requirements. Nationally, power requirements are now doubling each 10 years. Maryland will probably exceed the average rate of increases, especially since the Chesapeake Bay and its tributaries are attractive as potential sources of cooling water. The size of individual plants is also increasing rapidly, so that the 100–700 megawatt plants of most present utilities are being supplemented by 2,000–3,000 MW plants, and new generating stations may be built of even larger capacity. Nuclear plants require about 50% more water per kilowatt for cooling, since they are less efficient and release more waste heat.

A representative of the Federal Power Commission has recently predicted that Maryland may have six nuclear stations the size of the proposed Calvert Cliffs plant by 1980. These new plants would, with present technology, require the use of at least 32,000 cubic feet per second of Bay water for cooling.

THE RESPONSIBILITIES OF THE STATE

The role of the State of Maryland is of the utmost importance in guiding and controlling whatever power development is to be permitted within the state. At the federal level, the Federal Power Commission licenses hydroelectric plants and the Atomic Energy Commission is responsible for radiological aspects of nuclear power units. There is no federal regulation, approval, coordination, or supervision of coal—or oil—fueled power plants except for the Federal Water Pollution Control Administration, which essentially "backs up" the Maryland Department of Water Resources. The State is the principal representative of the public and must make the controlling decisions on the siting of new plants, the size of units, the environmental effects to be permitted, and related decisions on economic, aesthetic and industrial problems.

The State has recently made signal progress through research, through more appropriate regulations, through legislative requirement for pre-construction review, and through effective cooperation with industrial efforts. The rapid expansion of plant size and predictable increase in requests for new sites urgently require, however, that the State adds further to its understanding of the potential beneficial and detrimental effects of power plants, especially in the extraordinarily valuable northern half of the Chesapeake Bay.

We wish to suggest the information which Maryland will need if the waters of the Bay and its tributaries are to be used for cooling condensers. Part of this information is already available from the management and research agencies within the State, part can be drawn from the experience of other areas, and part must be developed by further research. We have not dealt with economic, social, aesthetic or political problems, but with the physical, chemical, geological and biological aspects of the environment of steam electric generating stations.

STATEMENT OF PROBLEMS

1. What knowledge of environmental properties and processes is needed in order for the state to fulfill its obligations in terms of proper siting, design and regulation of thermo-electric power plants, and of protection of the environment for other uses?

(a) For any potential site, what is the volume rate of flow of "new" water to the tidal segment of the estuary from which the power plant would withdraw water for condenser cooling? That is, what is the rate of supply of "available" dilution water?

(b) What are the physical consequences of withdrawals of water at any specified volume rate from a given depth interval and the return of water to the same or to a different depth interval upon the non-tidal circulation in the estuary?

(c) What are the natural temporal and special distributions of temperature, salinity, dissolved oxygen and other chemical components of the estuary adjacent to any potential plant site?

(d) What are the natural temporal and special distributions and abundance of important estuarine organisms, including those directly useful to man, those which are abundant at any season, and those which support the useful and abundant species in the area of possible effects?

(e) What estuarine organisms and stages are likely to be drawn through the plant with the condenser cooling water flow, as a function of depth of withdrawal and season?

(f) What would be the effects of passage of specific organisms through the plant with the condenser cooling waters (mechanical destruction, chemical injury, thermal damage, thermal stimulation, etc.)?

(g) What is the significance to the ecology and use of the estuary of the predatory effects of the plant on specific organisms drawn through the plant with the condenser cooling water?

(h) What will be the effects of condenser water discharge on the behavior, distribution and abundance of important bottom species, migratory animals and other organisms in the receiving estuary?

(i) What organisms would be trapped in an intake forebay and damaged or killed by impingement against the intake screens?

(j) What contaminants (i.e., biocides, heavy metals, radioactive materials, etc.) are likely to be released into the estuarine environment with condenser cooling water, and in what quantities and concentrations?

(k) What will the effects of these contaminants be on the ecological system, on public health, and on the suitability of estuarine organisms for human use?

(l) What design features insure minimum or acceptable loss of important species by entrapment, entrainment or damage in receiving waters?

2. What special knowledge will be useful in continuously improving the ability of the State to deal effectively with these problems?

(a) What are the actual effects of each permitted plant on the environment and on human uses in relation to all of the pre-approved questions posed in Section 1 above?

SPECIFIC RESEARCH AND SURVEYS REQUIRED

The activities which must be undertaken to answer the questions posed above can be divided into three areas—baseline studies, research to assist prediction, and monitoring of post-operating conditions. The studies listed are appropriate to any large nuclear power plant site in Chesapeake Bay or similar areas. For plants using coal or oil, the radiological studies would be eliminated from the program.

Not all of these may be required at a specific site, and not all of the studies listed must be pursued exhaustively at every potential power plant location. Sufficient information on each question must be available to permit state officials and pertinent advisors to know when significant danger exists—or when a reasonable margin of safety is provided by natural conditions or plant design. Information from local studies, the published literature and all other reliable sources should be brought into use for each question.

A. Base-line data

This information is needed to understand the pertinent conditions before changes are made, to identify the problems and dangers which are most important at each site, and to serve as a valid reference in measuring any changes which are caused by the power plant. In the complex and variable conditions of Chesapeake Bay and other estuaries, some of these should be continued for five years prior to decision and final design, and data for two full years is the minimum acceptable for estimating natural conditions and variation.

1. *Environmental surveys*, to determine the temperature, salinity, oxygen content, heavy metals content, and radiological characteristics of the water which might be affected. Sampling of vertical patterns at a number of stations should usually be at frequent intervals and continuous sampling may be required during summer months.

2. *Sediment surveys*, to determine the physical, chemical and radiological characteristics of the bottom sediments which might be affected. Repetitious sampling is not usually necessary so that one thorough survey may be sufficient.

3. *Biological survey*, to determine the abundance of important species and learn their seasonal, vertical, and horizontal variations. Some populations are stable, but many are highly variable, and sampling must be appropriate for each of the following groups.

(a) *Phytoplankton*—in terms of the total crop and of the abundant species.

(b) *Large plants*—distributions and abundance should be mapped by species.

(c) *Zooplankton*—appropriate qualitative and quantitative measurements are necessary at the proper seasons. Special attention must be given to these forms, because they are vulnerable to physical, chemical and thermal damage when they are pumped through a power plant and because almost all estuarine species have a planktonic stage and are dependent on its success. Important organisms include:

(1) Eggs and larvae of useful species, including oysters, clams, crabs and fish.

(2) Sea nettle and comb jellies.

(3) The copepod crustacea which feed larger animals in the Bay.

(4) Other species.

(d) *Epidenthos*—the organisms which attach to or are found in close association with substrates are usually useful as indications of natural conditions and of the effects of change.

(e) *Bottom species*—these are the basis of the most valuable commercial fisheries, and thorough observation should be made, including:

(1) oysters, clams and associated species, including condition, growth rate and other factors which might be affected;

(2) other benthic organisms, many of which are important as food for useful species.

(f) *Crabs*—winter populations are semi-hibernating but summer populations are highly active and migratory. It is difficult but necessary to conduct adequate long-term sampling.

(g) *Fish*—each site may be used by resident species and by the migratory shad, herring, striped bass and many other species in the estuary. These make possible a large commercial fishery and burgeoning recreational use of the Bay. They also contribute to the fisheries of the Atlantic Coast. Adequate sampling would require design for each site and should be carried out throughout several years.

(h) *Radiological and heavy metals study* of any radiological activity and pertinent metals in all species which are present in significant quantities.

4. *Human uses*, to measure the past and present uses of the waters which might be affected: (a) Commercial fishing of all types; (b) Recreational fishing, boating and other use; (c) Support of waterfowl and other birds, mammals and reptiles.

B. Prediction data

Reasonable predictions of the effects of significant environmental changes should be available to public agencies *prior* to decisions that changes will be instituted. In the problems of siting and evaluating power plants, this requires that predictions be available for the effects of thermal release, circulation changes, redistribution of oxygen and salinity, and, in some cases, low-level release of radioactive elements and compounds.

Such prediction requires a basis of appropriate research. The most efficient and effective rationale in such research appears to be:

1. Learn, from appropriate sampling in the Bay, which important species are present, the season of the occurrence, and the life history stages present in various parts of the Bay.

2. Conduct carefully designed laboratory studies of the effects of appropriate environmental changes on the important species, including the most sensitive stages (usually the eggs and larvae).

3. Determine, from the Chesapeake Bay Hydraulic Model or other pertinent hydraulic or mathematical models, the best possible estimates of the distribution of temperature, oxygen, salinity and dissolved materials from the effluent.

4. Apply the laboratory and model results in a meaningful and realistic way to predict all of the significant effects on the region of the Bay under consideration.

The following specific research programs must be completed, and will require new studies to add to the knowledge available from research which has already been conducted at various laboratories:

1. *Determine the effects* of change in temperature, oxygen, salinity, biocides, radionuclides and appropriate metals on (a) Egg and larval stages of oysters, clams, crabs, and fish; (b) Post-larval stages of those species; (c) The important species of plants and of other animals in the Bay.

These studies must simulate actual potential exposures in the operation of power plants, and also contribute to basic comprehension of these and other possible environmental changes in estuaries. They must also include research on the effects of these environmental changes on the long-term health of organisms, on the efficiency of organisms, on the behavior of many species of animals and on the complete ecosystem, as well as the more usual study of lethal limits.

2. *Develop and test modeling techniques*, so that significant environmental changes can be partially tested in models with reasonable accuracy in predicting the physical and chemical effects of power plant operations. These have unique value in testing engineering improvements which might reduce costs or minimize damage to the Bay. They can also help identify the most probable environmental problems from plant operation. Imaginative approaches are needed, and every possible advantage should be sought from dye studies, hydraulic models, mathematical models and other methods of prediction.

Useful prediction is one of the primary purposes and values of research. If sufficient and continuing support is given for such studies of these and other environmental changes, the State will have a constantly improving basis for protecting the conditions necessary for the best uses of the Bay and preventing those changes which would be detrimental.

C. Monitoring

Whenever any power plant is added to those which now use water from the Chesapeake Bay and its tributaries, thorough observations should be made of the physical, chemical, and biological effects of the operation. These will test compliance with state regulations, determine the validity and errors of any predictions which have been made, and discover any unexpected significant effects. Together, these permit continuous improvement in engineering design and state regulations. Monitoring surveys after operation begins should include:

1. *The actual distributions* of temperature, salinity, oxygen, radionuclides and heavy metals at all stages of tide and under all pertinent meteorological conditions.

2. *Biological effects* on the abundance, distribution, production and welfare of (a) All important organisms entrained in the water passing through the condensers and (b) Important bottom species, swimming organisms, and drifting forms in the area affected by the effluent.

As in the prediction studies, it is important to observe shock effects, chronic effects, behavioral response, efficiency changes and other effects which are involved in the welfare of bay species.

3. *Radiological, heavy metal,* and *biocide effects,* wherever they are present. These should be properly sampled in (a) Effluent water; (b) Sediments; (c) Phytoplankton and zooplankton; (d) Important bottom species; (e) Resident and migratory fish; (f) Organisms (birds, turtles, mammals, etc.) feeding on bay species.

4. *Recreational and commercial gains and losses.* Surveys similar to the base-line studies are necessary at appropriate intervals to obtain valid data on increases and decreases in fishing success and recreation which may be influenced by power plant activity.

CONSTRUCTIVE USES OF WASTE HEAT

The enormous quantity of heat released in a dilute form in the effluent of power plants offers important potentials for constructive use. The possibilities are probably greater north of Chesapeake Bay and lesser in southern states, but the best possible use of this energy in this climate merits exploratory research.

A special committee on beneficial use of heat, advisory to the Maryland Department of Water Resources, is now preparing a report in this area, and we will not comment extensively. However, several guiding principles related to research are worth noting:

(1) Exploratory and pilot-plant research is required for aquacultural use of warmed waters, since no commercially profitable use is now known to exist. Some of the experience at other sites (England, Long Island, Florida, Louisiana, etc.) can be drawn upon with value.

(2) Estuarine mollusca, including oysters, clams and perhaps mussels, are likely to provide the greatest immediate potential for culture in warmed Chesapeake water. They have good market value, can be owned, are well suited to estuarine culture, and feed near the base of the food chain, where the potentials are greatest for quantity production. Some of the problems of using power plant effluents are difficult, however. There are also potentials for rearing shrimp, fish, and possibly crabs.

(3) Research should draw on engineering capacity, biological competence, management responsibility and other sources. This is a promising field for cooperation among the power industry, scientists and the representatives of management agencies.

(4) The established potentials of improving certain types of recreational and commercial fishing merit exploration and improvement. Effluents might be designed to provide maximum attraction for fish during cool and cold months, with minimum repulsion of fish in summer.

COORDINATION AND SUPERVISION OF RESEARCH

No single agency will be able to conduct all of the studies needed by the State, although Maryland contains research centers with unusual pertinence and capacity. Appropriate action should be taken to assure that all necessary studies are made, that undesirable duplication is avoided, and that there is good liaison between the management agencies and those conducting research. The Governor's Commission requested by House Resolution 137 of the 1969 Maryland General Assembly appears to provide an excellent potential center for such coordination and supervision, or a special Advisory Committee might be established by the Secretary of Natural Resources. We suggest the following guidelines:

1. That all pertinent sources of research support be encouraged by the Commission or Committee, including state funds, federal agencies, philanthropic organizations, private individuals and groups, and industries.

2. That the Commission or Committee seek and receive specific research proposals from those who wish to participate and arrange for suitable and thorough review of each as to professional competence, adequacy for the stated objectives, suitable administrative structure, pertinence to the needs of the State, and lack of duplication of the work of others. In this review expert out-of-state advisors may be useful. The proposals which meet these criteria should be approved as part of the State program, and their financial support should be encouraged.

3. That the unusual pertinence of existing research organizations, including state, federal and private, be fully utilized in the research program.

SUMMERSVILLE, W. VA., SUCCESS STORY

Mr. BYRD of West Virginia. Mr. President, the Charleston Daily Mail recently carried two articles on success stories in West Virginia. The articles, which appeared in the Friday, November 14, edition, deal with the city of Summersville in Nicholas County and with Bill Bryant, the city's energetic young mayor.

As reporter Richard Grimes notes:

Summersville, a one-time typical coal town, has turned the tables on poverty. The place is booming.

The article points out that the number of businesses in and around Summersville has increased from 45 to 75 within the past decade, and that the population has risen by 1,000 over the same period.

Mayor Bryant is credited with bringing most of the new businesses to the city, and the second article states:

What ever the recipe is for mixing financial wizardry with political savvy, Bryant has found it.

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

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

SUMMERSVILLE SUCCESS STORY: INITIATIVE, INGENUITY

(By Richard Grimes)

Summersville, a one-time typical coal town, has turned the tables on poverty. The place is booming.

And, there are many success stories in the Nicholas County seat as a result of it.

One story might be the people—friendly ones not afraid to invest their time, money and energies in the young people of the area.

Another might be the local speculators like Mayor William S. Bryant who 22 years ago pinned his hopes on virgin coal fields around Summersville and came out smelling like a million dollars. Much of his good fortune has been invested back in the town.

The story might be the Bright brothers, natives of the community, who started a greeting card business in their bedroom and now, not even a decade later, operate a multimillion dollar industry, hiring 300 people, in a structure covering two football fields just outside Summersville.

And so on. Easily, there are a dozen more.

The story seems the reverse of elsewhere across Appalachia. In most instances, the spark of hope long trusted by the Mountaineer that his once bustling, tiny coal town will someday shake the drabs and again ring with life, flickers no more.

West Virginia has its string of them, too: towns once rich in, if nothing else, spirit and young high school football players; and now bleak crossroads with depressed widows whose children left for the city and whose husbands died from disappointment long before their graves.

But out of the ashes has emerged this hot bed of coals—Summersville, a town of 2,500 that was a crossroads and became a community, rich in spirit and wealth.

What might appear to the uninformed traveler as simply some houses and a store at the intersection of U.S. 19 and W. Va. 39 actually is the production center for coal, greeting cards, placemats, model homes, camping trailers, plastics, mine machinery and shoes. Some 500 are employed in Summersville proper, and another 700 on the perimeter.

The city sports a new municipal building, library and teen center complex, plus a modern five wing, convalescent hospital that may go general in the near future.

For a switch, young people are returning to Summersville. While there is no true way to measure at this point, the mayor, a banker, a county clerk, a grocer and a coal miner all say that between 50 and 75 per cent of the area's working force is under 35 years of age.

Besides that, executives from Ohio, New York and Pennsylvania are moving to Summersville to base operations.

Take John Harris, a big man in the plastics field. He came to Summersville from Binghamton, N.Y. in February to invest talent and money in a new plastics plant in the heart of town.

Harris plans to organize the Summersville Players, a theater group he says will soon be one of the best in the state. He adores the Charleston Civic Center and predicts his players will someday perform there.

"I can't understand why West Virginians complain. This is great down here . . " he adds. "I fell in love with West Virginia immediately."

Harry Richards, who was an engineering consultant to 20 hospitals in the Toledo, Ohio area gave that up to come to Summersville and become executive vice-president of Cardinal Homes, a firm building eight mobile homes a day with 25 men.

Most of the imports say Mayor Bryant was instrumental in bringing them to the Nicholas County seat.

Four major industries have started up this year alone. Besides Cardinal Homes, for example, Hanna Line is building a plant to make camping trailers. Bright of America, which started in greeting cards for fund raising groups, has diversified into other fields and is contemplating further expansion.

Inventive Molded Products Co. has its hand on a contract that may revolutionize the plastics packaging industry. There are 25 coal companies around the city. The Carroll Shoe Company is going strong.

U.S. Department of Labor statistics indicate that in the last decade Summersville and its surrounding area has increased from 45 to 75 businesses.

The population has grown almost 1,000 in 10 years and the mayor predicts it will exceed 5,000 before 1980. "That increase, incidentally, will be one of well trained people," says Mayor Bryant.

Bill Bright, one of the successful Bright brothers, says his firm is forced to tie up housing ahead of time so that enough is available for his people. Not only that, but he is counting on the town's mobile home manufacturer to produce enough units to assist in the housing shortage there. Since 1955, more than 300 new homes have been built in and around Summersville.

Of course, there is popular Summersville Dam nearby. It opened in 1966 and already is a tourist attraction for West Virginians. Still, Mayor Bryant says it hasn't even started to be the recreation mecca it will be for the eastern United States when the Appalachian Highway System passes it.

Summersville has its problems. The roads are not up to snuff and Nicholas County still has an unemployment rate higher than the national average. But it's a far cry better than it was 15 years ago and prospects of additional improvement are great. And, there are hot politics in the city, some jealousy and probably some hate.

"You have to expect that," says the mayor, "when there is money to be made and people are competing."

MAYOR BILL BRYANT'S HAND "EVERYWHERE" IN COMMUNITY HE SERVES WITHOUT PAY

There is a saying around Summersville that when you eat or sleep there, you must deal with Bill Bryant.

Mayor William S. Bryant owns more than his fair share of greater Summersville and makes no bones about it.

Some love him for it and others hate him.

Veteran Nicholas Countian Miss Sarah Hamilton says she can remember when the town had boardwalks and outhouses on the main street. Then came Bill Bryant, she beams.

"I've seen the city move from not much of anything to this bustling community. And Bill Bryant championed it. This has to be our greatest day. He goes out and dares to do this and dares to do that . . ."

On the other hand, retorts a town opponent, "Bill Bryant is like a pumpkin seed. You put one in the ground and it takes over the whole damn garden."

Whatever the recipe is for mixing financial wizardry with political savvy, Bryant has found it.

He doesn't have enough fingers and toes to count his investments. He owns Cardinal Homes, most of Inventive Molded Products Co., is vice president of Peerless Coal Co. and owns three corporations that operate hotels, motels and eating establishments in Nicholes County. Then there are his land holdings.

He confirms that his estate is worth a million dollars. With his wife and two daughters (he has a son attending Marshall) he resides in a stone mansion atop a knoll in Summersville. He has an ample supply of cars and a horse farm for a back yard. But he lets someone else farm it.

"I'm the type of guy who would rather stand with a glass of scotch and watch," he says.

Bryant explains frankly that he knows he manipulates and that he dangles money to get things for Summersville, but adds: "The town is prospering, isn't it?"

Bryant, besides traveling to make promotion for his town, says he gives at least $1,000 annually from his pocket to the city. He doesn't accept his $100 a month salary for beng mayor.

"Sure, my business is more important to me than being mayor," he says. "It would have to be. Politics is a hobby for me. Of course, the people here are terrific and this place is my life."

Bryant, a Democrat, is 48. He recently started in seventh, two year term, on 13th year as mayor of Summersville. The last four times he has been unopposed.

He doesn't know whether he wants to be mayor again. "I'm interested in the state Senate." His friends would like to see him governor. Bryant kind of smirks at the thought, but adds:

"I think I could do for West Virginia what I've done for Summersville." Bank official Larry Tucker, also President of the state's Young Democrats, says: "Bill will make us a fine governor in 10 years."

Asked what will happen to Summersville when Bryant dies, he says, "This is a real problem. I worry about that. Really, I do."

Yet, Bryant moves so fast it may be difficult for someone else to grab the reins. The federal government built the lake and dam, but people around the town say if it hadn't been for Bill there would be no dam.

The convalescent hospital was partially financed by Hill-Burton Funds at a time when they were available only to nursing and convalescent hospitals. So, that's what the hospital is. But a tour indicates that with few modifications it might just as easily be a general hospital. When queried about this, hospital officials could only smile sheepishly and refer the reporter back to Mayor Bryant. The mayor, when questioned, gave an ornery smile.

Bryant runs the town, not from city hall, but from his second floor office atop the Farmers Merchants Bank or in an office in the St. Nicholas Hotel across the street. "I rarely use the mayor's office in the municipal building," he says.

The man on the street, knowing full well that Bryant may own the land he lives on, still, for the most part, speaks highly of him. Bryant appears to have the greatest admiration for the townspeople. Like a boy with a reconstructed village under the Christmas tree, Bryant shows off the area and the people with the greatest pride.

A native of Beckley, he came to Summersville area in 1948 as a payroll clerk for the Peters Creek Coal Co.

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. WILLIAMS of Delaware. Mr. President, I ask unanimous consent to proceed for 15 minutes.

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

Mr. WILLIAMS of Delaware. Mr. President, the President has nominated Judge Haynsworth to be an Associate Justice of the Supreme Court; and the question before the Senate is, Should he be confirmed?

In the past several days I have been reviewing the testimony before the Judiciary Committee, and I have also carefully studied the committee reports containing both the majority and minority views. Likewise I have followed the arguments as presented in the Senate by those who would support and those who would oppose his confirmation.

It appears that the arguments being made against his confirmation are confined to two basic points:

First. There are those who oppose his confirmation because they do not want a man of Judge Haynsworth's conservative background to be a member of the Supreme Court. These opponents criticize some of his earlier decisions as a judge on the basis that they were not as favorable to labor and the civil rights movement as they would like.

Second. Others oppose his confirmation because, while they do not question his honesty, they do question whether or not he is sensitive to the delicacy of the position of a judge. They cite his failure to disassociate himself from certain business connections after becoming a Federal judge and point out instances where he made a financial investment in a company while they had a case pending in his court and instances where he participated in rendering decisions involving companies with which a vending machine company in which he owned a one-seventh interest was doing business.

I comment first on objection No. 1; namely, that Judge Haynsworth's conservative background would justify a vote against his confirmation. In my opinion agreement or disagreement with the man's political philosophy is no valid basis for opposition to his confirmation.

In fact, if this argument were to be accepted as the basis for a decision I personally would have enthusiastically endorsed the confirmation of Judge Haynsworth when his nomination was first announced, and by the same token I would have voted against many of the preceding Justices appointed by former administrations.

Under our Constitution nominations to fill vacancies on the Supreme Court are made by the President, and it is to be expected that in making this selection the President will nominate men whose social or political philosophy more nearly coincides with his own. Had Mr. Humphrey been elected President I am sure he would have named a liberal to fill this vacancy, and the country expects Mr. Nixon to name a man of more conservative background.

Therefore in my opinion objection to or approval of Judge Haynsworth's conservative record is not a valid basis upon which to base our decision.

The second point, however, relating to Judge Haynsworth's continued business activities after being appointed as a Federal judge does raise a valid question and one that must be resolved by each Member of the Senate. It is this point that gave me concern.

Mr. Haynsworth was appointed as a Federal judge in 1957 and was promptly confirmed by the Senate. I voted for his confirmation. He accepted that position on the basis of the Canons of Judicial Ethics that had been in effect since 1924.

Canon 26 of Judicial Ethics provides that:

> 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.

Canon 4 provides that:

> A judge's official conduct should be free from impropriety and the appearance of impropriety; . . .

Canon 29 provides that:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved . . .

Section 455 of title 28 of the United States Code provides that:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest . . .

The Canons of Judicial Ethics from which I have just quoted were adopted by the American Bar Association in Philadelphia, Pa., on July 9, 1924, by a committee acting under the chairmanship of William H. Taft. They are still in effect.

In recognition of the strictness of this Judicial Code, in particular as it would limit the financial activities of any judge, Congress has provided a lifetime tenure of office plus an exceptionally liberal pension.

A judge, once confirmed by the Senate, not only has a guaranteed lifetime job—subject only to impeachment for bad behavior—but upon retirement is eligible for a pension equal to his full salary on the date of separation. If after his retirement the salary for the position which he held on the date of retirement is increased his pension automatically increases to that amount.

For example, Judge X retired 3 years ago at which time the salary of his office was $30,000; his pension was $30,000. Later as these salaries were increased to $42,500, his pension automatically increased to $42,500.

In cases of disability, if the judge has served less than 10 years, he is eligible for a minimum of one-half of the salary on the date of retirement, or if he has served a minimum of 10 years, then he is eligible for retirement benefits equal to the full salary of his office, regardless of his age. In addition, any future salary increases for that office are reflected in increased retirement benefits.

No contributions are deducted from the judge's salary to pay for his retirement benefits.

In addition, the judge can elect to obtain a liberal survivorship benefit for his widow, but there is a nominal deduction from his salary for these survivorship benefits—approximately 3 percent.

For example, in his present capacity Judge Haynsworth draws a salary of $42,500 with a lifetime tenure of office and then upon retirement he is eligible for a pension of $42,500 plus any increase in salary that may become effective for that office.

This lifetime tenure of office with retirement benefits at full salary plus liberal survivorship benefits for his widow was granted for the purpose of relieving a Federal judge of any worries as to his or his family's financial security and to offset the restrictions that were being placed upon a judge's having outside business arrangements.

The question now arises, Has Judge Haynsworth during his service as a Federal judge met these qualifications as circumscribed in the Canons of Judicial Ethics in a manner that would justify his promotion to a position as an Associate Justice of the Supreme Court? Would his confirmation help to restore the prestige of the Court that has been lost as the result of the recent exposure of the financial activities of certain of its members?

I shall not take the time to review the full committee report. It has all been placed in the CONGRESSIONAL RECORDS of last Thursday and Friday, but there seems to be general agreement of the fact that Judge Haynsworth did participate in rendering decisions in cases where he had some financial interest.

In some of the cases cited by his opponents his financial investment was of such insignificance that one can only conclude they were mentioned to cloud the record, but there were cases where even Judge Haynsworth admitted his financial holdings were such as to justify criticism of his actions.

Mr. MILLER. Mr. President, will the Senator from Delaware yield at that point?

Mr. WILLIAMS of Delaware. I yield.

Mr. MILLER. The Senator refers to a citation of cases by some of the opponents which were insignificant. I can recall when a certain bill of particulars was presented to Members of the Senate and it contained an array of cases in which Judge Haynsworth was said to have had a substantial interest, which would be stopped by the canons of ethics—these canons of ethics would have stopped him from sitting on those cases.

Then the White House assistant, Clark Mollenhoff, came out with what I think was a masterly demolition of many of these cases. In fact, my recollection is that the name of a litigant was the same name as another corporation in which Judge Haynsworth did indeed have a few shares of stock, but it was a case that whoever had researched the bill of particulars had confused the cases. So it ended up that Judge Haynsworth did not even have a single share of stock in that company.

Then there was the W. R. Grace & Co. stock, in which Judge Haynsworth had a minute number of shares, but because a subsidiary of Grace Lines was before the court, it was alleged that he had a substantial interest, which should have stopped him from sitting.

I assume my colleague is talking about cases like that when he says these cases were put in to cloud the record.

Mr. WILLIAMS of Delaware. Yes. That is what I had reference to. I am familiar with the cases recited in the original charges. I am also familiar with the rebuttals which were prepared by Clark Mollenhoff and Senators in their majority report, showing that there was no validity to the charges involved in some of those cases.

It is unfortunate that they had ever been mentioned.

I do not want my remarks to appear to indicate that I do not think a judge can have independent wealth or have his money properly invested. After all, if he owns nothing but Government bonds then does he have a bias in favor of the Government?

I think we should remember one point. We should not have to try to put paupers on the Federal bench. I do not think we want only paupers in Federal positions. If we are going to allow men with some resources to be appointed to those positions they must invest their money in something. There is a line of reasoning to be drawn. We should keep that in perspective.

I think, at the same time, the rule that they should disassociate themselves from business activities must be interpreted as meaning having an active part in the operations to which they would have to devote a substantial part of their time and in which they really had a major or a controlling interest.

I only point out that it would have been better had no reference been made to these minor cases in the first place. In my opinion, it would have been better to leave them out than to put them in and say thy do not mean much. I do not think that is fair, as far as I am concerned.

Mr. MILLER. The Senator has made the same point which I myself have. One of the difficulties I had was in sweeping away the smoke that has been generated over this nomination.

I might say for the benefit of my colleagues on the floor that at the time I arrived at a tentative decision on this case I contacted—it was not a case of their coming to me; it was a case of my going to them—the Justice Department and the White House, including Clark Mollenhoff, to indicate that I was having difficulty on some of these cases and that I would like to have a memorandum, if they had one. Mr. Mollenhoff responded most exhaustively on this subject. As I said earlier, I think he did a masterly job of demolishing some of the cases that had been cited.

I regret that I could not agree with him on some other facets of this case, but it seems to me that there was a lot of demagoguery connected with some of the opposition to this case, and a good example was accusing Judge Haynsworth of having stock interest in a company that was before his court, when he never even had a share of stock in that company.

Another example came out when charges were made that, because of a gift that he had made of a home to the university, he had received a tax deduction that was illegal. My colleague, being on the Finance Committee, certainly is familiar with that one. I would like to ask the Senator if that is not another example of a red herring or a smokescreen.

Mr. WILLIAMS of Delaware. The Senator mentions the case of the gift of the home to the university. I am familiar with that. It was through the cooperation of Clark Mollenhoff that I got the information and the details. I went over them, and personally I saw nothing wrong with that transaction. In fact, I would commend the judge for his charitable intent. Notwithstanding the statements of some of his critics, I personally saw nothing wrong because the fact was that this home had been given to the university—Mr. President, I ask unanimous consent to have an additional 15 minutes.

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

Mr. WILLIAMS of Delaware. That home had been given to the university by former Senator Daniels. The university then traded that $115,000 home with Judge Haynsworth for a home that had been valued at $50,000 plus a payment of $65,000 cash. The university later sold that home for $50,000, so it was not overvalued. It was merely a trade.

Later Judge Haynsworth gave that home back to the university on the basis of a one-fifth undivided interest, for 5 consecutive years, which is permissible under the law. I may point out that Judge Haynsworth made some improvements on the home, air conditioning, and so forth.

Since he was reserving a lifetime interest in his home, the amount of allowable deduction was dropped from $115,000 valuation to between $50,000 and $55,000, or a little less than one-half of its current value. This reduction, was in accord with the actuarial table, which again was in accordance with the law. The judge had pledged a gift to the university, as I understand it, of $12,000 a year for 5 years. This value of the home was part of that gift, and he wrote his check to the university for the balance. He actually gave them more than the pledge.

I personally commend him for it and see nothing wrong with that transaction.

Mr. MILLER. I thank the Senator for yielding.

Mr. WILLIAMS of Delaware. Continuing, Mr. President, on December 26, 1967, Mr. Haynsworth purchased 1,000 shares of Brunswick Corp. stock. At the same time the company had a case pending before Judge Haynsworth's court—Brunswick Corp. against Long and others.

This case was argued on November 10, 1967, 5 weeks before the purchase of the stock, while the written decision on the case was rendered February 2, 1968, about 5 weeks after the purchase.

I quote Judge Haynsworth's own comment on this transaction as found on page 305 of the committee hearings:

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.

There are a series of other legal cases cited in the committee record where the nominee sat as judge on cases involving litigation with companies in which he or his vending company had financal connection, and the record shows that the litigants were not advised of this association nor did Judge Haynsworth refrain from participation in the decision rendered. Had this indiscretion been limited to one or two such incidents perhaps it could be accepted as an oversight, but it is hard to understand when it appears to be a pattern.

There is the case of his one-seventh ownership in Carolina Vend-A-Matic.

On April 5, 1950, 7 years before he was appointed a judge, Mr. Haynsworth, some of his law partners, and a couple of outside friends formed Carolina Vend-A-Matic, and with an initial investment of $3,000 Mr. Haynsworth obtained a one-seventh interest in the company.

This nominal sum did not represent his full investment, however, since he and his associates personally endorsed notes for the corporation in amounts of $50,000 or more. Therefore, in fairness it should be pointed out their individual liabilities were substantially more than the amount indicated by the stock investments.

The business of the company progressed at a good growth rate between 1950 and 1957, the date Mr. Haynsworth was nominated as a Federal judge, but after his elevation to the judiciary the company's business increased at a spectacular rate. For instance, gross sales were as follows:

1951	$169,000
1956	296,000
1957 [1]	453,000
1959	714,000
1960	941,000
1961	1,697,000
1962	2,552,000
1963	3,160,000

[1] The year Mr. Haynsworth was appointed a judge.

In 1964 Judge Haynsworth sold his one-seventh financial interest in the vending company for a profit of over $400,000 on the original investment of $3,000.

Now, there is nothing wrong with a man making a profit on his business operations. That is a part of our free enterprise system; but does such a business operation coincide with the Canons of Judicial Ethics to which Judge Haynsworth subscribed when he assumed office?

Again I quote canon 26 of Judicial Ethics, which 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. . . .

On June 2, 1969, before his nomination to be an Associate Justice, Judge Haynsworth was testifying before a congressional committee holding hearings on improvements in judicial machinery, at which time he said:

Of course, when I went on the bench I resigned from all such business associations I had, directorships and things of that sort. (page 94, committee hearings)

Later, on September 17, 1969, after his nomination for the Supreme Court he was asked if this statement were in error, and he replied as follows:

Well, yes; to the extent that I said that I resigned from them all when I first went on the bench it was. It was correct at the time I appeared. At the time I appeared I had no directorships whatever. (page 94, committee hearings)

Earlier that day he had said:

My recollection is that I resigned when I went on the court in 1957, but the minutes for the next year and the years after that show my being reelected as vice president each year until 1964. (page 91, committee hearings)

Not only did Judge Haynsworth not resign his official capacity as an officer and director of the company but he continued to collect director fees between 1957, when he went on the bench, and 1963. In 1963 his director fees were $2,600. In addition, his wife continued to act as secretary to the company.

When asked why he continued to retain his investment and to serve as an officer or director of the vending company after becoming a judge he said:

I retained on this board of directors because, again, it was very closely held. I had no reason to think that my interest as a stockholder or as a director was known outside this small group, and I felt no compulsion at that time to resign. (page 42, committee hearings)

Continuing in his testimony before the Judiciary Committee he commented further:

I moved to sell my stock as soon as I could, once it became known of my stock interest I thought I should divest myself of that, and I moved to do that as quickly as I could. (page 43, committee hearings)

Judge Haynsworth emphatically denies that he ever contacted the executives of any company in an effort to solicit business for his vending company, nor is there any contradiction of his statement.

But there appears to be no denial of the fact that his vending machine company did have contracts for placing its vending machines in the plants of many corporations operating in that area, and these were companies which later could—and some did—become litigants in his court.

A question may well be asked, To what extent can the spectacular increase in sales and earnings of the vending company be attributed to the unspoken decision on the part of company management that it may be advisable for his company to sign a contract with a vending machine company in which a Federal judge had a major financial interest, especially in view of the fact that at some time they may have occasion to appear in his court?

Certainly it was the possibility of such a thought or conclusion that prompted the Canons of Judicial Ethics, which states that:

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. (Canon 26)

And further:

A judge's official conduct should be free from impropriety and the appearance of impropriety. (Canon 4)

After reviewing this record the questions which must be answered by each Senator are:

First. Did Judge Haynsworth after his confirmation as a Federal judge in 1957 disassociate himself from outside financial transactions in a manner which is in accord with the expected standards of a Federal judge?

Second. If confirmed by the Senate would he add dignity and help restore respect for our High Court?

Perhaps no single decision or action of Judge Haynsworth to which the committee report alludes is of such a grave nature as to require a vote against his confirmation, but when all the pertinent matters are viewed collectively one can discern a pattern which indicates that Judge Haynsworth is insensitive to the expected requirements of judicial ethics, especially the rule that requires judges to separate from active business connections and to avoid even the appearance of impropriety.

For years I have been critical of Federal judges' neglecting their judicial duties and directing their energies toward outside activities for the purpose of financial gain, and to confirm Judge Haynsworth as an Associate Justice of the Supreme Court in the light of his record would, in my opinion, be placing a stamp of approval on such outside financial operations. I believe this would be a mistake.

The restoration of the confidence of the American people in the integrity and fairness of our courts is of paramount importance. This objective can be achieved only by promoting to the High Court men whose past records demonstrate that they recognize the importance of avoiding the appearance of improprieties as well as refraining from the improprieties themselves.

It is with regret that I shall vote against his nomination.

Mr. President, in last week's issue of Newsweek there appeared an article by Samuel Shaffer entitled "Anatomy of a Decision."

This article refers to the problem experienced by Senator MILLER, of Iowa, in making his decision on this confirmation.

I ask unanimous consent that the article appear at this point in the RECORD.

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

ANATOMY OF A DECISION: HOW ONE SENATOR MADE UP HIS MIND ON THE HAYNSWORTH CASE

(By Samuel Shaffer)

WASHINGTON.—What are the private agonies of a senator as he makes up his mind on a controversial issue like the Haynsworth case?

For Jack Miller, 53, a quiet, hard-working Iowa Republican, the decision was particularly heart-rending. He is a conservative, a Nixon admirer and a man who would ordinarily be delighted to vote for the confirmation of a fellow conservative like Judge Clement Haynsworth to the Supreme Court.

But there were complications, rising from Haynsworth's record and from that of Miller himself. Indeed, for the Iowa senator, the Haynsworth case actually began last year when he joined the fight against confirming Abe Fortas as Chief Justice.

Miller and like-minded senators made a strong—and eventually successful—stand against Fortas for failing to avoid "the appearance of impropriety." And then when Haynsworth was nominated for the court, he too was accused of the same sort of "carelessness" in stock transactions and the observance of the canons of ethics of the American Bar Association.

When the Haynsworth hearings began, Miller was immersed in the lengthy deliberations on the tax reform bill and was unable to watch the proceedings at first hand. But he had his staff prepare a memo on each day's happenings and at night would check the memo against the official transcript.

The more he studied the evidence and Haynsworth's own testimony on the stock transactions, the more convinced he became of the judge's "carelessness."

By mid-October, Miller had already reached a "tentative" decision to vote against Haynsworth. He reported this state of mind—in an atmosphere of the greatest secrecy—to Attorney General John Mitchell. At Mitchell's request, Miller agreed to keep his decision tentative until Mitchell could furnish him with briefs detailing the Administration's side of the controversy.

The briefs, extensive as they were, did not change Miller's mind. Nor did the arguments of deputy White House counsel Clark Mollenhoff who weighed in with stacks of legal material and testimonials. Haynsworth's chief Senate defenders also attempted to change Miller's view.

Finally, late in the afternoon of October 30, Miller was one of 14 senators invited to the White House to hear the President himself defend the nomination. And all along, there was pressure, pro and con, from all sorts of people.

"You become concerned over whether you are interpreting the canons of judicial ethics too harshly," says Miller, "especially when good friends, including both lawyers and judges, reach a different conclusion. You are further tormented by letters and phone calls from people in your own home state who are on both sides of the issue . . . and you realize there are good people who have arrived at different conclusions from yours."

Still, the senator was not yet willing to announce his decision. On the weekend after his meeting with the President, Miller flew back home to Iowa. With him went a bulging briefcase of papers on the case, as well as the 762-page text of the hearings.

He returned to Washington the following Monday and grimly announced his decision: he would vote against confirmation. Immediately afterwards, the word in the cloakrooms was: "That's the biggest nail in the Haynsworth coffin."

For Miller is symbolic of the problems the President encountered in the Haynsworth affair. Without men like him, none of the natural enemies of the appointment of the conservative Southern jurist—labor, the civil rights forces, the liberal Democrats—could ever have mustered enough votes to put the nomination in doubt.

Miller, moreover, is just the kind of Midwestern Republican Richard Nixon has always considered an ally. . . . Miller won his first term in the U.S. Senate (in 1960) and helped carry the state for Nixon. Re-elected in 1966, he was a staunch Nixon man at the '68 convention. Through it all, he has been a competent, well-informed legislator, with the forceful but low-keyed way with a speech that is most effective among professionals. In fact, some Senate observers consider him the "Mr. Republican" of the future.

His desertion from the Haynsworth cause, thus, was a particularly hard blow for the Administration. But in the end, his conscience prevailed, as did his feeling—which is almost an article of faith among some conservative legislators—that the Supreme Court has lost the confidence of the American people. And the appointment of Haynsworth, he concluded, would do nothing to restore this confidence.

Miller did not reach this conclusion gladly. Quite simply, he says, "It was torture."

MODIFICATIONS OF THE SYSTEM OF SELECTING PERSONS FOR INDUCTION INTO THE ARMED FORCES

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 524, H.R. 14001.

The PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 14001) to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDENT pro tempore. The Senate will be in order.

Mr. STENNIS. Mr. President, I ask the attention of Senators. This is an important bill. I do not think it will be debated at length, but it has been through quite a round of conferences and discussions, and I think the debate ought to be heard by Senators who are present.

The PRESIDENT pro tempore. The Senate will be in order.

The Senator from Mississippi may proceed.

Mr. STENNIS. Mr. President, I again ask the attention of Senators who are present, and ask staff members to take seats and be quiet.

Mr. MANSFIELD. Mr. President, will the Senator yield to me briefly, without losing his right to the floor?

Mr. STENNIS. I yield.

Mr. MANSFIELD. I think perhaps there should be a quorum call.

Mr. STENNIS. Yes.

Mr. MANSFIELD. 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. MANSFIELD. 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 Senator from Mississippi.

Mr. STENNIS. Mr. President, the pending bill, H.R. 14001, is a simple bill. So far as I know, it has no opposition, or perhaps only slight opposition. In substance, it repeals one sentence of the Military Selective Service Act of 1967.

The legislation to be repealed, in effect, prohibits the use by the President of a random system of selection for induction. Stated in the affirmative, the passage of the bill will permit the President, in his discretion, to use a random system of selection for induction. The significance of the bill can, I think, be better understood with an explanation of the legislative background of the issue.

Since the original enactment of the Selective Service Act of 1948, the President has always had the authority to designate the so-called prime age group for induction and establish the sequence of induction. Up until the present, this system has always operated on the basis of the oldest first from among those qualified and available in the class 1-A pool.

The Military Selective Service Act of 1967, I should emphasize, did not change the Presidential authority for designating the prime age group. As finally enacted, however, the law did contain the sentence to be repealed by this bill, which, in effect, provides that within whatever prime age group the President designates, he must use the "oldest-first" method. The President has already announced that he will revise this system by designating the 19 to 20-year-olds as the prime age group for induction, and had this bill not been enacted he would have been required to utilize some form of the "oldest first" method, within this particular group. This legislation, as I have already indicated, will permit the use of the random system within the younger prime group in a manner which I shall outline in more detail in a few moments.

But I emphasize at this point that the bill does not require the President to utilize the random selective system; it merely extends to him the discretion for its use. In that way, this is purely permissive legislation.

It might be of interest to recall to Members of the Senate that the Military Selective Service Act of 1967 in the version passed by the Senate did not contain the prohibition on the use of the random system of selection. The committee did express some reservation on the use of the method because of its possible adverse effect on voluntary recruitment, but it did not feel sufficiently strong in the matter to adopt any prohibitory language. The House, on the other hand, felt very strongly at that time that the random system should not be permitted as a matter of law and the Senate finally receded to the House position.

I should add at this point, Mr. President, that Secretary Laird testified last Friday that the Department of Defense foresees no significant adverse effects on either the voluntary enlistments or the ROTC programs because of the initiation of the random system.

In substance, therefore, Mr. President, the enactment of the pending bill will restore to the President the same authority that he possessed in the bill as it passed the Senate in 1967. I say that with emphasis because the Senate is reenacting today what was its position in 1967.

I pause here to give the House committee a great deal of credit. In their willingness to reconsider entirely this matter, they brought the pending bill out of the House Committee on Armed Services by a vote of 34 to 0. And it passed the House almost unanimously.

Representative HÉBERT, of Louisiana, has always been very much interested in this subject. And he was very active in the leadership on this matter that is pending before the Senate today. He deserves a great deal of credit for this. The regular chairman of the committee at that time had to be away from the city on official business for a few days.

Mr. President, I pause here to point out that our committee report covers the full impact of the pending bill and how it will operate.

I refer to the President's message of May 13, 1969, as a historic matter. In that message he made six major proposals on revising the selective service. And five of those six proposals could be implemented by the President under the present law within his discretion, but the sixth one could not. And that sixth proposal is the one that is pending before the Senate today, to repeal the negative sentence in the present act.

HOW THE RANDOM SYSTEM IS INTENDED TO OPERATE

Mr. President, the virtue of having a random system of selection in combination with the "youngest first" system is that it shortens the time of uncertainty as to whether a young man will be called into active service. One of the greatest criticisms of the present draft system is the long period of time during which young men are unable to make firm plans for their education and careers. Basically the process which I will outline will limit the period of so-called prime exposure for draft vulnerability to 1 year.

The main points are as follows, and this is a little involved, but it ought to be stated for the RECORD:

First. The system will become operative early in 1970, hopefully around Januray 1, but it is not known at this time whether all of the administrative details can be worked out by this date.

Second. As I have already indicated, the system will establish for the age group 19 to 20 a maximum exposure of 1 year for prime vulnerability for induction. After the 1 year has elapsed those not inducted would be placed in a lower order for call.

In other words, if one is not called in that 12-month period, he would not drop out entirely, but would drop into a lower order for call.

Third. This system will operate through a national drawing under which each of the 365 days of the year will be scrambled and receive a sequential number. For instance, if No. 1 is November 15, all those born on November 15 would be in the highest priority for call. If November 20 were to receive No. 365, all those born on this day would be in the lowest order for call.

Each of the 4,000 local draft boards would be guided by this numerical sequence. I should point out, Mr. President, that due to the difference in quotas and many other factors, the local boards will reach different numbers at different times during the year. One board might be able to meet all of their quota by not going beyond No. 150, whereas another board might have to go to a much higher sequence, depending on the factors involved.

Fourth. Mr. President, for those registrants born on the same day there will be a second national drawing which will determine the sequence based on a scrambling of the alphabet. This process is fully described in the committee report.

Fifth. Mr. President, I would also point out that those in the older group between ages 20 to 26 will also receive a number in the initial national drawing.

In other words, they will then be carried over, and in this initial national drawing, that group will not be skipped, but will be given a number.

Their deferments, however, will not be affected by the drawing itself. At such time as their deferred status is terminated they will be placed in the 19 to 20 group with the vulnerability of the number they previously acquired.

Sixth. The last point I would emphasize, Mr. President, is that there will be no exact way in which a young man will know whether or not he will be called for induction as a result of his sequential number. He will only know his relative degree of vulnerability. Whether or not he will be inducted will depend on many factors, such as the extent of voluntary enlistments, the size of the Armed Forces, and the number of draft calls. Of course if one received either a very high number or a very low number a fairly safe conclusion can be reached.

MATTERS NOT AFFECTED BY THE BILL AND FUTURE COMMITTEE PLANS

Mr. President, this bill, though important, applies to only a limited aspect of the Selective Service System. It does not affect certain major areas, including: First, registration; second, classification, which is the process by which all registrants are placed in some 18 broad categories of induction vulnerability; and third, all existing deferments and exemptions.

The only issue that has arisen in connection with this bill is that it does not go far enough, and on this aspect I would like to make the following points. I mean, the objection is that it does not go far enough and cover other points and other questions.

On November 10, our committee unanimously adopted a committee resolution providing, among other things, that comprehensive selective service hearings will begin not later than February 15, 1970. I had announced here as early as May of this year, when the President's message was received, that it appeared that it might not be possible to hold hearings this year, but that we would hold comprehensive hearings early in 1970. I repeated that announcement on the floor of the Senate in early summer and later in the summer. It has been the purpose all the time to have these comprehensive hearings in calendar year 1970.

I am hopeful that the committee will be in a position to report a bill, but I want to make it clear that we cannot make any guarantee at this time. As chairman of the committee, it is my wish to reiterate and to make it clear that these hearings will begin not later than February 15, and Senators and other interested people who have suggestions or legislative amendments will be heard.

Furthermore, as Members of the Senate may know, a joint Selective Service/National Security Council study on Selective Service guidelines and procedures has been underway and is due to be completed December 1. Both General Hershey and Secretary of Defense Laird stated at our hearings last week that the results of this study will be available for the hearings.

As chairman of the committee, I have emphasized that we expect the executive branch to be prepared to testify on all phases of the Selective Service System, including the matter of extending the authority for induction beyond July 1, 1971.

Mr. President, I trust that the foregoing remarks have served to adequately explain this bill.

I hope that the Senator from Maine (Mrs. SMITH), the ranking minority member of the committee, will make some remarks on this matter. She is most interested in this subject. We have talked about it many times, and she has urged that we get into the subject matter.

I believe that this bill should be passed now, without amendment, in order for the President to implement this new system at the earliest possible date. This is a matter, however, that is entirely within his discretion, under the new bill.

There has been a great deal of debate, there have been many speeches, and there has been a great deal in the press about various other amendments to the Selective Service Act. Many of them would be far reaching. Many of them, in effect, would abolish the local draft boards and set up a regional authority—all of it controlled from here. Others went into the exemptions. Others gave new definitions of conscientious objectors that extended into many fields beyond religious beliefs, and a host of other things. Also, the voluntary Army concept has been proposed.

Those matters and all others will be gone into, of course. But I was very clear and firm that there should not be any attempt to pass a bill on those subjects without comprehensive hearings, so that we would have the facts before us on both sides—a bill that had been studied by the committee, with at least a majority of them making a recommendation—and then we could have debate on the floor and Senators would know what the real issues and the facts are.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. STENNIS. May I just finish? I have a minute or two more and then I am going to yield to the Senator from Maine.

Our committee had a conference, and we voted unanimously to support this bill; and we voted unanimously, under the circumstances, to oppose all amendments in this calendar year. We voted then to set a date on the hearings for early 1970. We took that matter up with the leadership, the Senator from Montana, the Senator from Pennsylvania, and other interested Senators who had been interested in offering amendments. I think we had a very wholesome discussion there. It was worked out around the table, and those gentlemen agreed that for this year this was all we could do in a proper way. They agreed to defer offering amendments, even though some may want to explain their positions—I mean, offer their amendments for debate now or later and get them in the RECORD. I commend them very highly for their practical approach and for a very sound legislative approach to this matter.

Mr. President, I will be glad to answer questions. I am not trying to hold the floor, but I believe the Senator from Maine wishes to make some remarks.

Mr. JAVITS. I would not dream of detaining Senator SMITH, but I do have a question.

It is a fact that you gentlemen have agreed with Senator KENNEDY and others about this matter. That was widely advertised. Other Senators have bills—I do and others do.

I agree with what the Senator from Mississippi has said, and I am going to abide by it, even though I was not one of the parties to the consultation. I think it is sensible. But I did want to make the point clear that not all of us who have measures to suggest were in this consultation.

Mr. STENNIS. Yes.

Mr. JAVITS. My question, therefore, is this: First, I would like the Senator to allow me to put my bill in the RECORD at this point, with unanimous consent.

Mr. STENNIS. I suggest that debate continue and that the Senator from New York do this at the end.

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

(See exhibit 1.)

Mr. JAVITS. My second question is, Will the committee consider all the bills, not just those of the Senators with whom they, as it were, conferred?

Mr. STENNIS. Yes. It will be a wide open hearing—comprehensive hearings. No one was excluded from the meeting we had. We notified everyone we knew had a present interest. I believe the two leaders did that.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. MANSFIELD. As a matter of fact, I believe the distinguished Senator was absent on official business that day, because we did try to contact him.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. STENNIS. I yield to the Senator from Rhode Island.

Mr. PASTORE. If I correctly understand the explanation that the distinguished Senator just made, if a 24-year-old is now eligible for the draft and has no deferment and has no exemption, but his birthday falls on the same day as a 19-year-old, there is a likelihood that in the drawing both could be called up together, at the same time.

Mr. STENNIS. That is correct. They have an equal vulnerability, if I may use that term. I do not like it, but that is the term that is used at Selective Service. The Senator is correct.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine (Mrs. SMITH) is recognized.

Mrs. SMITH of Maine. I thank the distinguished and able Senator from Mississippi, the Chairman of the Committee on Armed Services.

Mr. President, as the ranking minority member of the Committee on Armed Services, I fully support the committee's favorable action in recommending the enactment of H.R. 14001, which will permit the President to institute the random system of selection, along with other proposed changes which can be accomplished by executive action.

It is a credit to the Armed Services Committee as a whole that both on the committee resolution of November 10 endorsing this legislation in principle, and in the committee's action of November 14 in reporting the bill, all 18 committee members were recorded in favor of this legislation in both instances.

The chairman of the committee has outlined in some detail the anticipated operation of the system. I shall not attempt to reiterate the procedures he has outlined. I would, however, Mr. President, like to emphasize three points.

First, the random selection system was only one of six changes recommended by President Nixon in his message to the Congress of May 13. This bill permitting the random selection system is the only one of six proposals necessitating a statutory change. The remaining five changes can be accomplished by Presidential regulation. Any fair administration of the Selective Service System is difficult at best and I think it is extremely important that the Congress support the President in his efforts to achieve a more equitable system for the serious business of induction of young men into the Armed Forces. Much remains to be done. I think it is auspicious that the Senate should show this unanimity for the President's first legislative request in connection with the draft.

Second, the President's decision to reverse the order of induction from the so-called oldest first method, which has been in continuous use since the Selective Service Act of 1948, to a youngest first method is a wise one. As the chairman has already indicated, the prime draft liability will be placed on the 19 to 20 age group who will be in a period of prime exposure for only 1 year following the national drawing in which they receive a sequential number.

Third, Mr. President, one of the principal reasons for criticism and dissatisfaction of the draft laws today is the state of uncertainty in which young men are placed because of the inability to know whether they will be drafted and when they will be drafted.

By limiting the period of prime exposure to 1 year our young men will no longer be confronted with the long period of uncertainty and inability to plan their careers and families because of the vulnerable draft status.

Mr. President, I would conclude by saying that I firmly support the announced plans of Chairman STENNIS with respect to the full and comprehensive draft hearings which are scheduled for early next year. The pending bill, though highly significant, deals with only a limited phase of the selective service system. I am confident that next year full and complete hearings will be had on all phases of the system either for reaffirming the soundness of the present system or for recommending whatever changes may prove necessary.

Mr. President, I urge the Senate to adopt the pending bill without amendment.

Mr. STENNIS. Mr. President, I yield to the Senator from Pennsylvania.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I thank the Senator, the chairman of the committee, for yielding. I commend the chairman of my committee, as well as the ranking member on my side of the aisle, the Senator from Maine (Mrs. SMITH), for their leadership in bringing this bill to the floor of the Senate.

In my opinion, the bill, although innocuous to some, is the key that will unlock the door for draft reform. I think the chairman made abundantly clear, as he mentioned earlier—and as early in this year as May—his sincere desire to hold full-scale hearings on the draft situation.

Now we have two routes we can take to accomplish what has long been needed. First of all, there is the legislative route, which the chairman indicated he is going to follow. He told our committee some months ago of his intention to do this. I commend him for it. I think this, in itself, will be quite helpful.

Second, the Nixon administration acted as the catalyst in this situation to uncork the bottle so the procedure can become operative. They pledged, with this proviso, that they will go ahead with other reforms needed, that were mentioned in a message to Congress.

The idea has been to arrange eligibility so that young men will be on the hook for only 1 year, and taking the youngest first, so that the period of exposure comes early in a person's life or after his educational career has terminated. Fixing a specific time will be a great help to young people in planning their lives and in knowing when that period will come upon them.

In addition, the President indicated in his message that he is going to implement an amendment I had placed in the 1967 bill when I was a Member of the other body, namely, uniform national standards. I believe a study is already underway, as indicated by the President, to show we are perfectly able to operate under the law as it now stands.

These four or five major reforms can become operative by this mechanism. That is why I say this is the key to unlocking the door. The situation is conducive legislatively and administratively for draft reform.

Mr. President, again I commend the Senator, the chairman of the committee, for getting the entire matter moving.

Mr. STENNIS. I thank the Senator. I appreciate his remarks.

Mr. President, I yield to the Senator from Texas.

Mr. TOWER. Mr. President, I thank the Senator for yielding. I join other Senators in commending the distinguished chairman of the committee, the Senator from Mississippi (Mr. STENNIS) and the distinguished Senator from Maine (Mrs. SMITH) for the way this draft matter has been handled.

I think in this particular instance the Senate is acting very responsibly. It is a credit to all parties involved in the consideration of the draft legislation that we have arrived at a meeting of the minds and that we can proceed to implement two of the most important reforms and most desired reforms by a very simple legislative act, giving us more time to proceed to the consideration of other suggested measures.

Mr. President, I am the author of a draft reform bill. I think that much that I have advocated and much that is contained in my bill would be accomplished by this simple act.

I have often spoken of the need to reform the draft and amend the Selective Service Act of 1967. In June of 1968, I introduced a bill known as the Fair Selective Service Act of 1968. During the first week of this year, I reintroduced this legislation. The main aim of my bill was to correct the sequence under which eligible persons are inducted into military service.

I am most pleased that the President has decided through the use of an executive order to adopt the changes which my bill would make legislatively. The executive branch of our Federal Government has always had the power to make changes in our Selective Service System but until recently has been hesitant to act. This Executive order will revise the order of induction from the so-called oldest first method to the youngest first system of prime vulnerability. It will also limit the period of prime vulnerability to a 12-month period.

I believe these changes will go a long way to providing the greatest possible equity in our draft laws. As the law exists now, a young man is eligible for the draft immediately upon reaching the age of 19. He remains eligible for induction for the next 7 years until he reaches the age of 26. These years of uncertainty cause the most distressing problem with the draft. In many cases a young man is unable to make adequate plans for the future simply because there is a chance that he may be called up to serve at a very short notice. There are many examples of this: A young man with a bachelor's degree confronted with the problem of attempting to pursue a graduate degree while being faced with the distinct possibility that he may be drafted; or the hesitancy of a businessman or factory owner to hire and train a potential employee due to the fact that the young man may soon be drafted.

By reducing the period of prime vulnerability and reversing the order of call for induction much of this uncertainty will disappear. To accomplish this, the President and the Director of the Selective Service System need the fairest system of selection that is possible. For this reason, this bill, although it may seem to be the simplest bill the Senate has had before it this session, is of great importance. In his testimony before the Senate Armed Services Committee on November 14 of this year, the Honorable Roger T. Kelley, Assistant Secretary of Defense of Manpower and Reserve Affairs, stated:

> We have examined the options of accomplishing the first objective—that of limiting draft vulnerability to one year—by Executive action without changing the law. The conclusion is that the options available through Executive action would not produce a system that has the combined virtues of fairness, simplicity, and understandability which is possible by simply repealing one sentence in the existing draft law. Also, important, the options available through Executive action would not as clearly help young men know whether and when they are likely to be drafted.

Under the President's plan as announced in his May 13 message to Congress, the prime age group would be composed of those 19 years old and in class I–A at the beginning of that year, along with those men whose deferments have expired. Prior to the beginning of each year all dates of that year would be randomly selected. This would enable the local boards to establish an orderly sequence of induction. Those dates drawn first would determine those individuals whose prime vulnerability would be high. Thus, depending on manpower needs and local board quotas, a young man would be able to judge his relative vulnerability to the draft. All he would need to know is where his birthdate falls in the last of 365 or 366 dates to judge his chances of being drafted. Those men whose birthdays fall at the bottom of the list would have a low vulnerability and would not probably be exempt from military service except in a national emergency situation.

I would like to applaud the action of the other Chamber in passing this legislation in both a speedy and near-unanimous manner. As a member of the Senate Armed Services Committee, I am very proud of the work which the committee did in reporting a resolution in unanimous fashion recommending passage of H.R. 14001. It is the duty of the Congress to establish the most equitable selective service system possible. President Nixon, in his May 13 message on draft reform eloquently explained his concern over this problem:

> Any system which selects only some from a pool of many will inevitably have some elements of inequity. As its name implies, choice is the very purpose of the Selective Service System. Such choices cannot be avoided so long as the supply of men exceeds military requirements. In these circumstances, however, the government bears a moral obligation to spread the risk of induction equally among those who are eligible.

In light, therefore, of all of the overpowering arguments for draft reform, I urge swift passage of H.R. 14001.

Mr. President, again, I commend not only members of the Committee on Armed Services—sort of patting ourselves on the back—but also all Senators who have an interest in this matter and who were helpful in expediting its consideration.

Mr. STENNIS. Mr. President, I thank the Senator for his help and his assistance in this matter. The unanimity we reached in the committee was a key factor. I agree that all Members of the Senate who have a special interest are entitled to credit. I am glad to give them such credit.

I yield to the Senator from Ohio, who is a member of our committee.

Mr. YOUNG of Ohio. Mr. President, as a member of the Committee on Armed Services, I desire to pay my respects and manifest my admiration for the distinguished chairman of our committee, the Senator from Mississippi (Mr. STENNIS). I shall vote for this stopgap proposal today but, as in the case of the Senator from Texas, I am also the author of a pending bill to effect draft reform. I consider my bill far superior to his bill. I hope it will be discussed in our committee early next year.

Mr. President, involuntary conscription is an abomination. We must do everything we possibly can early in the coming year to reform the present discriminatory and unfair Selective Service law. We must also go forward on the theory that conscripting young men is abhorrent to our way of life and should not be tolerated in our Republic except in times of grave national emergency or in times when we are engaged in war—not involved by an act of the chief executive in a civil war from which we are having difficulty extricating ourselves.

We should proceed on the theory that we should not, in this Republic, even consider conscripting our youth unless it is at a time when the Republic is in peril and that is needed. However, if we must have selective service, at least we can do our utmost not to disrupt family life and the lives of millions of young Americans as the present selective service law has done. We must not discriminate against any young Americans.

In that connection, we would do well to follow what our allies have done. Canada and England have no draft laws whatsoever. Most nations of Europe, such as Italy, France, Belgium, Norway, and others, have conscription for 12 months to 15 months. West Germany, of all the European allies, stands alone in having conscription for 18 months.

I am sorry to have to add that in many of those European countries, parents of boys about to be drafted are able to buy their way out of having to serve in the armed forces. I am glad that is not true in this country. However, if we have to have a draft, we must not require draftees to serve more than 18 months.

The Armed Services Committee, its chairman, and others, have expressed an interest in the matter of reducing the term of active service. I hope that perhaps when we look searchingly at this entire matter early in the coming year, the period for service will be set at 18 months.

The present tour of duty of men in our Armed Forces in Vietnam is 1 year. Even assuming that an inductee were given 6 months of training instead of the present 4 months before being assigned to combat duty overseas, it is obvious that our military manpower needs could be fulfilled with an 18-month draft. It is unfair and unnecessary to require these young men to serve for 2 years.

If we have to suffer this abomination—and conscription is an abomination—then I, for one, am going to fight to the utmost, early next year, to set the limit at 18 months. I know that many Senators share my view.

Mr. STENNIS. Mr. President, I thank the Senator for his remarks. He was most cooperative in the committee when we took this unanimous position.

Mr. President, I am ready to yield the floor but there is one other point I want to make: The question came up in the conference he was talking about, as to the committee's promising to report a bill during calendar year 1970.

I said that I would certainly make every reasonable effort, but that it was a matter which rests squarely within the discretion of the committee. I asked a member to withdraw the request, and he did, because that is what committees are for. But we have the attitude I have already mentioned, with reference to the promise made about the content of any bill we might report. Let me say that no promises were made, although they were asked in good faith. Again, that is what committees are for.

Mr. DOLE. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield.

Mr. DOLE. Mr. President, I rise in support of H.R. 14001, to amend the Military Selective Service Act of 1967 to authorize modification of the system of selecting persons for induction into the armed services under this act.

There were times during this session when the future of draft reform legislation appeared to be bleak. It is gratifying to me that the Senate leadership and the Armed Services Committee were able to reach an agreement that allowed this bill to come before the Senate for consideration.

There are approximately 2 million young men who reach the age of military service each year. For them and their families the draft is one of the most important factors affecting their lives. President Nixon realized the disruptive impact of the present draft system on the individual and recommended to Congress on May 13 that changes be made that would provide immediate relief. In September, the President revised his proposal and requested only a modification that would restore to the President the discretionary authority held prior to the enactment of the Selective Service Act of 1967 with respect to determining the relative order of selection for induction within specific age groups.

Mr. President, on January 22, 1969, I joined with the Senator from Oregon (Mr. HATFIELD) and seven other Senators in introducing S. 503, a bill to end the draft and substitute a voluntary military manpower program. At that time, I thought it necessary to examine legislation that would meet the Nation's military requirements but with the maximum amount of personal liberty for our young men. On March 7, 1969, in recognition of the manpower needs arising out of the Vietnam war, I joined the Senator from Pennsylvania (Mr. SCHWEIKER) and nine other Senators in introducing S. 1433, composed of amendments to the Military Selective Service Act of 1967 which would have provided the most critically needed reform.

Mr. President, there are many in Congress who want to see a complete revision of the Selective Service System. I have worked toward this end myself. However, it is clear that if we are to provide any relief this year, it must be in the form of H.R. 14001. I urge my colleagues to support this legislation as a first step toward comprehensive draft reform.

Mr. STENNIS. Mr. President, I thank the Senator from Kansas for his comments.

Mr. President, I yield the floor.

Mr. MANSFIELD. Mr. President, I think I should make my position clear on this question.

I intend to vote against the pending legislation.

I feel that what it does is to constrict the pressure of the draft to that broad age group of 19-year-olds who, as the report indicates, will become the "prime vulnerable" group for induction.

There is a great deal wrong with our Selective Service System. Unfairness and inequity are built-in impediments. We are in need of an exhaustive review of the whole procedure involved in selecting and maintaining our Armed Forces—a review that should include the close scrutiny of all of the loopholes available and, even more, of the whole question of compulsive service.

Perhaps the so-called random selection or lottery proposal is a step in the right direction. I am not sure. In any case, I am not at this time prepared to support a move in that direction. More—much more has to be done.

I did not vote for the extension of the Draft Act last time. It is inequitable and, at first blush, this most recent proposal is pressurized insofar as a single age group is concerned. The fact is, inequities and unfairness still continue in the draft system.

Mr. President, I want the RECORD to show my position on this matter.

THE LOTTERY: A THREAT TO DEMOCRACY

Mr. HATFIELD. Mr. President, since the end of World War II our country has been faced with the inequity of a peacetime military draft. It has been my firm conviction, and still is, that peacetime conscription is contrary to the ideals on which our democracy was founded, ideals which we must maintain if our country is to flourish. There has been a proposal to establish a lottery, and I find it just as, if not more, inimical to our youth, our Nation, and our future than the the present Selective Service System.

There are three criteria by which to judge the adequacy of a military manpower procurement system: First, the degree to which it would preserve the maximum amount of individual liberty and freedom from unjustified intrusion by the Government; second, the fairness in its application so that every young man receives equal treatment and no young man is required to make sacrifices that are not demanded of his peers; and third, the system's provision for maximum national security with the greatest efficiency and economy.

The present draft system meets none of these standards adequately—nor does the proposed lottery. We are still faced with the injustice, inequity, and inefficiency with the lottery that we face with the draft. There are some differences, however, which would further frustrate a persisting, intolerable situation. Under the lottery we substitute Lady Luck for conscious choice. This will not alter the fact that some young men are forced into service and denied their individual liberty while others escape any military duty. Furthermore, we would discriminate against the 18- and 19-year-olds more than under the present selection methods.

Patching up the draft will not necessarily move us toward an all-voluntary Army. The continuation of a peacetime conscription serves as a case in point. Similarly, a stopgap lottery system will only postpone the necessary transition to an all-volunteer military. As long as the incentives for voluntary enlistment are not improved, the undemocratic principle of the military draft is further entrenched in our society.

On September 10, 1969, I wrote to the President expressing this opinion, proposing that he set January 1, 1971, as a target date for establishing an all-volunteer Army, having a lottery as an interim measure. To my knowledge no target date has been set. And, consequently, we are faced with the possibility of prolonging and heightening the alienation, discord and polarization that conscription has brought in its 25-year wake.

President Nixon has vehemently supported the concept of an all-volunteer armed force. He has stated that "as soon as our reduced manpower requirements in Vietnam will permit us to do so, we should stop the draft." Secretary of Defense Laird has asserted, furthermore, that the question of instituting a volunteer Army is essentially one of monetary cost. We have the manpower necessary to meet our military needs, and we can afford the budgetary cost—a cost, I might add, which is minimal when compared to the social losses incurred by conscription.

If we are to move toward constructive change, a unified citizenry and a more just nation, we must set our goal at instituting a volunteer military and the total abolition of the draft. Involuntary servitude in any form will only perpetuate the dysfunctional effects of inefficiency, inequity, and injustice. One does not reform inequity, one abolishes it.

Therefore, I would like to register my protest vote.

Mr. BYRD of West Virginia. Mr. President, the passage of H.R. 14001 could be a significant step toward meaningful reform in our Selective Service System. It would return to the President the authority to institute his proposed draft lottery—a random-selection system designed to erase some of the inequities that now exist.

The current draft system leaves a young man in the eligible category from the time of his maximum vulnerability—age 19—until he has reached his 26th birthday. Decisions concerning education, career, marriage, and family are often postponed simply because of the young man's uncertain draft status.

I feel that the proposal before us appears very sound in this regard. Under the random-selection method, each eligible young man would enter the lottery during his 19th year. If he is not called within 12 months after this entry, he is reasonably assured that he will not be drafted. His name, after that 1-year period, is placed in a less vulnerable bracket.

The lottery also provides that each person in the prime age bracket would run the same risk of being called first—there would be no discrimination within the age bracket, and the President would not be under compulsion to call the oldest first within the given age group. In his message to Congress, President Nixon said the first in a series of selective service years would be established. He further stated:

> Prior to the start of each selective service year, the dates of the 365 days to follow would be placed in a sequence determined by a random method. Those who spend the following year in the pool would take their places in the draft sequence in the same order that their birthdays come up on this scrambled calendar.

Thus, Mr. President, a young man born on January 1, would not be made more vulnerable just because of his apparently unfortunate birth date. Those persons who share the same birth date would be further arranged according to the first letter of their last names—and that alphabetical list would be scrambled to make the A's potential equals of the Z's. This lottery would be rearranged each year, further assuring its parity for all young men.

It has been accepted practice recently to induct the youngest men first, and the average age for inductees has dropped from 24 a few years ago to a present average of 20.2 years. The administration's proposal would make drafting on a youngest-first basis a matter of policy, rather than procedure, and would erase most of the inequities within a given age bracket.

The administration has seen fit—and wisely so, I think—to continue undergraduate student deferments and to make the rules governing graduate deferments more realistic. Our Nation needs young men who are being educated by our colleges and universities. To draft them before they finish their baccalaureate training would be to undercut an important national investment. The proposal before us recognizes this fact, but it also recognizes that letting these students completely miss induction would be denying the military their needed skills.

Thus, the proposal would grant the deferment, but would regroup these students in the 19-year-old age bracket once they finish college. The students would, therefore, run the same risk of involuntary induction that noncollege men run.

Graduate school deferments would be extended until the end of the academic year—rather than just until the end of the semester, as is presently the case. As we all realize, most financial planning for higher education is done on an annual basis, not a semester at a time; and much of the graduate work is distributed over the full school year. To interrupt that work—to impose that kind of a financial hardship—in midstream is to possibly drown a young man's career. After finishing out the year, the graduate student would serve his time in the military.

Blanket continuance would be given to only the deferments for medical students and those students in the allied health field. With a shortage of physicians estimated to reach 50,000 by 1975 and an equally alarming shortage of other health professionals, continuing these deferments appears to be in the best national interest.

A major reservation concerning the lottery proposal was whether such a selective service system would have a detrimental effect on voluntary enlistments and various Reserve Officers Training Corps programs. Addressing itself to this concern, the Senate Armed Services Committee has reported that:

> The testimony before the committee indicated that the Department of Defense does not consider this to be a matter of great significance based on recent studies.

Thus, without amendment, the committee has reported out H.R. 14001. Some of these proposals, it should be noted, were endorsed by both the Marshall Commission and the Clark Panel in 1967.

Mr. President, the Senate Armed Services Committee is expected to hold full hearings on draft reform next year, and the administration is expected to conduct further investigations into various aspects of our Selective Service System. The proposal now before us, therefore, is not necessarily the end of draft reform. It is a beginning, and it could provide an equitable base on which to build still other draft reforms.

EXHIBIT 1

S. 992

A bill to amend the Military Selective Service Act of 1967 to provide for uniform national criteria for the classification of registrants, to authorize a random system of selecting persons for induction into military service, and for other purposes

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

AMENDMENTS TO THE MILITARY SELECTIVE SERVICE ACT OF 1967

SEC. 2. The Military Selective Service Act of 1967 is amended as follows:

(1) Paragraph (1) of section 5(a) is amended by striking out "local board" each time it appears therein and inserting in lieu thereof "area office".

(2) Paragraph (2) of section 5(a) is amended to read as follows:

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, in meeting any national quota of men to be inducted into the Armed Forces under this Act, selection of persons for induction to fill such quota shall be made from persons in the prime selection group, after the selection of delinquents and volunteers, to the extent that such group has a sufficient number of qualified registrants to meet such quota. Subject to the provisions of paragraph (3) of this section, selection of persons for induction into the Armed Forces from the prime selection group shall be made on the basis of the dates of birth of the registrants and upon such other factors as the President may deem appropriate."

(3) Section 5(a) is further amended by adding at the end thereof the following new paragraphs:

"(3) The President is authorized, under such rules and regulations as he deems appropriate, to provide for the selection of persons from the prime selection group for induction into the Armed Forces by a random selection system. In the event the President provides for such a system, he may provide for the selection of persons for such service on a national rather than a regional or local basis.

"(4) As used in this section the term 'prime selection group' means persons who are liable for training and service under this Act, who at the time of selection are registered and classified and who are—

"(A) between the ages of nineteen and twenty and are not deferred or exempted;

"(B) between the ages of nineteen and thirty-five and, on or after the effective date of the Military Selective Service Amendments Act of 1969, were in a deferred status, but are no longer in such status; or

"(C) between the ages of twenty and twenty-six on the effective date of the Military Selective Service Amendments Act of 1969 and are not deferred or exempted. Unless selected for induction or unless otherwise deferred from induction into the Armed Forces, a person shall remain in the prime selection group for a period of one year. Any person who is in a deferred status upon attaining the age of nineteen shall, upon the termination of such deferred status, and if qualified, be liable for induction as a registrant within the prime selection group irrespective of his actual age, unless he is otherwise deferred under authority of this Act. Any person who is removed from the prime selection group because of a deferment shall again be placed in the prime selection group, if he otherwise qualifies, whenever such deferment is terminated. In no event shall any person be placed in the prime selection group for any period or periods totaling more than one year.

"(5) Notwithstanding the provisions of paragraph (4) of this subsection, any person who, on the effective date of the Military Selective Service Amendments Act of 1969, comes within the provisions of clause (B) or (C) of such paragraph shall be placed in the prime selection group as follows:

"(A) A person who attained the twenty-fourth anniversary of the date of his birth prior to such effective date shall be placed in the prime selection group during the first twelve-month period following such effective date.

"(B) A person who is between the ages of twenty-two and twenty-four on such effective date shall be placed in the prime selection group during the second twelve-month period following such effective date.

"(C) A person who is between the ages of twenty and twenty-two on such effective date shall be placed in the prime selection group during the third twelve-month period following such effective date."

(4) The first sentence of section 5(b) is amended to read as follows: "Except when a random selection system is in effect pursuant to subsection (a)(3) of this section, and the President, by rule or regulation directs otherwise, quotas of men to be inducted for training and service under this title shall be determined for each State, territory, possession, and the District of Columbia on the basis of the actual number of men in the several States, territories, possessions, and the District of Columbia who are liable for such training and service but who are not deferred after classification, except that credits shall be given in fixing such quotas to residents of such subdivisions who are in the Armed Forces of the United States on the date fixed for determining such quotas."

(5) Section 5 is further amended by adding at the end thereof a new subsection as follows:

"(d) The physical, mental, and moral standards which an individual must meet in order to qualify for induction into the Armed Forces under this Act shall be no lower than those prescribed for persons who voluntarily enlist for service in the Army."

(6) Subparagraphs (A) and (B) of section 6(b)(2) are amended by striking out "local board" each time it appears, and inserting in lieu thereof "area office".

(7) Paragraph (1) of section 6(h) is amended to read as follows:

"(1) Except as otherwise provided in this subsection, the President is authorized, under such rules and regulations as he may prescribe, to provide as uniformly as possible consistent with the national interest and the needs of the Armed Forces for the deferment from training and service in the Armed Forces of persons who are satisfactorily pursuing a course of instruction at a bona fide university, college, junior college, community college, technical college, vocational school or similar institution of learning, or who are satisfactorily pursuing a bona fide apprentice-training program or similar occupational instruction program, and who request such deferment. A deferment granted to any person under authority of this paragraph shall continue until such person completes the requirements for his baccalaureate degree, completes the training program, fails to pursue satisfactorily his course of instruction or training or attains the twenty-fourth anniversary of the date of his birth, or until the expiration of five years from the date of his graduation from high school or similar institution of learning, whichever first occurs. The President is authorized to restrict or terminate deferments under this paragraph whenever he determines such action is necessary to meet the military manpower needs of the Armed Forces. In the event of a declaration of war by the Congress or upon a determination by the President that a substantial number of persons inducted into the Armed Forces will probably be required to participate in armed conflict with hostile forces, deferments under this paragraph and paragraph (2) of this subsection shall be limited to those deferments he determines to be absolutely essential for the maintenance of successful military effort.

(8) Section 6(h)(2) is amended by striking out the last two sentences and inserting in lieu thereof the following: "There shall be posted in a conspicuous place in the headquarters of each area office a list setting forth the names and classifications of those persons who have been classified by such area office. Notwithstanding any other provision of this title, the President shall establish national standards and criteria for the deferment of persons under this subsection and such standards and criteria shall be applied at all levels of the Selective Service System as uniformly and impartially as practicable in the case of all registrants."

(9) Paragraph (2) of section 6(i) is amended to read as follows:

"(2) Any person who while satisfactorily pursuing a course of instruction at a university, college, junior college, community college, technical college, vocational school, or similar institution of learning, or who is satisfactorily pursuing an apprentice program or similar occupational instruction program, and is ordered to report for induction under this Act, shall, upon the facts being presented to the area office, be deferred (A) until the end of the academic term or training term, as the case may be, (B) until he ceases satisfactorily to pursue such course of instruction or apprentice or similar occupational instruction program, or (C) for a period of six months, whichever is the earliest. No person shall receive a deferment under this paragraph who has completed the requirements for a baccalaureate degree or who has heretofore been deferred as a student apprentice, or trainee under this paragraph or section 6(h) of this title, nor shall any person be further deferred by reason of pursuit of a course of instruction or training program except as may be provided by regulations prescribed by the President pursuant to the provisions of paragraph (h) of this section. Nothing in this paragraph shall be deemed to preclude the President from providing, by regulations prescribed under subsection (h) of this section, for the deferment from training and service in the Armed Forces of any category or categories of students, apprentices, or trainees for such periods of time as he may deem appropriate."

(10) The second sentence of section 6(j) is amended to read as follows: "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

(11) Section 6(j) is amended by adding at the end thereof the following: "Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the area office or local board, be entitled to an appeal to the regional appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the Armed Forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his area office, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the area office may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his area office shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the area office on a register of conscientious objectors."

(12) The third sentence of section 6(j) is amended by striking out "local board" the first time it appears in such sentence, and inserting in lieu thereof "area office or local board"; and by striking out "local board" each time it subsequently appears in such sentence, and inserting in lieu thereof "area office".

(13) Subsection (n) of section 6 is repealed.

(14) Section 10(a) is amended by redesignating paragraph (4) as paragraph (5), and by striking out paragraphs (1), (2), and (3) and inserting in lieu thereof the following:

"(1) There is hereby established in the executive branch of the Government an agency to be known as the Selective Service System, and a Director of Selective Service who shall be the head thereof.

"(2) The Selective Service System shall be composed of (A) the National Selective Service System Office, to be located in Washington, District of Columbia, (B) eight regional headquarters distributed throughout the United States, and (C) such area offices, appeal boards, and other agencies as are hereafter provided.

(3) The Director of Selective Service shall be appointed by the President, by and with the advice and consent of the Senate.

"(4) The Selective Service System shall, to the maximum extent practicable, utilize automatic data processing equipment in carrying out the provisions of this Act."

(15) Section 10(b) is amended by redesignating paragraphs (5) through (10) as paragraphs (6) through (11); and by striking out paragraphs (2), (3), and (4), and inserting in lieu thereof the following:

"(2) to appoint a Regional Director for the Selective Service System for each regional headquarters, established pursuant to subsection (a)(2) of this section, who shall be in immediate charge of the regional headquarters; to employ such number of civilians, and upon declaration by the President of a state of national emergency to order to active duty with their consent and to assign to the Selective Service System such officials of the selective service section of the various regional headquarters and headquarters detachments and such other officials of the federally recognized National Guard of the United States and Air National Guard of the United States and other Armed Forces personnel (including personnel of the Reserve components thereof), as may be necessary for the administration of the national and of the several regional headquarters and area offices of the Selective Service System;

"(3) to create and establish one or more area offices in each State with an area of jurisdiction to be established by the Director of the Selective Service System on a population basis. Each area office shall consist of a civilian area director, assisted by appropriate civilian staff. Each area director shall have the power within the respective jurisdiction of such an area office to hear and determine, in strict conformity with the rules and regulations prescribed by the President, and subject to a right of appeal to the local board and from the local board to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from training and service under this title, of all individuals within the jurisdiction of such area offices, together with such other duties as may be assigned under this title;

"(4) to create and establish within the Selective Service System civilian local boards, as well as such other civilian agencies of appeal, as may be necessary to carry out its functions. Each local board shall function in conjunction with an area office provided for under paragraph (3) of this subsection and shall consist of three or more members. The local board shall, under rules and regulations prescribed by the President, and under appropriate precedents, have the power within the jurisdiction of such area office to hear and determine appeals from the decisions of an area director subject to the right of further appeal to the appeal boards herein authorized and all other questions relating to inclusion for, or exemption or deferment from, training and service arising under this title. There shall be not less than one appeal board, together with such additional separate panels thereof as may be prescribed by the President, located within the area of each regional headquarters of the Selective Service System. Appeal boards within the Selective Service System shall be composed of civilians who are citizens of the United States and who are not members of the Armed Forces. The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President. The President, upon appeal or upon his own motion, shall have power to deterimne all claims or questions with respect to inclusion for, or exemption or deferment from, training and service under this title, and the determination of the President shall be final unless modified or reversed upon judicial review, as hereinafter provided. Except in the case of a clear violation of the provisions of this title, decisions of area offices, local boards, appeal boards, and the President regarding the classification of a registrant shall be subject to judicial review only (A) by way of defense to a criminal prosecution of the registrant under section 12 of this title, after the registrant has responded either affirmatively or negatively to an order for induction or for civilian work in the case of a registrant determined to be opposed to participation in war in any form, or (B) in the case of a registrant who has complied with an order to report for induction or for civilian work in an action under chapter 153 of title 28, United States Code, commenced within thirty days of the date of his induction. Judicial review in any case shall be limited to questions of law and the determination of whether there is any basis in the record for the classification assigned to the registrant. No citizen shall be denied membership in any component of the Selective Service System established pursuant to this section on account of race, color, creed, or sex. Composition of the membership of area offices and local boards and appeal boards shall represent, as far as practicable, all elements of the public which the boards serve. No person shall serve in an area office or on a local board or appeal board for more than twenty-five years, or after he has attained the age of seventy-five. No person who is a civilian officer, member, agent, or employee of the Selective Service System, shall be excepted from registration or deferred or exempted from training and service, as provided for in this title, by reason of his status as such civilian officer, member, agent, or employee;

"(5) to appoint and fix the compensation of such officers, agents, and employees as he may deem necessary to carry out the provisions of this title, but the compensation of employees of area offices and local boards and appeal boards may be fixed without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. Any officer on the active or retired list of the Armed Forces, or any reserve component thereof with his consent, or any officer or employee of any department or agency of the United States who may be assigned or detailed to any office or position to carry out the provisions of this title (except to offices or positions in area offices or on local boards or appeal boards established or created pursuant to paragraphs (3) and (4) of this subsection may serve in and perform the functions of such office or position without loss of or prejudice to his status as such officer in the Armed Forces or reserve component thereof, or as such officer or employee in any department or agency of the United States;".

(16) Section 10(b) is further amended by striking out the period at the end of paragraph (11), as redesignated by paragraph (15) of this section, and inserting in lieu thereof a semicolon; and by adding after such paragraph (11) a new paragraph as follows:

"(12) to delegate any authority vested in him under this title, and to provide for the subdelegation of any such authority."

(17) Section 10(c) is amended to read as follows:

"(c) Every individual shall be afforded the opportunity to appear in person before his local board for the purpose of objecting to or challenging the classification assigned to him and shall have the right to be represented before such board by private counsel and to present testimony and other evidence to such board regarding the matter of his classification. If any registrant is financially unable to provide his own counsel he shall have counsel made available to him without charge under such rules and regulations as the President may prescribe."

(18) The last sentence of section 12(a) is amended to read as follows: "Precedence shall be given by courts to the trial of cases arising under this title, and such cases shall be advanced on the docket for hearing at the earliest practicable date. The determination of appeals in cases arising under this title shall be expedited in every way practicable."

(19) Subsection (c) of section 12 is hereby repealed.

(20) Section 15(b) is amended by striking out "local board" and inserting in lieu thereof "area office".

(21) Section 15 is further amended by adding at the end thereof a new subsection as follows:

"(e) It shall be the duty of the Director to inform every registrant of all rights and procedures available to him under this title regarding classification, deferment, and exemption. Such information shall be in writing and shall be given to every person who registers under this title at the time of his registration."

(22) Subsection (e) of section 16 is hereby repealed.

(23) Section 16 is further amended by adding at the end thereof a new paragraph as follows:

"(j) The term 'delinquent' means a person required to be registered under this Act and who fails to perform or violates any duty, with respect to his own status, required of him under the provisions of this Act or any regulation issued thereunder."

MILITARY YOUTH OPPORTUNITY SCHOOLS

SEC. 3. (a) The Secretary of Defense, with the cooperation and assistance of the Secretary of Labor and the Secretary of Health, Education, and Welfare, and other appropriate Federal agencies, shall conduct a comprehensive study and investigation to determine the feasibility and desirability of establishing and operating military youth opportunity schools which would provide special educational and physical training, for a period not exceeding one year, to volunteers who fail to meet the minimum physical and mental requirements for military service in order to enable such volunteers to qualify for service in the Armed Forces.

(b) The Secretary of Defense shall submit a written report to the Congress of the results of such study and investigation, together with such recommendations as he deems appropriate, not later than one year after the date of enactment of this section. The Secretary of Defense shall include in such report findings with respect to—

(1) the average annual number of volunteers for military service who fail to meet the educational and physical standards for such service, but who, with a maximum of one year's training in opportunity schools of the kind referred to in subsection (a) of this section, could qualify for military service;

(2) an estimate of the costs and benefits to the Department of Defense of establishing and operating such opportunity schools;

(3) the administrative capacity of the Department of Defense to carry out such a program;

(4) an estimate of the reenlistment rate which could be expected from volunteers trained in such opportunity schools;

(5) the advisability of requiring longer enlistment periods for volunteers receiving training in such opportunity schools; and

(6) the most effective means and measures for implementing a program of the kind described in subsection (a) of this section.

NATIONAL SERVICE CORPS STUDY

SEC. 4. (a) The President shall conduct a study and investigation to determine the feasibility and desirability of establishing a national service corps in which citizens of the United States who are mentally and physically able and who desire to perform nonmilitary services designed to combat disease, ignorance, and poverty at home and abroad may serve.

(b) The President shall submit a written report to the Congress of the results of such study and investigation, together with such recommendations as he deems appropriate, not later than one year after the date of enactment of this section. The President shall include in such report such information as he deems appropriate, and in the event it is determined that the establishment of a national service corps as described in subsection (a) of this section is feasible and desirable, he shall specifically include in such report—

(1) a review of existing voluntary Federal service programs (nonmilitary) in which hardships are endured by the participants or extraordinary service is required of the participants, such as the Peace Corps and the Volunteers in Service to America, in order to determine the feasibility of establishing an expanded national service program with the broadest possible participation;

(2) a consideration of what the nature and scope of a national service program should be;

(3) the number of service opportunities which would be generated by such a program;

(4) the relationship of such a service system with the Selective Service System and the feasibility of authorizing service in such a national service corps program as an alternative to military service;

(5) the most effective means by which

such a service program might be coordinated with appropriate private, local, and State programs of a public service nature;

(6) the impact of such a service program upon the labor force and the economy of the United States;

(7) the effect of such a service program upon secondary education and higher education;

(8) the role of women in such a service program;

(9) the cost of establishing and operating such a service program; and

(10) the mental physical standards for participation, if any, and the duration of service in such a service program.

VOLUNTARY ARMY STUDY

SEC. 5. The President shall conduct a study to determine the cost, feasibility, and desirability of replacing the present system of involuntary induction of persons into the Armed Forces with an entirely voluntary system of enlistments. The President shall submit the results of such study to the Congress, together with such recommendations as he deems appropriate, within one year after the date of enactment of this section.

EFFECTIVE DATE

SEC. 6. Sections 2 through 5 of this Act shall take effect upon enactment. The amendments made by section 2 of this Act shall become effective ninety days following the date of enactment.

The PRESIDING OFFICER. The bill is open to amendment.

If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 14001) was passed.

Mr. STENNIS. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. TOWER. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. STENNIS. Mr. President, I ask unanimous consent to have printed in the RECORD the message from the President of the United States on the Selective Service System reform of May 13, 1969.

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

SELECTIVE SERVICE SYSTEM REFORM

(Message from the President of the United States relative to reform of the Selective Service System)

To the Congress of the United States:

For almost two million young men who reach the age of military service each year—and for their families—the draft is one of the most important facts of life. It is my conviction that the disruptive impact of the military draft on individual lives should be minimized as much as possible, consistent with the national security. For this reason I am today asking the Congress for authority to implement important draft reforms.

Ideally, of course, minimum interference means no draft at all. I continue to believe that under more stable world conditions and with an armed force that is more attractive to volunteers, that ideal can be realized in practice. To this end, I appointed, on March 27, 1969, an Advisory Commission on an All-Volunteer Armed Force. I asked that group to develop a comprehensive plan which will attract more volunteers to military service, utilize military manpower in a more efficient way, and eliminate conscription as soon as that is feasible. I look forward to receiving the report of the Commission this coming November.

Under present conditions, however, some kind of draft will be needed for the immediate future. As long as that is the case, we must do everything we can to limit the disruption caused by the system and to make it as fair as possible. For one's vision of the eventual does not excuse his inattention to the immediate. A man may plan to sell his house in another year, but during that year he will do what is necessary to make it livable.

Accordingly, I will ask the Congress to amend the Military Selective Service Act of 1967, returning to the President the power which he had prior to June 30, 1967, to modify call-up procedures. I will describe below in some detail the new procedures which I will establish if Congress grants this authority. Essentially, I would make the following alterations:

1. Change from an oldest-first to a youngest-first order of call, so that a young man would become less vulnerable rather than more vulnerable to the draft as he grows older.

2. Reduce the period of prime draft vulnerability—and the uncertainty that accompanies it—from seven years to one year, so that a young man would normally enter that status during the time he was nineteen years old and leave it during the time he was twenty.

3. Select those who are actually drafted through a random system. A procedure of this sort would distribute the risk of call equally—by lot—among all who are vulnerable during a given year, rather than arbitrarily selecting those whose birthdays happen to fall at certain times of the year or the month.

4. Continue the undergraduate student deferment, with the understanding that the year of maximum vulnerability would come whenever the deferment expired.

5. Allow graduate students to complete, not just one term, but the full academic year during which they are first ordered for induction.

6. In addition, as a step toward a more consistent policy of deferments and exemptions, I will ask the National Security Council and the Director of Selective Service to review all guidelines, standards and procedures in this area and to report to me their findings and recommendations.

I believe these reforms are essential. I hope they can be implemented quickly.

Any system which selects only some from a pool of many will inevitably have some elements of inequity. As its name implies, choice is the very purpose of the Selective Service System. Such choices cannot be avoided so long as the supply of men exceeds military requirements. In these circumstances, however, the Government bears a moral obligation to spread the risk of induction equally among those who are eligible.

Moreover, a young man now begins his time of maximum vulnerability to the draft at age nineteen and leaves that status only when he is drafted or when he reaches his twenty-sixth birthday. Those who are *not* called up are nevertheless vulnerable to call for a seven-year period. For those who *are* called, the average age of induction can vary greatly. A few years ago, when calls were low, the average age of involuntary induction was nearly twenty-four. More recently it has dropped to just about twenty. What all of this means for the average young man is a prolonged time of great uncertainty.

The present draft arrangements make it extremely difficult for most young people to plan intelligently as they make some of the most important decisions of their lives, decisions concerning education, career, marriage, and family. Present policies extend a period during which young people come to look on government processes as particularly arbitrary.

For all of these reasons, the American people are unhappy about our present draft mechanisms. Various elements of the basic reforms which I here suggest have been endorsed by recent studies of the Selective Service System, including that of the Marshall Commisson of 1967, the Clark panel of that same year, and the reports of both the Senate and the House Armed Services Committees. Reform of this sort is also sound from a military standpoint, since younger men are easier to train and have fewer family responsibilities.

My specific proposals, in greater detail, are as follows:

1. *A "youngest-first" order of call.*—Under my proposal, the government would designate each year a "prime age group," a different pool of draft eligibles for each consecutive twelve-month period. (Since that period would not necessarily begin on January 1, it would be referred to as a "selective service year.") The prime age group for any given selective service year would contain those registrants who were nineteen years old when it began. Those who received deferments or exemptions would rejoin the prime age group at the time their deferment or exemption expired. During the first year that the new plan was in operation, the prime age group would include *all* eligible men from nineteen to twenty-six, not deferred or exempt, so that no one would escape vulnerability simply because of the transition.

2. *Limited vulnerability.*—Each individual would experience maximum vulnerability to the draft only for the one selective service year in which he is in the prime age group. At the end of the twelve-month period—which would normally come sometime during his twentieth year—he would move on to progressively less vulnerable categories and an entirely new set of registrants would become the new prime age group. Under this system, a young man would receive an earlier and more decisive answer to his question, "Where do I stand with draft?" and he could plan his life accordingly.

3. *A random selection system.*—Since more men are classified as available for service each year than are required to fill current or anticipated draft calls, Selective Service Boards must have some way of knowing whom to call first, whom to call second, and whom not to call at all. There must be some fair method of determining the sequence of induction for those available for service in the prime age group.

In my judgment, a fair system is one which randomizes by lot the order of selection. Each person in the prime age group should have the same chance of appearing at the top of the draft list, at the bottom, or somewhere in the middle. I would therefore establish the following procedure:

At the beginning of the third month after Congress grants this authority, the first of a sequence of selective service years would begin. Prior to the start of each selective service year, the dates of the 365 days to follow would be placed in a sequence determined by a random method. Those who spend the following year in the pool would take their place in the draft sequence in the same order that their birthdays come up on this scrambled calendar. Those born on June 21st, for example, might be at the head of the list, followed by those born on January 12th, who in turn might be followed by those born on October 23rd. Each year, a new random order would be established for the next year's draft pool. In turn those who share the same birthday would be further distributed, this time by the first letter of their last names. But rather than systematically discriminating against those who come at the front of the alphabet, the alphabet would also be scrambled in a random manner.

Once a person's place in the sequence was determined, that assignment would never change. If he were granted a deferment or exemption at age nineteen or twenty, he would re-enter the prime age group at the time his deferment or exemption expires, taking the same place in the sequence that he was originally assigned.

While the random sequence of induction would be nationally established, it would be locally applied by each draft board to meet its local quota. In addition to distributing widely and evenly the risk of induction, the system would also aid many young men in assessing the likelihood of induction even before the classification procedure is completed. This would reduce uncertainty for the individual registrant and, particularly in times of low draft calls, simplify the task of the draft boards.

4. *Undergraduate student deferments.*—I continue to believe in the wisdom of college deferments. Permitting the diligent student to complete his college education without interruption by the draft is a wise national investment. Under my proposal, a college student who chooses to take a student deferment would still receive his draft sequence number at the time he first enters the prime age group. But he would not be subject to induction until his deferment ended and he re-entered a period of maximum vulnerability.

5. *Graduate student induction.*—I believe that the induction of men engaged in graduate study should be postponed until the end of the full academic year during which they are first called to military service. I will ask the National Security Council to consider appropriate advice to the Director of the Selective Service to establish this policy. At present, graduate students are allowed to delay induction only to the end of a semester. This often means that they lose valuable time which has been invested in preparation for general examinations or other degree requirements. It can also jeopardize some of the financial arrangements which they made when they planned on a full year of schooling. Induction at the end of a full academic year will provide a less damaging interruption and will still be consistent with Congressional policy.

At the same time, however, the present policy against general graduate deferments should be continued, with exceptions only for students in medical and allied fields who are subject to a later special draft. We must prevent the pyramiding of student deferments—undergraduate and graduate—into a total exemption from military service. For this reason the postponement of induction should be possible only once for each graduate student.

6. *A review of guidelines.*—The above measures will reduce the uncertainty of young men as to when and if they may be called for service. It is also important that we encourage a consistent administration of draft procedures by the more than 4,000 local boards around the country. I am therefore requesting the National Security Council and the Director of Selective Service to conduct a thorough review of our guidelines, standards and procedures for deferments and exemptions, and to report their findings to me by December 1, 1969. While the autonomy of local boards provides valuable flexibility and sensitivity, reasonable guidelines can help to limit geographic inequities and enhance the equity of the entire System. The 25,000 concerned citizens who serve their country so well on these local boards deserve the best possible framework for their decisions.

Ultimately we should end the draft. Except for brief periods during the Civil War and World War I, conscription was foreign to the American experience until the 1940's. Only in 1948 did a peacetime draft become a relatively permanent fact of life for this country. Now a full generation of Americans has grown up under a system of compulsory military service.

I am hopeful that we can soon restore the principle of no draft in peacetime. But until we do, let us be sure that the operation of the Selective Service System is as equitable and as reasonable as we can make it. By drafting the youngest first, by limiting the period of vulnerability, by randomizing the selection process, and by reviewing deferment policies, we can do much to achieve these important interim goals. We should do no less for the youth of our country.

RICHARD NIXON.

THE WHITE HOUSE, *May 13, 1969.*

Mr. WILLIAMS of Delaware. Mr. President, I ask unanimous consent that a statement by the Senator from Michigan be printed in the RECORD at this point.

There being no objection, the statement by Senator GRIFFIN was ordered to be printed in the RECORD, as follows:

Mr. GRIFFIN. Mr. President, I want to commend the distinguished chairman and members of the Senate Armed Services Committee, and the leadership of the Senate, for the action that has been taken in approving the administration's draft bill.

This legislation is only the first step—but an important one—in the direction of badly-needed reforms in the Selective Service System.

It is particularly heartening to see this measure go to the White House with bipartisan endorsement. Only a few weeks ago, it seemed that the Senate would not be given an opportunity to act on this legislation in this session but, as it sometimes happens, it turned out otherwise.

I am sure the Nation's young men will applaud the passage of this bill.

It will enable the President to adopt the method of random selection, or lottery, for calling young men into military service—a method far more equitable than the present system.

Under other changes which the administration proposes to accomplish by executive order a young man's vulnerability to the draft will be reduced from seven to one year. By placing the emphasis largely on the 19-year-old age group, the field of those subject to the draft will be narrowed from more than 12 million to under two million.

Most assuredly, much remains to be done in the area of draft reform. I am pleased that the Senate Armed Services Committee will hold hearings on additional reforms, starting early next year.

The President has placed a high priority on the objective of overhauling the draft system. I will do what I can to see that this objective is realized.

And I expect to have some recommendations for additional reforms which I will present at the appropriate time.

DEATH OF JOSEPH P. KENNEDY

Mr. PASTORE. Mr. President, it seems altogether fitting that the Senate of the United States should pause in its deliberations to mark the passing of a great American—Joseph P. Kennedy.

In his own right as Ambassador and as Chairman of the Securities Exchange Commission and the architect of policies that gave our Nation fiscal sense and security, he would deserve our eulogy as one who made American history.

But Joseph Kennedy is singular in our annals as a father who inspired three sons who, in their turn, made history in this Senate. He gave the Kennedy name to his sons—and they gave the Kennedy character and charisma to an era unsurpassed for its challenges and its changes. He saw his own flesh and blood achieve the Presidency of these United States in an atmosphere of exaltation America has not been able to retain.

In his hour of triumph Joseph Kennedy was stricken helpless—but he refused to accept the inevitable. In the years of his illness and infirmity we still sensed the power of his inspiration and example. He displayed the courage and stamina he expected of his sons—and they did not fail him.

Joseph Kennedy was a self-made man who believed that man was not made to serve himself alone.

His was a genius in the attainment of wealth—and his was a generosity in devoting that wealth to great and good causes.

They were causes that made the world a more cultured and kindly world—a more helpful and healthful world—because Joe Kennedy cared.

His own heart suffered the most cruel blows a father could endure. For violence took his precious children out of the destiny he had dreamed for them—destinies to which those children gave their loyalties—and their lives.

November can be a lonely month on Cape Cod. It is a month of sad memories in the Kennedy compound, a term that signifies this closely knit family—too often sundered by tragedy.

This November is a lonelier month in all Massachusetts. It is not only because a patriarch and patriot has passed from life's scene. But in that lonely scene there is a lovely personality who more than any other person or cause has made Massachusetts "Kennedy country."

Mrs. Rose Kennedy stood by her men and campaigned for her sons with a spirit to which the old Bay State joyously responded. It was the same loyalty she had for her husband—and our times are the sweeter for the steadfastness of her faith that has enabled her to rise above tragic blows to her heart and home.

The universal admiration in which she is held now becomes the earnest consolation of all our people to this fine woman—wife and mother.

As she has our praise, she has our fervent prayers that she shall find the strength to bear this newest sorrow.

To our colleague, EDWARD M. KENNEDY, as to all the loved ones of Joseph P. Kennedy, there goes the heartfelt sympathy of this Senate and that of all the American people.

For Joseph P. Kennedy we repeat the prayer of his faith—that he may rest in eternal peace.

Mr. MANSFIELD. Mr. President, with the passing of Joseph Patrick Kennedy, a long and full life has ended. He saw in his lifetime the American dream—both as an adventuresome entrepreneur, public servant, and especially as a parent.

The great American dream—not yet fully realized—seeks to remove every limit to the measure of worldly success for each of its citizens. Joseph P. Kennedy proved the validity of this American experiment. He has been described as tough, ambitious, sometimes reactionary, often sentimental, and, on many occasions, even wrong. With such diverse characteristics it cannot be said that, in his lifetime, Joseph Kennedy did not provoke controversy.

But no combination could be more

American. And what it produced was success, and success like Joseph Kennedy's is the American way. This country gave Joseph Kennedy great opportunity. In return, he gave his country so much more.

As the so-called patriarch of an American legend, he set in motion what will remain a part of America. A good parent seeks to teach his offspring the best of his experience and to instill in them a motivation to seek a less selfish society and a more perfect world. Joseph Kennedy was a good parent. And his family—without exception—has demonstrated how well it learned. Idealism, devotion to public service, a capacity for work—these are the qualities that have become the legacy of his influence. In the end, Joseph Kennedy's own personal accomplishments have been overshadowed only by his greatest achievement of all—the family he fathered.

To his gracious and remarkable widow and to all the family, Mrs. Mansfield and I extend our heartfelt sympathies.

STRENGTHENING THE PENALTY PROVISIONS OF THE GUN CONTROL ACT OF 1968

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 532, S. 849.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. Calendar No. 532, S. 849, a bill to strengthen the penalty provisions of the Gun Control Act of 1968.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments on page 2, line 6, after the word "than", where it appears the first time, insert "two or more than"; in line 8, after the word "sentence", insert "in the case of a second or subsequent conviction"; in line 10, after the word "probationary", strike out the "sentence" and insert "sentence,"; so as to make the bill read:

S. 849

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 924 of title 18, United States Code, is amended to read as follows:

"(a) Whoever—

"(1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than *two nor more than* twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence *in the case of a second or subsequent conviction* of such person or give him a probationary *sentence,* nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony."

Mr. MANSFIELD. Mr. President, as reported by the Judiciary Committee, the Lesnik bill provides mandatory sentences for using or carrying a gun in the commission of a crime.

The criminal gun user—first and subsequent offenders—would be penalized separately for choosing to use or carry a gun in committing a crime. The criminal gun user—first and subsequent offenders—would be penalized solely for choosing to use or carry a gun. The sentence imposed for the mere act of using or carrying a gun in the commission of a crime would be in addition to the sentence for the crime itself—be it bank robbery, interstate car theft, or whatever.

With regard to the first offender—that is, the man who for the first time commits a crime using or carrying a gun—the bill provides that the court be required to sentence the man for from 1 to 10 years solely for using or carrying a gun. However, in this first-offender instance, the court retains the power to suspend that first offender or to give him probation. In this fashion the court is given some leeway in the case of a first offender.

For a second or subsequent offender the mandatory sentence of from 2 to 25 years is provided in its fullest sense. The judge is given no leeway to suspend or set probation.

In short, this bill provides for the first time a separate and additional penalty for the mere act of choosing to use or carry a gun in committing a crime under Federal law. If that choice is made more than once, the offender can in no way avoid a prison sentence regardless of the circumstances.

A little more than a year ago, Thadeus Lesnik, a young marine from Fishtail, Mont., was shot down in a restaurant here in the District. That tragic act of violence, like so many others, caused me to reassess my thinking on gun legislation. The availability of guns, their easy access by those who are incompetent, by the criminal, the addict, the alcoholic, and the lawless was brought home to me in a very tragic way. In response, I introduced this year a bill, S. 849—now before the Senate—that would provide mandatory prison sentences against gun criminals in addition to the sentence imposed for the crime itself.

I certainly am pleased that this measure has now been reported out of the Committee on the Judiciary. It is the Lesnik bill, and what it says to the gun criminal in terms that are clear and simple is that he will be punished for his wanton act of violence—for the mere act of carrying a gun or using a gun in the commission of a crime. The terms of the bill as it was reported by the committee are explained in the report of the committee, and I ask unanimous consent that an excerpt from that report be inserted in the RECORD at this point.

There being no objection, the excerpt from the report (No. 91-539) was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE AMENDMENTS

The bill, as introduced, provided that upon conviction for a Federal crime punishable as a felony, the person convicted who either used a gun or carried one with him in the commission of the crime, would be subject to a term of imprisonment of not less than 1 year nor more than 10 years and that such term would be imposed as a consecutive sentence to that imposed for the commission of the specific crime.

Upon conviction for a second or subsequent offense, the individual would be subject to a mandatory 25-year term of imprisonment, to run consecutively with that imposed for the specific crime. In addition, such an individual could not receive a suspension of sentence nor probation.

The committee amendments pertain to the person convicted on a second or subsequent offense and provide, in lieu of a mandatory 25-year term of imprisonment, a term of imprisonment of not less than 2 nor more that 25 years to run consecutively with the term imposed for the commission of the specific crime.

In addition, suspension of sentence and probation would not be allowed.

The committee believes that the stringent nature of the penalty provisions of the bill have not been lost in the amendments provided thereto, and that the intent of the bill as indicated by its sponsor, Senator Mansfield, is retained.

PURPOSE

The principle purpose of this bill is best stated by Senator Mansfield in his testimony before the Subcommittee to Investigate Juvenile Delinquency.

He stated:

"Gun crime is a national disgrace. And with this bill I offer another approach to curtailing the gun crime rate—an approach that says to the criminal in terms that are clear and simple that his resort to a gun will be met automatically with punishment that fits such an act of violence. In contrast to the present gun law, no burden is imposed on the law-abiding gun owner. No sacrifice is asked. The burden falls squarely where it belongs—on the criminal and the lawless; on those who roam the streets, gun in hand, ready and willing to perpetrate their acts of violence.

"I am no expert in crime control. I am not even a lawyer. But I know that there is something wrong when the Federal Bureau of Investigation tells us that while our gun crime rate continues to spiral upward, our prison population shrinks proportionately. I hope this trend is reversed. I would think an assured prison sentence for criminals who choose to resort to firearms would help establish such a reversal or at least stem the tide. That is the purpose of my bill."

STATEMENT

In 1968, according to Federal Bureau of Investigation figures, there were 8,900 gun murders committed in the United States. In addition, 65,000 Americans were victims of gun assaults and 73,000 citizens were robbed by gunmen that year. These figures reflect substantial increases over 1967, and since 1964, gun murders have jumped 71 percent; gun assaults have increased 117 percent and gun robberies have risen 113 percent.

While all of the above offenses are not Federal crimes, certain of them are including those bank robberies which violate Federal statutes, assaults upon killings of Federal officers, and robberies of U.S. post offices. It is upon this class of criminal, the Federal felon, that this legislation would have an impact.

In addition to these Federal crimes of violence upon which the Mansfield bill would have an impact, other serious Federal felonies, such as interstate transportation of automobiles, interstate gambling and racketeering, narcotics violations, threats against the President and his successors, extortion, and kidnaping come within the purview of the provisions of the bill.

Thus, this bill would provide the Federal courts with measures to deal stringently with serious Federal violators.

SCOPE OF COVERAGE

In amending the penalty provisions of the Gun Control Act of 1968, this bill would apply to those persons convicted of Federal felonies while armed with or carrying guns during the commission of the crime for which convicted.

In addition to the penalty that the court would impose for the specific offense, S. 849 provides additional penalties of from 1 to 10 years on an initial conviction and, as amended by the committee, of not less than 2 nor more than 25 years on a second or subsequent conviction.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the committee amendments be adopted en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are agreed to en bloc.

Mr. MANSFIELD. Mr. President, let me just say in conclusion that I certainly appreciate the efforts of the Committee on the Judiciary, because the members of that committee cooperated splendidly in seeing that this measure was considered expeditiously and brought to the attention of the Senate as a whole.

It is my hope that henceforth, after this law is written firmly into the lawbooks, the gun criminal will consider carefully his resort to a gun in the first instance. He will know that that mere decision will be sufficient to penalize him with a jail sentence. I think this bill will act as a deterrent to the gun criminal. I think the gun criminal will think twice before he decides to employ such a weapon of violence.

If one life is saved, or one injury avoided, I think this measure will represent as well a fine memorial to the memory of Thadeus Lesnik, of Fishtail, Mont.

Mr. President, I urge the passage of the Lesnik bill.

Mr. SAXBE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. SAXBE. Mr. President, I wish to associate myself with the remarks of the distinguished Senator from Montana, because it is a very healthy thing to put this burden on the law violator rather than the sportsman or gun collector who peaceably is a gun owner.

The action in the House yesterday, which continued the provision to relieve the shotgun owner from the onerous burden of registering components and shotgun shells, is another step, I believe, in recognizing that the majority of gun owners in this country are law-abiding people, people who are sportsmen, who are hunters, and who are gun collectors, and have a legal right to own guns.

The action which the Senator from Montana has referred to for the first time shows that we are serious about increasing penalties on a person who violates the law with a gun. I certainly am in accord with that.

Mr. ALLEN. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. ALLEN. I would like to ask as a matter of information if, in defining the new offense, the offense of using a weapon in the commission of a crime, it would require, as a condition precedent to conviction for using the weapon, conviction of the original offense. Would that be a condition precedent?

Mr. MANSFIELD. The answer is yes and no. I would imagine that with this measure on the books, the indictment would contain a separate count for a violation of this provision of the criminal law. But the Senator from Alabama is correct in what he suggests; that the crime itself must be established in the first instance, before the criminal may be convicted—in addition—for using or carrying a gun.

Mr. ALLEN. In other words, if he were acquitted of the original offense—of committing a crime—then, under the provisions of this bill, he could not be convicted for using a gun in the commission of a crime.

Mr. MANSFIELD. That is correct. He could not be convicted just for carrying a weapon itself. The offense would be the carrying or using of the weapon in the commission of a crime. The two would have to be considered together.

Mr. ALLEN. But he could not be acquitted of the original offense, and then be convicted under the provisions of this bill. Is that correct?

Mr. MANSFIELD. Not unless the commission of a crime were established. Then the criminal could be sentenced under this measure separately if it were found that he carried or used a gun in committing that crime.

Mr. DODD. Mr. President, will the Senator yield?

Mr. MANSFIELD. Yes.

Mr. DODD. Mr. President, I rise in support of S. 849, introduced by the majority leader (Mr. MANSFIELD), which is an amendment to title 18 of the United States Code, to strengthen the penalty provisions of section 924(c) of title 18.

The principal purpose of this bill was best stated by Senator MANSFIELD in his testimony before the Subcommittee To Investigate Juvenile Delinquency.

He stated:

Gun crime is a national disgrace. And with this bill I offer another approach to curtailing the gun crime rate—an approach that says to the criminal in terms that are clear and simple that his resort to a gun will be met automatically with punishment that fits such an act of violence. In contrast to the present gun law, no burden is imposed on the law-abiding gun owner. No sacrifice is asked. The burden falls squarely where it belongs—on the criminal and the lawless; on those who roam the streets, gun in hand, ready and willing to perpetrate their acts of violence.

I am no expert in crime control. I am not even a lawyer. But I know that there is something wrong when the Federal Bureau of Investigation tells us that while our gun crime rate continues to spiral upward, our prison population shrinks proportionately. I hope this trend is reversed. I would think an assured prison sentence for criminals who choose to resort to firearms would help establish such a reversal or at least stem the tide. This is the purpose of my bill.

In 1968, according to Federal Bureau of Investigation figures, there were 8,900 gun murders committed in the United States. In addition, 65,000 Americans were victims of gun assaults and 73,000 citizens were robbed by gunmen that year. These figures reflect substantial increases over 1967, and since 1964, gun murders have jumped 71 percent; gun assaults have increased 117 percent, and gun robberies have risen 113 percent.

While all of the above offenses are not Federal crimes, certain of them are including those bank robberies which violate Federal statutes, assaults upon or killing of Federal officers, and robberies of U.S. Post Offices. It is upon this class of criminal, the Federal felon, that this legislation would have an impact.

In addition to these Federal crimes of violence upon which the Mansfield bill would have an impact, other serious Federal felonies, such as interstate transportation of automobiles, interstate gambling and racketeering, narcotics violations, threats against the President and his successors, extortion, and kidnaping come within the purview of the provisions of the bill.

Thus, this bill would provide the Federal courts with measures to deal stringently with serious Federal violators.

In amending the penalty provisions of the Gun Control Act of 1968, this bill would apply to those persons convicted of Federal felonies while armed with or carrying guns during the commission of the crime for which convicted.

In addition to the penalty that the court would impose for the specific offense, S. 849 provides additional penalties of from 1 to 10 years on an initial conviction and, as amended by the committee, of not less than 2 nor more than 25 years on a second or subsequent conviction.

Mr. President, generally speaking, I have in the past been opposed to this type of additional sentence. However, the ever increasing rate of violent crime indicates that more stringent measures for crime control are in order. We must serve notice on those who would use guns in the commission of crimes that they will be severely punished for doing so.

I think stiffer penalties for using a gun in committing a crime will provide a deterrent. I think the deterrent will work. There are those who say, and there is something to it, that this approach shows lack of confidence in the judiciary. I would say, that if it does, it is only because the judiciary has brought it upon itself. Accordingly, I commend the majority leader for sponsoring this legislation, and I hope that the Senate will promptly pass the measure. There is no time to waste in curtailing crime in the streets, in deterring the assassin, or disarming the insane.

If we are to make progress in the war against crime, now is the time to move.

Mr. SCHWEIKER. Mr. President, I am a cosponsor of S. 849, introduced by the Senator from Montana (Mr. MANSFIELD), to impose mandatory minimum prison sentences on persons apprehended in the commission of a crime while possessing a firearm.

I am vitally interested in this measure and am pleased that we will have an opportunity to vote on it today.

For some time I have maintained that if we are to be successful in removing profitability from the use of firearms in the commission of a crime, we must act to penalize the criminal who carries a gun. The Mansfield bill would do this. A first offender, under this act, will receive an additional 1- to 10-year sentence, and a second offender will receive an additional 25-year sentence if he possesses a firearm while committing a felony. Additionally, the court would be prohibited from suspending these sentences, or releasing the felon on probation.

I have always been opposed to gun control measures which have the sole effect of imposing burdensome requirements on sportsmen and other law-abiding citizens, but which have no effect on criminals, and do not serve to deter crime. The bill can help to make law enforcement more effective by serving notice on criminals that if they use or possess firearms the courts will not go easy on them. At the same time, the law-abiding sportsmen will not be penalized by measures, such as registration, which have in the past proved impractical and a burden to both the law-abiding sportsman and the police.

Mr. President, we now have an opportunity to enact legislation which will be effective in removing firearms from the hands of criminals. I shall vote for this measure and I urge the Senate to give it their favorable consideration.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 849) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SAXBE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD of West Virginia subsequently said: Mr. President, I ask unanimous consent that in the engrossment of S. 849, passed earlier today, the Secretary of the Senate be authorized to change the letter "(a)" appearing on page 1, line 5, to the letter "(c)". This is merely a technical correction.

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

CONNECTICUT-NEW YORK PASSENGER TRANSPORTATION COMPACT

Mr. MANSFIELD Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of Calendar 526, S. 2734, which I understand has been cleared on all sides.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 2734) granting the consent of Congress to the Connecticut-New York Railroad Passenger Transportation Compact.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to the consideration of the bill which had been reported from the Committee on the Judiciary with amendments on page 4, after line 11, strike out:

SEC. 2. The right to alter, amended, or repeal this Act is expressly reserved.

And, in lieu thereof, insert:

SEC. 2. The consent herein granted does not constitute consent in advance for any amendments or supplements to the compact which may be adopted by concurrent legislation of the party States pursuant to article II of the compact.

After line 17, insert a new section, as follows:

SEC. 3. The right is hereby reserved by the Congress or any of its standing committees to require the disclosure and the furnishing of such information and data by or concerning the Metropolitan Transportation Authority and the Connecticut Transportation Authority in their operation under the compact as is deemed appropriate by the Congress or such committee.

After line 24, insert a new section, as follows:

SEC. 4. The right to alter, amend, or repeal this Act is expressly reserved.

So as to make the bill read:

S. 2734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the Connecticut-New York Railroad Passenger Transportation Compact in substantially the following form:

"CONNECTICUT-NEW YORK RAILROAD PASSENGER TRANSPORTATION COMPACT

"ARTICLE I

"For the purpose of continuing and improving the railroad passenger service of the New York, New Haven and Hartford Railroad (and its successors) between the city of New Haven in the state of Connecticut and the city of New York in the state of New York, including branch lines which are tributary to the main line of that railroad between the said cities; Metropolitan Transportation Authority, a governmental corporation of the state of New York, and Connecticut Transportation Authority, an agency of the state of Connecticut, acting individually, but in cooperation with each other, or as co-venturers where they deem it advisable and practical, are hereby authorized to do the following where permissible under the enabling laws of their respective states:

"(a) to acquire through eminent domain proceedings, or by gift, purchase, lease or otherwise, the ownership interest in or the right to the use of all those assets of the said railroad (or of any successor in interest to such assets), be they real property, personal property or a combination of the two (including rights arising out of contract, franchise or otherwise), which are or may reasonably be expected to become necessary, convenient or desirable for the continuation or improvement of such service;

"(b) to repair and rehabilitate such assets, or to acquire by gift, purchase, lease, or otherwise, such new or additional assets and rights as they deem necessary, convenient or desirable for such continuation or improvement;

"(c) to dispose of any such assets, new and additional assets and rights, or of the right to the use of the same, by conveyance, lease, or otherwise (including, without limitation, the grant of trackage rights) when and to the extent that they are not needed for such service by the said agencies; and to abandon or discontinue portions of such service when advisable; and/or

"(d) to operate such service, or to contract for the operation of the whole or any part of such service by others.

"To accomplish the foregoing objectives, the said agencies are authorized, individually and jointly, to apply for aid, Federal, State, or local, to supplement those funds appropriated or otherwise made available to them under the laws of the party States.

"ARTICLE II

"The provisions of this compact shall be construed liberally to effectuate the purposes thereof. Amendments and supplements to this compact to implement the purposes thereof may be adopted by concurrent legislation of the party States.

"ARTICLE III

"This compact shall be of no force and effect unless and until the Congress of the United States of America, on or before December thirty-first, nineteen hundred sixty-nine, has consented thereto."

SEC. 2. The consent herein granted does not constitute consent in advance for any amendments or supplements to the compact which may be adopted by concurrent legislation of the party States pursuant to article II of the compact.

SEC. 3. The right is hereby reserved by the Congress or any of its standing committees to require the disclosure and the furnishing of such information and data by or concerning the Metropolitan Transportation Authority and the Connecticut Transportation Authority in their operation under the compact as is deemed appropriate by the Congress or such committee.

SEC. 4. The right to alter, amend, or repeal this Act is expressly reserved.

The PRESIDING OFFICER. Without objection, the amendments are agreed to en bloc.

Mr. RIBICOFF. Mr. President, the bill now before the Senate would grant Federal consent to the formation of a compact by Connecticut and New York to revitalize railroad service between the two States.

The bill is cosponsored by my colleague from Connecticut (Mr. DODD) and by the Senators from New York (Mr. JAVITS and Mr. GOODELL).

The compact would combine the Metropolitan Transportation Authority of New York and the Connecticut Transportation Authority as an intergovernmental agency. The compact agencies would be authorized individually and jointly to acquire ownership of the railroad's assets or the right to use those assets—real property or personal property or passenger service. The compact agencies would also be authorized to apply for financial aid—Federal, State, or local—to supplement those funds appropriated or otherwise made available to them under the laws of Connecticut and New York.

The purpose of the bill is to give full and unquestioned legal status to the bi-State operation of rail service over the lines of the former New Haven Railroad. Both State legislatures have already approved the compact and are individually negotiating with the Penn Central for property acquisition, lease arrangements, and an operating agreement.

The railroad lines of the Penn Central's New Haven Division are a vital New England passenger artery. Each day, thousands of commuters use this line to travel to their jobs in New York.

Today, Connecticut and New York State commuters are suffering from deplorable traveling conditions because of old, worn equipment and years of minimum maintenance of railroad tracks, signals, and electrical overhead wires.

Both Connecticut and New York realize the importance of this railroad link. Both want to improve railroad service on this line.

I strongly urge favorable Senate consideration of the bill.

Mr. DODD. Mr. President, I am very pleased at the prompt consideration which the leadership has given to S. 2734, a bill to grant the consent of Congress to the Connecticut-New York Railroad passenger transportation compact. The Senate Judiciary Committee considered this bill yesterday, at my request, and I am grateful to the staff of the committee for preparing the report so promptly so that it could be considered on the floor today.

S. 2734 merely gives congressional consent to a compact established by the State legislatures of Connecticut and New York, which will seek to improve the railroad passenger service of the New Haven Division of the Penn Central Railroad.

As the Senate knows, the problems of passenger service across the country are legion, but perhaps no commuter has suffered more affronts than those who travel on the New Haven Railroad. Most Connecticut residents cannot remember the time when the New Haven provided adequate passenger service.

The Legislatures of Connecticut and New York have wisely agreed to form a compact in the hope that the two States can take joint action to solve, once and for all, the problems which have plagued Connecticut and New York commuters through the years.

I hope that the time will soon come when I can receive letters from New Haven commuters telling me that there has been an improvement in service.

Mr. President, since the enabling legislation approved by the two States terminates on December 31, 1969, I urge the Senate to take prompt action on this bill.

Again, I wish to express my appreciation to the chairman of the Judiciary Committee and to the staff for making it possible for S. 2734 to be taken up on the floor today.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-533), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENT

The purpose of the proposed amendment is to make the consent of the Congress in accordance with the standard procedure relating to compacts.

PURPOSE

The purpose of S. 2734, as amended, is to give consent of Congress to the Connecticut-New York railroad passenger transportation compact, adopted by New York on June 16, 1968 (sec. 1, ch. 824, laws of New York for 1968) and by Connecticut on April 21, 1969 (sec. 1, Public Act 46 of the laws of Connecticut for 1969).

This legislation is sponsored by the Senators from Connecticut, Mr. Ribicoff and Mr. Dodd and by the Senators from New York, Mr. Javits and Mr. Goodell and recommended with a suggested amendment, which has been adopted by the Secretary of Transportation.

STATEMENT

The compact entered into by the two States relates to the continuation and improvement of railroad commuter passenger service over the Penn Central Railroad's lines between New York City, N.Y., and New Haven, Conn. It authorizes the Metropolitan Transportation Authority, a government corporation of the State of New York, and the Connecticut Transportation Authority, an agency of the State of Connecticut, acting individually but in cooperation with each other, and as conventures where they deem it advisable, to do the following (where permissible under the enabling laws of their respective States):

(a) Acquire assets of the New York, New Haven, & Hartford Railroad (and its successors) where needed, (b) repair and rehabilitate such assets, (c) dispose of such assets where not needed, and (d) and operate the service or contract for its operation.

By its terms, the compact legislation lapses if Congress fails to consent by December 31, 1969.

A letter dated July 28, 1969 from the Honorable Nelson A. Rockefeller, Governor of the State of New York to Chairman Celler, requesting the subject legislation reads as follows:

"I am seeking your help in securing the consent of Congress to a compact entered into by the States of New York and Connecticut relating to the continuation and improvement of railroad commuter passenger service over the Penn Central Railroad's lines between New York City, N.Y., and New Haven, Conn. That compact is evidenced by the enactment of two statutes, section 1 of chapter 824 of the laws of New York for 1968 and section 1 of Public Act 46 of the laws of Connecticut for 1969. A certified copy of the New York statute is enclosed, together with several uncertified copies of both acts.

"The Metropolitan Transportation Authority for our State and the Connecticut Transportation Authority for the State of Connecticut are hopeful of an early conclusion to their negotiations with Penn Central relating to the modernization and improvement program for this vitally needed commuter service which Governor Dempsey and I endorsed in late 1966. These negotiations were delayed, seemingly interminably by a host of complicated problems. Indeed, they could not begin in earnest until this past January, when Penn Central finally agreed to merge with the New Haven.

"Federal and State financing for the $56.8 million priority capital improvement program is also assured. Moreover, we are hopeful that additional Federal funds will be granted, making possible the full $80 million capital program which the two States originally contemplated. To this end I am asking the MTA and the CTA to reinstitute their 1966 request for funds under the Urban Mass Transportation Act of 1964.

"If you or your staff needs any further assistance relative to the details of the compact, the status of our financing or the nature of the projected relationship with Penn Central, I would suggest that they be referred directly to Dr. William J. Ronan, Metropolitan Transportation Authority chairman.

"The State of Connecticut has asked for assistance similar to that which we ask of you from their congressional delegation. You may wish to coordinate your efforts with them.

"Please note that if the compact is not approved by December 31, 1969, it lapses and the legislative process would have to be started all over again in both States.

"Sincerely,

"NELSON A. ROCKEFELLER."

The first section of S. 2734 grants the consent of Congress to the compact. As noted in the above letter the committee finds merit in the compact and believes that Congress should grant its consent thereto, subject to the amendments herein made in article II of the compact.

First, article II of the compact provides that amendments and supplements to the compact to implement the purposes thereof "may be adopted by concurrent legislation of the party States." Section 2 of S. 2734 makes clear that the consent of Congress to the compact does not constitute consent in advance for any amendments or supplements to the compact which may hereafter be adopted by concurrent legislation of the party States. Any such amendments or supplements would be adopted subject to the consent of Congress before being put into effect.

Second, section 3 of S. 2734 reserves the right of Congress or its standing committees to require submission of information and data concerning operations under the compact.

Third, section 4 of S. 2734 reserves the right of Congress to alter, amend, or repeal the legislation.

Attached hereto and made a part hereof is the report from the Secretary of Transportation to the Honorable James O. Eastland, chairman of the Senate Judiciary Committee, dated November 12, 1969.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2734) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. MANSFIELD. 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. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, as in legislative session, I ask the Chair to lay before the Senate messages from the House of Representatives on S. 632, S. 499, and S. 757.

RELIEF OF RAYMOND C. MELVIN

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 632) for the relief of Raymond C. Melvin, which were, on page 1, line 4, "2733" and insert "2733(b)"; and on page 2, line 3, strike out "July 4, 1964" and insert: "or about July 6, 1964".

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

LUDGER J. COSSETTE

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 499) for the relief of Ludger J. Cossette, which was, on page 2, line 4, strike out "in excess of 10 per centum thereof".

Mr. MANSFIELD. Mr. President, I tion is on agreeing to the motion of the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

YVONNE DAVIS

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 757) for the relief of Yvonne Davis which was, on page 2, after line 3, insert:

> No part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE STRATEGIC ARMS LIMITATION TALKS

Mr. JAVITS. Mr. President, on Monday in Helsinki the United States and Soviet delegations met to commence the SALT negotiations. While the occasion Monday was largely ceremonial, there was a note of high purpose in the statements of both delegations. Serious discussions began yesterday in what could be the most portentous negotiations affecting the survival of mankind. As Secretary of State Rogers expressed it so aptly in his speech of November 13:

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

Let us hope that the enormous difficulties and complexities inherent in these negotiations will be overbalanced by a recognition on both sides of the mutual and reciprocal advantages to be obtained from viable arrangements to stabilize and control the strategic arms race. The negative incentive to agreement is similarly persuasive—the cost and the danger to both sides inherent in an escalation of the nuclear arms race could cast a most ominous shadow over the continued health and existence of both societies.

The immediate challenge to the United States and Soviet negotiators, once substantive discussions begin, will be to seek mutually agreeable arrangements for containing the next generation of strategic weapons now under development in both countries—ABM's and MIRV's.

In my judgment, it is regretable that the U.S. negotiators have reportedly been instructed not to offer a mutual moratorium on the flight testing of MIRV's. The clock is running out on MIRV's, and if an agreement with respect to this new weapons development is not achieved prior to the operational deployment stage—expected some time next year—hopes for a meaningful and verifiable agreement will be diminished.

The clock is also running out with respect to ABM systems, but fortunately, the pace is slower in this instance because deployed ABM systems are easily verifiable by aerial or satellite inspection, while deployed MIRV's are verifiable allegedly only by onsight inspection.

The major address by Secretary Rogers on November 13 is a most salutory indication that U.S. policy with respect to the life and death issues inherent in the SALT talks has not been defaulted to military authorities by the concerned civilian agencies of our Government—especially the State Department. I express this view against the background of numerous press reports and "leaks" in recent weeks which have indicated that efforts by the military authorities have succeeded within the administration in curtailing the brief and the negotiating leeway of Ambassador Gerard Smith and his colleagues in the SALT talks.

In his address to the Senate on November 13, President Nixon assured us that he would seek to work out an arrangement for consultations with the Senate respecting the SALT talks which would meet our requirements and prerogatives. The President's thoughtful and cooperative remarks in this regard merit our respect and appreciation. In this spirit, I think it is unfortunate that the administration has set itself against the inclusion of senatorial observers or advisors to the SALT negotiations. The implication in the administration's position that the necessary secrecy and discretion might be comprised by the presence of Senators is not one which the Senate could find acceptable as a reason.

Extensive and detailed consultations regarding the U.S. negotiating position have been carried out with the governments of our NATO allies. Virtually without exception our NATO allies have parliamentary forms of government. Consequently, the implication that the parliamentary leaders of Western Europe and Canada are more discreet than the congressional leaders of the United States is paradoxical and unconvincing; especially in view of the history of the congressional representatives and committees handling the most secret information.

There is an invisible third dimension to the SALT talks which is seldom mentioned—the specter of Peking. In the period since the 1962 United States-Soviet "eyeball-to-eyeball" confrontation over Cuba—and the emergence of Communist China as a thermonuclear power—it is perhaps no exaggeration to say that policymakers both in Washington and Moscow have considered the potential future threat of nuclear war with China to be as real a threat as a United States-Soviet nuclear exchange.

There is no doubt that calculations with respect to the potentiality of Chinese nuclear capabilities will be factored into the negotiating postures of both the United States and U.S.S.R. I regard this as prudent and unavoidable. Nonetheless, we must guard vigilantly against military hardliners on both sides attempting to exploit the Chinese "threat" as an instrument to prevent agreements and controls on advanced weapons systems that are the very purpose of the SALT negotiations.

Moreover, the SALT negotiators bear the additional responsibility for attempting to shape agreements resulting from the SALT talks in such a way as to encourage, rather than discourage, Peking from eventual cooperation with international nuclear arms control agreements.

The U.S. negotiators bear an additional responsibility with respect to Communist China in the SALT talks. Our negotiators must scrupulously seek to avoid agreements with the Soviet Union which will create the impression of a United States-Soviet nuclear "ganging up" against Communist China. In my judgment, agreements of such a nature could serve to exacerbate the grave tensions between Moscow and Peking, as well as between Washington and Peking—rather than making nuclear war on the Asian mainland less probable.

In this respect, I commend to my colleagues' attention Harrison Salisbury's new book "War Between Russia and China," which sets forth the dangers and implications of a Sino-Soviet war to the nuclear security of the United States in a most persuasive and sobering fashion.

My purpose today is to hail the beginning of the SALT negotiations. I wish to conclude on a high note rather than a low note, for I am an optimist on the future of mankind. Accordingly, I believe it is altogether fitting to close with a most sincere and deserved tribute to President Nixon and the U.S. delegation led by Director Gerard Smith for the diligence of preparation, the dignity, and high seriousness of purpose with which these landmark negotiations have been opened. I believe they have every right so long as this attitude and atmosphere in the U.S. delegation persists to be confident of the support of the Senate in their crucial and urgent search for a viable means to cap the volcano of the nuclear arms race.

CONCLUSION OF MORNING BUSINESS AS IN LEGISLATIVE SESSION

Mr. TOWER. Mr. President, has morning business been concluded?

The PRESIDING OFFICER. Is there further morning business as in legislative session? If not, morning business is concluded.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 1453. An act for the relief of Capt. Melvin A. Kaye;

H.R. 1865. An act for the relief of Mrs. Beatrice Jaffe; and

H.R. 14794. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1970, and for other purposes.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 92) for the relief of Mr. and Mrs. Wong Yui.

HOUSE BILLS REFERRED

As in legislative session, the following bills were severally read twice by their titles and referred, as indicated:

H.R. 1453. An act for the relief of Capt. Melvin A. Kaye; and

H.R. 1865. An act for the relief of Mrs. Beatrice Jaffe; to the Committee on the Judiciary.

H.R. 14794. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1970, and for other purposes; to the Committee on Appropriations.

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. TOWER. Mr. President, the Senate will soon decide whether to approve the nomination of Clement F. Haynsworth to the post of Associate Justice of the Supreme Court. For over 2 months this man has undergone an examination of character, ability, and philosophy which has not been duplicated since the inquisition. In an attempt to find some reason to justify opposition to Judge Haynsworth's nomination, critics have invoked a standard of behavior that, if applied to all future nominees to the Court, would guarantee that the Supreme Court membership shall remain at eight until the millennium.

Justification for opposition, however, has simply not been presented. It has not been presented, Mr. President, unless one can consider a multipage collection of error and half-accuracies, known as a "bill of particulars," a meaningful indictment. The distinguished Senator from Kentucky (Mr. COOK) demonstrated the hollowness of the charges set out in this bill beyond any reasonable doubt.

He did such an outstanding job of refuting those charges that I shall not take the Senate's time to belabor the point. But I would like to briefly note that the Kentucky Senator's support of the Haynsworth nomination is particularly meaningful to me because of his own judicial experience and because of the searching analysis which he gives every issue before commenting on it. As one who stood on the opposite of the issue from the Kentucky Senator during the ABM debate, Mr. President, I can assure you with a great deal of confidence that he has reached his decision on this issue solely on the basis of his own judgment and knowledge.

Many of my colleagues have completely rebutted charges against Judge Haynsworth, which, if true, might have disqualified him under the traditional test applied to nominees to the Supreme Court. That test is best stated by canon 34 of the American Bar Association:

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 the law, and deal with his appointments as a public trust; he should not allow other affairs of his private interest 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.

A careful review of the record, of the facts, shows that Judge Haynsworth has lived up to this standard of excellence.

I do not find anywhere in canon 34 the requirement that a nominee to the Federal bench has to be completely invulnerable to the attacks of those who differ from him on constitutional and judicial philosophy. It does not say in canon 34 or anywhere else that a man cannot be approved for service on the Supreme Court if those who oppose him are successful in raising—merely raising without proving—doubts about him.

No, Mr. President, this new standard created by the Haynsworth critics finds no precedent in law. Nor, I respectfully suggest, does it find any precedent in reason. Opponents outside this body have explained their decision thus:

It is immaterial whether concrete *proof* of conflict of interest, lack of ability or question of character has been presented. But a doubt *has* been raised. Since the Supreme Court has already been the subject of considerable criticism, let us just fail to confirm this man and find somebody else.

Mr. President, if this reasoning were not so frightening, it would be ludicrous. It disturbs me greatly to think that responsible men and women will abandon the traditional Anglo-Saxon concept that the burden of proof is on the accuser in favor of this new circular argument. An argument that begins with an unproven presumption of doubt as to innocence and ends with a conviction because the unproved presumption has created an aura of incredibility.

In simple terms, this new test says that because fire creates smoke, wherever there is smoke, there is fire. Mr. President, hot air blowing over the ashes of political defeat can also create smoke. Let us not confuse the rhetoric and innuendo of those whose judicial and constitutional philosophy was rejected by the American people 1 year ago with fact and reason sufficient to justify opposition to the President's nomination. Mr. President, we must not adopt this new test and abandon one which has served the Republic well.

Mr. President, I firmly believe that each and every Senator here, makes a great effort to reach his decision on important issues independently. I also believe that this process of independent decisionmaking is absolutely essential to the continued existence of the Senate as a viable body. One cannot help, however, but be influenced by the background of those who stand on opposite sides of an issue.

The Committee on the Judiciary heard and received testimony which filled some 762 pages when reprinted. In addition to that, each Senator has been presented with the written and oral views of every conceivable labor, legal, business, and citizens group imaginable. In the course of my analysis of this plethora of information, it has struck me that those who have made the most careful examination, and those who have known and dealt with Clement F. Haynsworth the most, have supported him, while those who have conducted cursory examinations and have had only minimal exposure to Judge Haynsworth's judicial career have opposed him. I do not present this information as a statement of absolute, invariable, statistical analysis, but as an expression of one Senator's observation.

For example, let us compare the recommendations made by the American Bar Association standing committee on the Federal judiciary, and the American Trial Lawyers Association.

The standing committee of the ABA is composed of men of unquestioned good standing in the legal community who represent the various geographical districts of the country. The standing committee's function is to try and formulate standards of qualification for admission to the Federal bench. In order to bring about the application of these standards, the standing committee investigates each and every nominee to the Federal judiciary. It is rare, indeed, Mr. President, when the executive branch of our Government overrules the recommendation of the standing committee after its investigation.

Many times, Mr. President, Members of this body have experience acute unhappiness over the failure of that body to agree with their own judgment of a man's qualifications to sit on a Federal court. I think it is understating the truth to say that the ABA standing committee knows its own mind. That committee, Mr. President, met on September 5 in New York and stated, without reservation, that Judge Haynsworth met the qualifications for membership to the Supreme Court. Later, after the application of a great deal of pressure, the committee agreed to convene again and reassess its recommendation in light of all the charges made against Judge Haynsworth. Once again, the committee overwhelmingly approved the Haynsworth nomination.

Of course, a great deal of furor was raised over the fact that not all of the members agreed. Astute political commentators never tired of pointing out that the judge only received endorsement by a 2-to-1 majority. Mr. President, I greatly hope that these same commentators will have the opportunity to point out that I only received a 2-to-1 margin of approval the next time I take my record before the people of Texas. I do not know of a single elected official in this country who would not willingly suffer journalistic analysis of why he only received a 2-to-1 vote of confidence.

The American Trial Lawyers Association took a somewhat different approach to determining whether to recommend approval of the Haynsworth nomination. Not surprisingly, they reached a different result.

The American Trial Lawyers Association is comprised of some 24,000 trail attorneys in the United States. In order to determine their feelings on the Haynsworth nomination, the executive board conducted a poll. At least they conducted a type of poll. A "selected sample" of some 1,204 trial attorneys was requested to reply to a questionnaire which gave them three choices: First, approve the nomination; second, disapprove the nomination; and, third, withdraw the nomination.

A total of 715 people returned the questionnaire and of those, 524 answered that the nomination should be withdrawn or disapproved. In short, 524 out of 24,000 announced their conviction that Clement F. Haynsworth should not become a member of the Supreme Court. That represents a percentage of 2.15. On the basis of the opinions of 2.15 percent of the total membership of the American Trial Lawyers Association, the board of governors recommended that Justice Haynsworth not be promoted to the Supreme Court.

That, Mr. President, is an astounding conclusion. It is, however, representative of the opposition to the Haynsworth nomination.

Perhaps the most interesting of all the testimony before the Judiciary Committee was that given by John Bolt Culbertson. Mr. Culbertson gave a moving, though often humorous, explanation of his reasons for refusing to oppose the nomination of Clement Haynsworth.

John Bolt Culbertson is not a man who finds himself in philosophical agreement with Judge Haynsworth or the Republican Party very often. Politically, Mr. Culbertson must be described as a Democratic liberal. He would not be offended, I feel, if he were described as one who has favored a broadening of the interpretation of the Constitution as done by the Warren court. He is, in short, not a natural ally of Clement Haynsworth.

But, John Bolt Culbertson is an honorable man. He recognized his differences with the judge for what they were—differences of political persuasion. He also had the wisdom to observe that President Nixon had won a mandate from the American people, a mandate to appoint men to the Supreme Court who were not in total agreement with the philosophies of the past.

Mr. Culbertson recommended approval of the Haynsworth nomination in the unequivocal terms which have been the hallmark of his legal career. He said:

> I predict that Judge Haynsworth will prove to be one of the greatest Justices of the Supreme Court that has ever been on this Court. I believe that my friend of liberal persuasion can understand that if we have the right when our crowd is in power to appoint judges, then our opponents, by the same token, have this right when they win. As a South Carolinian, I shall be proud to have Judge Haynsworth on our highest Court, and if I were a Member of the U.S. Senate, I would vote for the confirmation of his appointment, and for this endorsement, I do not apologize to anyone.

I can add nothing to that.

Mr. President, I call upon all of my colleagues to carefully reassess their decision on this most important vote. Let us not be confused by innuendo nor convinced by inaccuracies. If we have philosophical differences with the nominee, let us refrain from insisting that he agree with us before we vote approval. As Charles Alan Wright, a noted constitutional scholar from my own State, said in his testimony before the Judiciary Committee:

> History teaches us that it is folly to suppose that anyone can predict in advance what kind of record a particular person will make as a Justice of the Supreme Court. The awesome and lonely responsibility that the Justices have in considering the great issues that come before them has made them, in many instances, different men than they were before. All that one can properly undertake in assigning a nominee to that Court, is to consider whether he has the intelligence, the ability, the character, the temperament, and the judiciousness that are essential in the important work he will be called upon to perform.

Clement Haynsworth has met the traditional requirements set for approval of this body for appointment to the Supreme Court of the United States. Let us act accordingly.

Mr. CURTIS. Mr. President, I rise to speak in support of the confirmation of the nomination of Judge Haynsworth. Perhaps nothing that I have said or will say will change any minds.

This matter is of the utmost importance. It is of great importance to the country. It is also of great importance to the Senate. I feel compelled, therefore, to state why I take the position I do.

First, I digress a bit to commend those Senators who have worked so long and hard in carrying out the task of sending to the Senate for confirmation the nomination of Judge Haynsworth to be an Associate Justice of the U.S. Supreme Court, whose name has been submitted to us by the President of the United States. I refer particularly to my distinguished senior colleague from Nebraska, Senator HRUSKA.

Perhaps no Member of the Senate has been more faithful in the attendance at the Committee on the Judiciary, the subcommittees, and all conferences pertaining to the matter of the nomination of Judge Haynsworth as an Associate Justice of the Supreme Court. Not only has Senator HRUSKA given his time, but also, he is a man of unquestionable character. In addition, he has a keen legal mind, he is a good scholar, and he is able to discern the wheat from the chaff. He is able to sort out and pass judgment on conflicting allegations.

So I want the RECORD to show my admiration for and my commendation of the fine work of Senator HRUSKA with respect to this nomination.

Mr. President, I feel that what is done in reference to this issue is of very great importance to the U.S. Senate. The U.S. Senate is going to establish a record here, a record that is going to be read for all time to come. I believe it is important that every Senator not vote on impulse or propaganda or publicity pro or con on this issue. We are called upon to examine the facts, examine the accusations, and then do justice. I cannot feel that to reject the nomination of Judge Haynsworth is justice, because it is well known that much of the opposition against Judge Haynsworth relates to his political philosophy.

Has any Senator risen and said, "I believe that Judge Haynsworth is corrupt"? Not one. Has any Senator ever cited an instance in which a decision in Judge Haynsworth's court was influenced by financial considerations of Judge Haynsworth? Never has such an accusation been made. Has any Senator or any other responsible person ever pointed to an instance in which Judge Haynsworth enriched himself by reason of any matter coming before him as a judge? The answer is "No."

Then, Mr. President, we come to this question: What do we mean when we say that judges and public officials should not only be free of wrongdoing—and certainly Judge Haynsworth has been scrutinized more than most Americans have been—but also, they should be without the appearance of evil or without the appearance of impropriety? We have to think about that. Does it mean that if someone mistakenly or recklessly, or even intentionally, accuses a good man and it happens that those accusations receive wide publicity, it is then correct to say there is the appearance of evil, there is an appearance of impropriety, because a great deal of complaint has received wide publicity?

That is where we reach the point in this proceeding where the Senate becomes on trial; because, if we adopt the principle that all one must do is to make some accusations, which accusations become widely publicized, and that that constitutes an appearance of impropriety, what is the result? The result is that a malicious individual or a malicious group, a mistaken individual or a mistaken group, an individual who did not carefully check his facts or a group that did not carefully check their facts, can fix upon any public official a charge or place him in a situation in which it is said that he has the appearance of impropriety and therefore should be rejected.

What is required of the Senate? The Senate is required to do justice, and we cannot follow a course of justice if we say that a man need only be accused of something, that the accusations be publicized, and that therefore there is an appearance of impropriety. In some instances there might truly be an appearance of impropriety. But if we go on that premise, we turn the selecting and the confirming power of the country over to the most vicious elements in the United States. If it is possible to hurl charges at a nominee or at an officeholder, cause those charges to be publicized, and that individual is accepted per se as having engaged in an operation that has the appearance of impropriety, then we have turned the appointing and selecting power over to outsiders, and we have created a situation in which the most vicious in the land have the authority of government. They could create a situation in which it would be said, "Because there is noise here, because there is smoke here, it has the appearance of impropriety."

I repeat, Mr. President, that to my knowledge not a single Senator has risen on this floor and said, "Here is a transaction in which Judge Haynsworth was dishonest." Not a single Senator has risen in his place, to my knowledge, and said, "Here is a case in which Judge Haynsworth enriched himself by reason of a matter being litigated before him," or, "Here is a case in which the decision was influenced by financial considerations."

Some of these charges are so flimsy that even opponents of Judge Haynsworth have dismissed them as such.

What does that indicate? When does an advocate or an opponent resort to flimsy arguments? There is only one time and that is when he does not have any other arguments.

For instance, I hold in my hand a news release of the Frank Mankiewicz and Tom Braden column for the Los Angeles Times Syndicate, Los Angeles, Calif., dated Sunday, November 9, 1969. Here is what it states:

Among the ways in which men with large incomes avoid taxes is to buy and sell property through tax-exempt institutions, claiming charitable deductions along the way. Judge Clement Furman Haynsworth, Jr. now lives in a home which has twice been donated to Furman University and the value of which has twice been claimed as a charitable deduction.

I do not know whether these men are ignorant, or whether they are careless, or whether they are malicious, but one does not have to go beyond the fourth grade to understand that the opening paragraph there, in effect, charges Judge Haynsworth of skullduggery in giving a home to a university.

Mr. President, I think it would be well to take the time to consider the facts in reference to this charge. Again, I wish to ask why opponents of Judge Haynsworth would resort to such nonsense if they had a case. If they had a case, they would bring it in here. They do not have a case.

Mr. President, here are the facts. 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 ½ interest in that home to Furman University. In 1959, Mrs. Daniel gave Furman University the remaining 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 were 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.

Mr. President, I have spent a little time considering the tax laws of the country. If an individual gives some property to a college or hospital or something else, he gives the property away and he is entitled to a deduction for the fair market value of it.

If one wishes an insight into the character of Judge Haynsworth, he did not claim a tax deduction for the fair market value of $153,000. He did not claim a tax deduction for the $10,000 in improvements he put in the home. He claimed a tax deduction of $115,000, the very price he paid some years before—and all values have gone up as is well known.

Yet somebody here would so misstate the facts, either intentionally, unintentionally, accidentally, or somehow, that he would imply that a man who is generous, a man who decides in favor of the tax collector, is impugned to have done something wrong.

Mr. President, does that mean the man has the appearance of evil, or does that mean he has the appearance of impropriety? Actually there was no implication made. Again I wish to repeat that if the Senate ever goes to a system of turning down a nominee for confirmation because someone makes a charge, then we give veto power to outsiders and that power can be exercised by some of the most vicious individuals in the land.

When one gives something away and retains a life estate interest, he does not get a full deduction. This is not a new problem for the Internal Revenue Service. They take the donor's age and his life expectancy and work out something according to the table.

Here is what happened. The deduction for the remainder interest in the house, after taking the lower value, in 1963 was $9,844.46; in 1964, $10,000-plus; in 1965, $10,000-plus; in 1966, $10,000-plus; in 1968, $11,000-plus; or a total of $52,673.44.

The variations follow the Internal Revenue Service tax table where a life estate is retained by persons of the ages of Mrs. Haynsworth and Judge 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 the home, and all 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 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 it 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.

Mr. President, we would have a much better land if more people in the United States gave their property to good causes; if more people who could afford to do so would leave their property to some worthy institution that is seeking to find a cure for cancer or some other dreaded disease. If more people gave their property to the cause of education, we would have a better country. If more people gave their property to the church, our society would be better. This is what Judge Haynsworth did. There is not one iota of evidence that he received special treatment; in fact, he did not receive as much tax benefit as he was entitled to.

Yet someone could publish a column and imply that his action was illegal; that it was wrong; that Judge Haynsworth was dishonest.

Mr. President, why do people do such things? I will tell you why: It is because they do not have a case. If they had a case of substance, they would bring it here. They would bring in canceled checks. They would do some other things. If they had a case against Judge Haynsworth, somebody would appear on the scene and say, "I had a suit pending in the court on which Judge Haynsworth sat. I received an injustice because"—and then he would tell the facts. Has any litigant ever made such a claim? Not at all.

I will tell the Senate what has happened. There are some pressure groups that do not like Judge Haynsworth, and they have opposed his nomination and made all sorts of charges. Some of the pressure groups have been quite vocal against Judge Haynsworth. It might be interesting to note that the same pressure groups have spent hundreds of thousands of dollars to elect men to the U.S. Senate and House of Representatives. If a nominee for a judgeship or other high office is opposed by a pressure group—and in this instance I am referring to some of the top union bosses in the country—I wonder whether it would not be in the interest of justice that those who have received large sums—$20,000, $30,000, or $40,000—as campaign contributions from unions should step aside and not vote on the pending nomination.

Certainly we should apply the same rules to ourselves as we apply to others. Would it be unreasonable to suggest that any Senator who had accepted $10,000, $20,000, $30,000, or $40,000 in campaign contributions from the unions should step aside in the Judge Haynsworth controversy? Certainly they have a financial interest in one of the parties because, according to the record, not all, but some, union officials, have vehemently opposed Judge Haynsworth.

I am not suggesting that that be done. I merely invite the attention of the Senate to the possibility that, perhaps, some of those who are battling so hard to defeat the President's nomination might serve as outstanding examples of ethics and virtue if they were to step aside voluntarily and not participate in the decision to confirm or not to confirm the nomination.

It has been said, or at least it has been implied, that there is a connection or a similarity between the Haynsworth situation and the Fortas case. They are dissimilar in many respects, and I shall mention two of them.

Judge Haynsworth has submitted to a complete investigation and has answered every question. He has not withheld any facts.

What happened in Judge Fortas' case? He resigned, and there has never been any investigation of him. That is one difference.

Here is another: Judge Fortas did receive funds from a foundation as a fee, not once, but for a lifetime, from a client that did have problems that could well come before the Court.

There is absolutely no similarity between the Haynsworth and the Fortas cases.

Mr. President, I read with interest the statement of the very distinguished Senator from Kansas (Mr. DOLE). If anyone has any doubt or questions about Judge Haynsworth and the so-called Brunswick case, he can get the answer in just a few paragraphs from Senator DOLE's statement. I shall not repeat it here, but I commend it to Senators for reading.

All of us have so much material to read, and we do not get it all done. One of the things that make Senator DOLE's statement such a good one is that he has been able to boil it down and concisely state the issue. He comes to the conclusion that there is nothing wrong about it that should hinder or prevent the confirmation of the nomination of Judge Haynsworth.

Mr. President, there is one man living in the United States who has resigned from the Supreme Court and has had something to say about this matter. I refer to former Justice Charles E. Whittaker. He has been on the inside. He is now a private citizen. I am sure that he has been moved by nothing but his desire to see justice done and the truth prevail. I want to refer to a statement made by him on November 10, 1969:

> Charles E. Whittaker, who served as an Associate Justice of the U.S. Supreme Court from 1957–1962, said here yesterday he was convinced that opposition to the confirmation of Judge Clement F. Haynsworth, Jr., to the Court is spurred by his philosophy, not by his ethical character.
>
> Whittaker said that his study of the records of hearings before the Senate Judiciary Committee in the light of criticism of Haynsworth's appointment compelled him to speak out on the matter.

Incidentally, Judge Whittaker read all of these hearings; and they are voluminous. He said a thorough review of the hearings has convinced him that Haynsworth is guilty of no improper or unethical conduct. Justice Whittaker said:

> 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.

Justice Whittaker said he is convinced that Haynsworth is guilty of no misconduct in two cases brought up in the hearings. Regarding the Brunswick case, 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 judgment 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 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.

Mr. President, the unsound ground upon which the opposition to the confirmation of the nomination of Judge Haynsworth stands is illustrated by this particular case. It was presented as though it might be a great case, involving a merger or some internal transaction which, as a result of the lawsuit, would greatly enhance the value of the stock of the company. But it was not that at all. It was a suit over a promissory note for $1,500. It was a publicly held corporation. Judge Haynsworth bought it on the advice of his broker. Senator DOLE's statement, to which I referred quotes the testimony of the broker wherein he said he recommended that to many of his clients.

Continuing with reference to Judge Whittaker, in another case in which Haynsworth has been criticized for his financial interests, Whittaker said:

> The record shows that he did not own stock in either litigant in the case, but only held some shares in a vending company which on a lease basis maintained some of its vending machines in a plant of one of the litigants.

Mr. President, to be a Judge of the Supreme Court of the United States is to assume a great responsibility. Who would be able to judge that better than someone who had sat on it and who is now free to speak out as a private citizen? The testimony of Judge Whittaker in behalf of Judge Haynsworth is worthy of consideration.

Mr. President, a question has been raised about the fact that Judge Haynsworth heard cases that involved firms and those firms, in turn, had vending machines for sandwiches, pop, and so on, in their plants, and that Judge Haynsworth was part owner of the vending company and therefore did wrong in sitting on those cases.

If there had been something dishonest, something unfair, going on, if there had been a situation where the judge's position on the bench was being used to promote business for a company of which he was part owner, certainly his competitors would have known about it.

Mr. President, the competitiors of the Carolina Vend-A-Matic Co., or one of the principal ones, the leading competitors, was Alex Kiriakides, Jr., of the Atlas Vending Co. of the same city.

This competitor has written a letter to the Senate Judiciary Committee stating his concern over what he calls "the slanders which are being circulated in the press about Judge Haynsworth and Carolina Vend-A-Matic."

Kiriakides makes these important points:

First. The food vending business in South Carolina and in the United States has had a phenomenal growth, and "the experience of Carolina Vend-A-Matic was not in the least unique to it."

Second. His own business, Atlas Vending, experienced comparable growth, as did others in the area.

Third. He competed with Carolina Vend-A-Matic for locations in textile plants and other industrial plants, and the practice in the area was to make the awards on the basis of open bidding.

Fourth. The business was not developed on the basis of anyone using anyone's influence on anybody.

Kiriakides said:

> I know that Judge Haynsworth's name was never used in an attempt to influence anybody. As a very active competitor, I knew what was going on in the business, and I would have heard of it if it had been.

Mr. President, when someone who is accused of an impropriety has a leading competitor in the business referred to, and that leading competitor of the concern involved volunteers the statement that there is nothing wrong, that there was not any influence peddling, that there was not any using of Judge Haynsworth's name to enrich anybody, that it happened to be a business that operated on open bidding, the Senate should consider that statement carefully.

I wish to make just one further point: I hope that, as my colleagues read this RECORD, and particularly my colleagues on the Republican side, they will remember that Judge Haynsworth was appointed to the circuit court of appeals by the late Dwight D. Eisenhower. President Dwight Eisenhower's is one of the most revered names in the history of our country. His notions on political questions may not meet with unanimous approval throughout the land, but one thing everyone knew: Dwight Eisenhower would not stand for anything that was wrong, illegal, or dishonest. Search the record throughout his administration. He fearlessly acted every time the facts justified it. In concluding, I wish to leave with the Senate this thought: If there was any doubt about Judge Haynsworth's ethics, or his honesty, Dwight Eisenhower would never have made him a judge of the circuit court.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. CURTIS. I yield.

Mr. DOLE. First of all, I concur with what the Senator has said. He has put his finger on the real question involved in this nomination, that is, whether any group, whatever it may be—business, labor, or agriculture—should have veto power over appointments. That is really what is at stake here.

It was said by Mr. Meany during the hearings that his organization opposed the appointment of Justice Parker in the Hoover days and successfully blocked that appointment, and that they intended to do so again if possible. The Senator has clearly stated what I consider to be the real issue. It is not the philosophy; it is not that he may be antilabor; it is not that he may be anticivil rights. I do not believe he is and am certain the Senator from Nebraska would agree. No one questions the man's honesty; no one questions the man's integrity. As the Senator has just stated, certainly President Eisenhower would not have nominated him back in 1957 had he not been a man of honesty and integrity.

Again I state that the Senator has put his finger on the basic issue: whether or not any special interest group should have veto power over a Presidential nomination.

Mr. CURTIS. I thank the Senator. I might also add that President Richard Nixon would never send the name of a dishonest or unethical man to the Senate for confirmation.

Mr. BOGGS. Mr. President, on the confirmation of Judge Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States, after full and careful consideration and evaluation of the record, pro and con, I have reached the conclusion that I will support the nomination.

A review of the record confirms my opinion that Judge Haynsworth is a man of great integrity and of imminent judicial qualifications. His 12 years as a judge on the U.S. Court of Appeals for the Fourth Circuit offers ample evidence of his sound judicial temperament.

The opponents to Judge Haynsworth come from two sources: Those who differ with his judicial philosophy and those who question his ethical sensitivity.

The first point I do not believe is a valid basis for a decision. In 9 years I have voted on the confirmation of five nominees to the U.S. Supreme Court, most of them representing the liberal side of our political spectrum. Never in any of those cases did I base my opinion on the judicial philosophy of the nominee. I do not intend to do so now.

I have always rested my decision on the basis of character, qualifications, and experience.

During the past 2 months Judge Haynsworth's ethical conduct has been scrutinized more closely than that of any other nominee in the history of the Supreme Court, to my knowledge. The questions involving his ethical conduct have been reviewed twice by the American Bar Association, then by the Senate Committee on the Judiciary, and by many Senators working individually. Volumes have been written and spoken about Judge Haynsworth's conduct.

I do not believe his opponents have built a case substantiating the charge of ethical insensitivity.

I put great store in the endorsement of the American Bar Association, which offered its recommendation of Judge Haynsworth, then, upon request, reviewed its study and came back with the same recommendation. The American Bar Association is the custodian of the reputation of the legal profession. Its code of ethics is the rule by which attorneys must practice and judges must perform above and beyond the requirements of the law.

I would like to quote from Judge Lawrence E. Walsh, chairman of the American Bar Association's Committee on the Federal Judiciary. He said:

> 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 and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is, beyond any reservation, a man of impeccable integrity.

I would like to point out that former Supreme Court Associate Justice Charles E. Whittaker, for whom everyone, to my knowledge, has the highest esteem, studied the record closely. He said that his thorough review of the hearings convinced him that Judge Haynsworth was guilty of no improper or unethical conduct.

In summary, after 2 solid months of consideration, Judge Haynsworth still carries the endorsement of the American Bar Association, the Committee on the Judiciary, Justice Whittaker, and of many other prominent legal experts. These endorsements confirm my opinion when, after my study and evaluation of the record, I decided to support the nomination of Judge Clement F. Haynsworth, Jr., to the U.S. Supreme Court.

Mr. GOLDWATER. Mr. President, in considering the nomination of Judge Clement F. Haynsworth, Jr., to the Supreme Court, the Senate of the United States is called upon to exercise one of its most important responsibilities. Needless to say, this nomination by President Nixon has perhaps been subjected to the closest scrutiny ever conducted by this body into matters of judicial ethics. The debate over Judge Haynsworth's confirmation in which we are now engaged constitutes the concluding chapter of that scrutiny.

Our colleagues on the Judiciary Committee have already examined, in the most microscopic detail, Judge Haynsworth's sensitivity to ethical questions. The junior Senator from Indiana (Mr. BAYH) has provided us with a bill of particulars. The ranking Republican member of the Judiciary Committee (Mr. HRUSKA) and the distinguished junior Senator from Kentucky (Mr. COOK) have made several outstanding speeches which have been an invaluable aid to all Senators in evaluating the charges against Judge Haynsworth. The Senators I have mentioned and all other members of the Judiciary Committee should, I believe, be congratulated for their diligent work in providing the Senate with as detailed a record as possible so that we could properly evaluate the qualifications of the nominee.

Mr. President, it was my intention originally to leave this debate entirely in the hands of the Judiciary Committee and other Members of the Senate who have been trained as lawyers. However, the determined efforts to influence this matter through a process which might be described as "trial by news media" have convinced me that my own experience with the subject of "appearances" in the public media might prove helpful to some Members of this body who do not understand thoroughly the workings of all facets of news and public information.

The President of the United States in his staunch defense of Judge Haynsworth has himself drawn attention to one of the most dangerous aspects of the situation we find confronting us today. Mr. Nixon drew attention to an editorial in the Washington Post which was quite candid in saying that the charges against Mr. Haynsworth on the ethical side were not warranted, or at least were not with the foundation that should be, but that because a doubt had been raised, the judges' name should be withdrawn. This involves us quite directly in the whole concept of what is becoming known today as "the appearance of impropriety." There are those among the critics of Judge Haynsworth who insist that, like Caesar's wife, he should be above any hint of suspicion and that if charges against him give the appearance of impropriety, they are sufficient to disqualify him for the post to which he has been nominated.

As the President quite aptly pointed out, the application of this concept would mean that anybody who wants to make a charge can thereby create the appearance of impropriety, raise a doubt and cause the withdrawal of a Presidential nominee.

Mr. President, here I would like to ask the Senate's indulgence while I delve for a few moments into a personal experience of mine with the whole erroneous, misleading concept of appearance created by the press, radio, and television of this country in the handling of ethical allegations. I am here to state flatly and categorically that appearances are very often misleading and in a political contest of some heat, just as in a confirmation debate which arouses partisan passions, appearances are much more likely to be downright false.

I doubt if it is necessary to remind this Senate that in 1964 I was pictured by my critics in the public media of this Nation as a man totally ruthless and almost completely devoid of any humanitarian feelings. In a few short months of campaigning, I became—judging from the appearances of me which sprung up in the public print and on television—a candidate who was determined to abolish the American social security system and start World War III by the indiscriminate use of nuclear weapons. Once the charge was made, the appearance followed immediately, and try as I would to point to the many times I had voted for the enlargement and extension of social security, as many times as I tried to explain that no President, no matter how powerful, could abolish the social security system, my efforts were unavailing. By the same token, I was unable to erase the appearance of nuclear irresponsibility by any of my explanations of what I felt was required to keep this Nation strong and to honor her commitments. Never did I urge the indiscriminate use of nuclear weapons, nor did I ever suggest that they be placed in the hands of junior officers in the U.S. military. But I was never successful in substituting this for the appearance that had been created.

Because of this, Mr. President, I think I know what I am talking about when I speak of the danger of leaning on the whole idea of the appearance of impropriety. It can become dangerously close to the abhorrent practice which all Americans deplore—the practice of character assassination.

As close as I am to this whole debate, I found the charges being leveled in the newspapers and on the air coming so fast and furious that I had to deliberately sit down and review every word of testimony, every word of allegation, and every word in defense of Judge Haynsworth which I could get my hands upon. This was necessary for me, as a U.S. Senator, to keep the record straight in my own mind. And if this is true, one can imagine what the impression is with the casual reader of American newspapers and the casual listener of our broadcasts and the viewer of televised news reports.

Judge Haynsworth is accused of something called conflict of interest. Let me make it absolutely clear that there is not now, nor has there ever been, any implication at all that Judge Haynsworth's conduct could have—by the furthest stretch of the imagination—violated a criminal statute. On the contrary, the attack has been limited to the charge that he failed to disqualify himself from several cases in which he might have stood to make a tiny financial gain. The most that can be said is that it is conceivable that his decision in a few cases might have increased his stock value by an infinitesimal amount. For example, it has been estimated that if one construes the facts of the so-called Grace Lines case as strongly as possible against Judge Haynsworth, it is conceivable that his decision in the case might have increased the value of his stock by a value of 48 cents.

It should be pointed out that both the Federal disqualification statute and the Canons of Judicial Ethics attempt to provide a judge with some guide to the types of cases in which he could disqualify himself so as to avoid charges of the appearance of impropriety. And it should not be forgotten that at least three courts of appeal have held that a judge is as much under a duty to sit where he is not disqualified as he is under a duty to disqualify himself where required to do so. In other words, it should be thoroughly understood that these rulings make it impossible for a judge to "bend over backwards" but must make a careful judgment on the facts of each case.

I submit that the atmosphere surrounding this case is such that almost any kind of stock ownership on the part of a judicial nominee becomes almost prima facie evidence of impropriety. This, undoubtedly, is the result of the disclosures which led to the resignation some months ago of Justice Abe Fortas after his dealings with a convicted stock manipulator were revealed. Judge Haynsworth is suffering from the historical fact that his appointment occurred shortly after the Fortas revelation. However, there is no tangible similarity between these two cases, and I shall go into that in more detail later on in my remarks.

As has been pointed out in numerous newspaper editorials, men appointed to the Federal judiciary very often are men of substance—highly successful lawyers, for examples—and as such have assets to look after. If they are totally to escape any appearance of conflict problems, they would have to limit their assets to cash and Government bonds, and anyone acquainted with today's security situation will have to admit that this kind of stewardship of assets which a man hopes to pass along to the inheritors of his estate is a highly questionable investment program. In this connection, too, there is something to be said for a judge's confidence in the future of the American business community and the free enterprise system.

But, be that as it may, under the principles applied by Judge Haynsworth's critics, a man who held stock in any corporation would have to be intimately acquainted with all of its affairs, since, in the critics views, it would be a conflict if he sat on any case involving one of the corporation's customers. Imagine what this would mean if the judge happened to hold stock in one of the Nation's giant conglomerates. He would be hard put to acquaint himself with the nature of the multiple activities of such a corporate entity, much less examine the nature of the businesses conducted by its customers. And if you really want to carry this to its dizziest, impractical heights, just imagine the burden this would place on a judge with a sizable stock portfolio made up almost entirely of conglomerate issues. We are led to wonder what would happen to a judge's interest if he held stock in a mutual fund which is charged with conducting all kinds of investments on the stockholder's behalf, but not necessarily with his permission.

Mr. President, I believe that this alleged conflict of interest concept can be carried much too far and to such ridiculous lengths that we will soon be reaching a point where we exclude from public service—executive, judicial, or legislative—all men whose accomplishments and capabilities have brought them heavy financial reward.

Now, Mr. President, I should like to point out several of the points which differentiate in my mind the charges which led to the resignation of Justice Fortas and the attack presently being made on Judge Haynsworth.

Last spring, an account of certain dealings between Justice Fortas and Louis Wolfson was made public. The story indicated that Justice Fortas, while serving on the Supreme Court of the United States, had received a payment from the Wolfson family foundation. At about the same time, Wolfson had been investigated by the Securities and Exchange Commission and indicted by a Federal grand jury on multiple felony counts. Successive statements by Justice Fortas indicated that the $20,000 actually paid to him had been for work he was expected to do during the summer recess of the Court in connection with charitable projects of the Wolfson Foundation, and that the agreement had been canceled and the initial payment returned when it became apparent to Justice Fortas that he would not be able to do the contemplated work. However, it was further learned that there was an agreement between Justice Fortas and the Wolfson Foundation which called for payments of $20,000 every year to Justice Fortas as long as he lived and after his death for life payments to Mrs. Fortas as long as she lived.

When these facts were made public, a demand arose for the Justice, in effect, to either explain or resign. Faced with this alternative, Justice Fortas chose to vacate his seat, an action which resulted from his own decision and not from any formal action or decision by Congress. From this it can easily be seen that there is a vast difference between the charges which caused Fortas' resignation and the allegations of tiny conflict of interest against Judge Haynsworth.

If you give Judge Haynsworth all the worst of it, you have to admit that these conflict of interest cases—if they benefited Mr. Haynsworth at all—benefited him very indirectly and very infinitesimally. On the other hand, Justice Fortas had contracted to receive $20,000 for every year for the rest of his and his wife's lives and had actually accepted the first payment prior to retiring. But the biggest and most important difference between these affairs stems from the fact that Justice Fortas chose to resign rather than explain, while Judge Haynsworth has testified freely and fully before the Judiciary Committee and submitted to cross-examination by all of its members on all of his affairs. He also furnished voluminous personal records of a kind never before asked from any nominee for high office. Whereas Justice Fortas decided against disclosing all the facts, Judge Haynsworth was more than willing to reveal everything.

Mr. President, it is doubtful whether the financial affairs of any nominee for any judicial position have ever been subjected to more microscopic scrutiny in all the long history of this Republic. Throughout it all, Judge Haynsworth has conducted himself in exemplary fashion and cooperated with every phase of what can only be described as an unprecedented and uncalled for investigation.

For all of these reasons, I find absolutely no merit in the suggestion that Judge Haynsworth acted improperly or in a fashion not in the best keeping with the Federal judiciary. Some small examples of conflict of interest may accidently have crept into his affairs, but I would remind this Senate that the important consideration is intent. Obviously, there was no intent on Judge Haynsworth's part to enhance his financial condition at the expense of his judicial integrity.

From my examination of the record, I believe he is an honorable man and he is a fair man and he is eminently qualified to serve this Nation on the highest Court in the land. I congratulate President Nixon on his selection, and I applaud his steadfastness in supporting the nominee. For all these reasons, I shall be happy to add my voice to those in this Chamber who will join in confirming the nomination of the newest member of the U.S. Supreme Court.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. GOLDWATER. I yield.

Mr. DOLE. I have listened with interest to the statement of the Senator from Arizona. I believe he pointed out early in his statement how appearances of impropriety or appearances of being on the wrong side of an issue can be created. Certainly, the Senator has had experience with this, as he has indicated. The Senator has known from personal experience what certain people in the news media can do, whether it be with respect to Judge Haynsworth, the Senator from Arizona, or anyone else; and I do not make blanket accusations with reference to all of the media. However, many times some are so busy reporting what they believe should be the outcome that they fail to report both sides of the news.

The American people, by and large, and some Senators, read the headlines—there were the incidents to which the Senator referred, and the house transaction which the Senator from Nebraska has discussed—and that Judge Haynsworth may have violated a criminal statute, and these charges raise serious doubts.

Now, some of the media feel, as an afterthought, that they should tell the other side of the story. But maybe it is too late; perhaps the man and his future have been destroyed. I hope that did not happen.

I believe the Senator from Arizona, having had firsthand experience, has set the record straight.

Mr. GOLDWATER. I thank the Senator.

I might point out that all of the judgment made by people around the country on Judge Haynsworth, prior to the publication of this book of testimony, was made because of things they had read in the press, seen on television, or heard on radio.

I listened to the distinguished Senator from South Carolina (Mr. HOLLINGS) yesterday, as he very meticulously and in great detail read chapter and verse of testimony supporting the judge that I have never seen on television, read in newspapers, or heard on the radio. And I might say I did not see it in this morning's Washington Post, either. I might say it was the most brilliant speech I have heard on the floor of the Senate since I have been in the Senate; and yet the Washington Post, in its useful, ignoring way, tucked it away.

Mr. DOLE. It was on page A8.

Mr. GOLDWATER. I usually read only the funny papers in that paper.

I had letters from many lawyers in my State urging me to vote against Judge Haynsworth. That was weeks ago. They are lawyers who would consider me as being to the left. Most of them have written since and said that they had changed their minds after reading the RECORD.

I think it is very proper that we call attention to the way this case was handled earlier. I am not critical of any Senators in this body. I am sure the distinguished Senator from Indiana did not ask the press to handle it in this way. This is the way the press is taking out after people with whom they disagree. They destroyed President Johnson, and they are trying to destroy President Nixon. They will destroy anyone in public life with whom they do not agree.

This is not relevant here, but that is why I applaud the Vice President's statement so strongly. I hope he intends to keep it up, because I intend to keep it up.

I was glad to relate the situation I went through. I am not being "sour grapes" about it. It is history. But I do not want to see it happen to any man.

Mr. DOLE. Mr. President, will the Senator yield further?

The PRESIDING OFFICER (Mr. CANNON in the chair). Does the Senator yield?

Mr. GOLDWATER. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I have taken great encouragement from a statement I received, from former Associate Justice Charles Whittaker. As the Senator knows, he was confirmed in 1957 and he served with great distinction for about 5 years as Associate Justice. He had read the record.

I have heard from lawyers who said, "If the news accounts are correct, you should not vote for Judge Haynsworth's confirmation." They enclosed clippings which were not correct, they were biased.

If one reads the entire record, and this is the point I made yesterday and the day before, and it is the point I was making in reaching my decision, if one relies on all statements by Senators for or against, all witnesses for or against, one can arrive at different conclusions. But if one reads the record with the thought in mind that the President has the right to nominate, and ours is the right to advise and consent, and if one reads the record hoping he can find a way to vote for confirmation, not improperly, but looking at the record in that light, most will agree Judge Haynsworth is a man of honesty, ability, and integrity, and should be confirmed.

This is the conclusion of former Associate Justice Whittaker after reading the record, not the headlines.

Mr. GOLDWATER. I thank the Senator.

Mr. STENNIS. Mr. President, I wish to commend the Senator from Arizona for his timely remarks on this matter.

To give or withhold consent to the nomination of a Supreme Court Justice is one of the most solemn, delicate, sensitive, and important functions of the Senate. Not only is this one of the highest offices in the land, but, subject to good behavior, a Judge of the Supreme Court may serve for life. For this and other reasons the issue now before us is of particular importance.

Elective officers must submit their records, good or bad, to their constituencies every 2, 4, 6 years, and they can then be turned out of office by the people for any reason. However, a Supreme Court Justice can, and usually does, have a lasting impact since he participates in the shaping of the law over a period of many years without being accountable to any authority except his learning, judicial philosophy, integrity, and judgment. The decisions in which he participates may affect human conduct, rights, and relations for generations.

In the last few decades the importance of these positions has greatly increased. Whether a man is conservative, liberal, or middle of the road, whatever he may be, we must all agree and admit that the Supreme Court has become, in a major way, sort of a superlegislative body. I would not suggest that the justices acted in bad faith in this. If that was the case we would have to go into it at great length, but it is a fact of life. We are passing on a position now that, by acquiescence and custom, carries the equivalent of vast legislative power.

I am not happy about this situation, but if they are going to exercise legislative functions, it is all the more reason why we should have justices of different ideologies and philosophies. I am satisfied that Judge Haynsworth measures up in every respect and that he has the experience, learning, integrity, and political philosophy, and other attributes which will enable him to serve on the Supreme Court with distinction.

Therefore, I believe we should give our consent to the confirmation, and I shall do so.

A wide variety of charges have been hurled against Judge Haynsworth questioning his fitness to serve and his sense of ethics. I do not challenge any of my colleagues who raise these questions and question his fitness to serve; but I do severely challenge their conclusions. I challenge the logic of their reasoning. However, it is easy to understand that the gravity of these charges would confuse and concern segments of the population as well as some Members of the Senate. Nevertheless, upon analysis, almost all of the allegations are found to be unfounded and, in my judgment, none of them disqualifies him.

I shall not discuss the charges and the rebuttals thereto in any detail. This has already been done by those who have intimate familiarity with the facts.

However, I would like to say I have been furnished with a detailed memorandum listing the charges and the replies thereto. I have also discussed the matter with Senators who have the knowledge of the facts.

From this I have concluded that those who oppose Judge Haynsworth have failed to meet the burden of proving that the Senate should refuse to confirm him. In supporting this nomination now I am in good company. Aside from the fact he was selected by the President—and I shall refer to that later—the six other sitting judges of the Fourth Circuit on October 10, 1969, stated their "complete and unshaken confidence" in the integrity and the ability of Judge Haynsworth.

Just a few days ago former Supreme Court Justice Charles E. Whittaker said "there is no support in the record for the charge of unethical conduct that are being widely hurled at Judge Haynsworth." That is a sweeping statement. Judge Whittaker added that the Haynsworth opponents must be "doing these things for other reasons—perhaps because they do not like his nonlegislative and conservative judicial philosophy."

Mr. President, I have had the privilege of knowing Justice Whittaker, not as an intimate friend, but I knew him personally when he was a member of the Supreme Court. I have had special reason to hold conferences with him, some long ones by telephone and others by memorandums, in connection with some special duties I had as a Senator. He has one of the finest legal minds backed by a fine character that one could possibly find.

Those are sweeping statements by Justice Whittaker, that he finds no support in the record that in any way shows unethical or questionable conduct on the part of Judge Haynsworth. They are the most powerful statements, to me, from one of the most complete witnesses on the subject that could possibly be furnished to the Senate.

Mr. BAYH. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield, briefly if I may, because I have other duties.

Mr. BAYH. The Senator would perhaps prefer that I did not interrupt him now, but I want to make one observation, and I appreciate his yielding to me for that purpose. I appreciate Justice Whittaker's statement, too. I have not had the good fortune to meet him. I took issue the other day with our distinguished friend from Kansas (Mr. DOLE) when he introduced this statement into the RECORD. It was implied that those of us who oppose the nominee because of his ethical conduct were shielding other motives. I thought that the statement of the Senator from Mississippi just now was a rather sweeping statement, also, and not in the best interests of our discussion.

The distinguished Senator from Delaware, who spoke on the floor of the Senate a few moments ago, made his determination on the ethical question. I would hate to see that we were not considered sincere in our conclusions.

Mr. STENNIS. I do not think there is any basis whatsoever for the Senator's observation if he imputes a bad motive to Justice Whittaker. I do not think there is any purpose on his part to——

Mr. BAYH. Let me make myself clear——

Mr. STENNIS. I do not believe there was any desire in the mind of Justice Whittaker to impute bad motives to anyone.

Mr. BAYH. If I may interrupt there——

Mr. STENNIS. Of course.

Mr. BAYH. I believe that the RECORD will show that I did not impugn his motives, but the Senator from Mississippi is suggesting that those who are opposed to Judge Haynsworth on grounds of ethics are hiding their real motives.

Mr. STENNIS. I think the words speak for themselves. I do not think Judge Whittaker impugned the Senator's motives. I certainly am not. In making a strong statement here I say that one reason why I am for him is that I like his judicial philosophy. That is why. I do not think he is leaning toward the legislative-judicial approach as much as some.

I said at the beginning that we have different types on the Court, and if we have those who lean one way, we had better have some leaning the other way in order to give balance.

I am not giving special praise to anyone but those who know Justice Whittaker know the caliber and the character of his fine mind and know that his testimony here is of tremendous value, and I commend to any Senator any subject that he deliberately speaks on, particularly in this field. Of course, we do not have to accept his views.

I understand that 16 out of the 19 living former presidents of the American Bar Association have likewise expressed their support of and confidence in Judge Haynsworth. None of the remaining three have opposed him.

The American Bar Association committee on the Federal judiciary has twice endorsed Judge Haynsworth—once after examination of the charges against him. Judge Walsh, who headed and chaired this committee, a former Deputy Attorney General of the United States, a former Federal judge, and certainly one of the distinguished and eminent members of the American bar today, testified as follows:

> 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 the differences with Judge Haynsworth's ideological point of view, preferring someone less conservative. None of these gentlemen, however, expressed any doubt 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.

I direct your attention, Mr. President, particularly to Judge Walsh's statement that a few persons "regretted the appointment because of differences with Judge Haynsworth's ideological point of view." I think that this is a very relevant matter which has a very significant bearing on the issue we are considering.

I certainly do not impugn the motives of any Senator who opposes Judge Haynsworth. But I do believe that some, possibly many, of the opponents are subconsciously influenced by widely disparate views in personal, judicial, political, and philosophical ideologies. With these, perhaps without any conscious realization of the fact, the barrage of charges against Judge Haynsworth become an excuse and not a real or valid reason for opposition.

In short, I am suggesting that much of the opposition stems from the widespread, but fallacious, view that Judge Haynsworth is overly conservative, intensely antilabor, strongly against civil liberties, and sectional in his personal, political, and judicial approach, outlook and philosophy. Having taken a position of opposition to Judge Haynsworth on a political and philosophical basis, it was only natural to look around for a firmer basis for opposition and for reasons to buttress the argument that he should not be confirmed.

Let us take a brief look at how quickly these charges of conservatism, antilabor and anticivil liberties bias and sectionalism got started and how quickly they grew.

On August 18, 1969, President Nixon announced his selection of Judge Haynsworth. The next day, August 19, an editorial appeared in the liberal New York Times saying that the choice of Judge Haynsworth was "disappointing" and that the President "has sought out an obscure judge with little reputation for the kind of depth, social sensitivity, and philosophic insight that ought to be considered the prime qualifications for a Justice of the Nation's highest court." It said that Judge Haynsworth's record "has surely been marked by an extremely cautious reluctance to interpret the Constitution in the light of changing conditions."

On the same day, August 19, an editorial in the equally liberal Washington Post referred to Judge Haynsworth as a "not particularly distinguished Federal judge." It said further:

> We cannot avoid the feeling that he (President Nixon) chose a symbol more than a man. Judge Haynsworth comes out of the Southern aristocracy, and, whether fairly or unfairly, is widely believed to be more conservative than the President on the important legal issues of his time. His nomination will be read, no doubt, as a victory by the "law and order" boys and by those who would go slow on desegregation and civil rights.

A story in the New York Times on the same day, August 19, under the byline of Warren Weaver, Jr., stated in its opening paragraph that Judge Haynsworth's nomination "aroused immediate opposition today among civil rights, labor, and other liberal groups." It pointed out that statements of opposition "came from representatives of the Urban League, Americans for Democratic Action, and the Leadership Conference on Civil Rights, a confederation of more than 100 groups."

A story in the Washington Post on August 19 conceded that Judge Haynsworth had never defied the Supreme Court but stated that he was "faulted by civil rights lawyers chiefly for failing to move vigorously in the face of obstructionism and massive resistance by southern officials."

Opposition to Judge Haynsworth on doctrinaire and ideological grounds continued to mount, particularly among the civil rights groups, labor organizations, other liberal groups, and liberal columnists. Finally, on August 26, 1969, in a Washington Post column by Frank Mankiewicz and Tom Braden, who have been among the most persistent critics of Judge Haynsworth—and they have a right to criticize—it was charged that Judge Haynsworth "was in clear violation of the canon of ethics for 7 years on the bench." With this the opponents were in full cry.

I have outlined the foregoing comments for the purpose of showing how the opposition to Judge Haynsworth commenced with allegations that he was conservative, antilabor and anticivil rights and then progressed to the hue and cry that he was as guilty of improprieties and unethical conduct of sufficient gravity to disqualify him. Without questioning anyone's sincerity, I think the latter charges are excuses rather than valid reasons for opposition.

Let me say that I do not believe that all judges should not be cast in the same mold. Basically, in my judgment, the rap against Judge Haynsworth is that he exercises judicial restraint rather than being a judicial activist in the tradition of some justices. But if the opposition to Judge Haynsworth is on this basis, then this should be made clear so that the American people will fully understand the precise issue involved. It should not be clouded by flimsy charges against Judge Haynsworth's ethics and integrity.

I commend Senators who have come on the floor and given as the reason for their opposition to this nominee the ground that they did not like his judicial philosophy and they did not like his approach to interpretation of the Constitution of the United States. They have at least said what was in the back of their minds, and brought it out here, for whatever it was worth.

I say frankly that I am for the nomination, for one reason, because I do like his judicial approach. I do like his philosophy. We know this nine-man Court—and I make no attack on the Court—has become, in some ways, a superlegislative body. We need different types of philosophy on that Court just as we have different philosophies in this body—not to the degree that we have it here, but—and I speak with all deference to every present member—there are some on the bench who make it necessary to have someone on there to offset what seem to me to be extremely liberal views and what seem to me to be personal and individual interpretations of the Constitution of the United States.

As I see it, it just boils down to this: There is nothing wrong, there is nothing unethical, in what Judge Haynsworth has done that disqualifies him; it is a question of whether or not we are going to take him or reject him based on the philosophy he has, which is reflected in decisions which have been honest and fully developed. He has written 300 decisions himself, and has taken part in more than 1,000 decisions in cases that were important enough to get to the circuit court of appeals.

This is too important a matter to be decided merely on charges about being conservative or liberal, or prolabor or antilabor. Surely, it should not be determined solely on that basis.

We have to take a broader view. I think the great number of cases involving labor he took part in have been shown in the RECORD, when his decision was in favor of labor, as we use that term. Certainly, in the civil rights cases, no one has proved that he tried to defy the Supreme Court of the United States.

He was not quick to jump forward or move ahead. He was not a crusader in that subject, or in any other field so far as that matters.

I think this man has shown a tremendous judicial temperament and willingness to work and labor—and it is work of the hardest kind—and has applied himself rigidly in the court that is next to the Supreme Court of the United States.

We should not let the recent sound and fury that have been raised in this matter obscure the fact that much of the opposition has poured forth through the columns of the press and elsewhere.

Certainly, the original opposition, was motivated far more by disagreement with some of his decisions and his personal and political philosophy than by any thought of a conflict of interest. This is a matter which should be gotten back into clear and sharp focus.

I have been unable to find any substantial support for the charges that Judge Haynsworth has been guilty of unethical conduct or that he has given the appearance of impropriety. To the contrary, those who know him best express "unshaken confidence" in his ability, honesty and integrity.

I do not like to rake up the past, but I must say that I think one of the most significant facts in connection with Judge Haynsworth's nomination is that it came only 3 months after the resignation of Judge Fortas from the Supreme Court. Because of this, it was both inevitable and proper that Judge Haynsworth and his record would be examined very, very closely in an effort to determine whether he should be confirmed. There can be no quarrel with this as long as the examination and the inquiry is confined to matters which genuinely and legitimately relate to Judge Haynsworth's qualifications as a judge.

However, let us avoid the mistake of inferring that there is a connection, no matter how slight, between the Fortas and Haynsworth cases. Certainly, there should be no inference, because accusations were made against Justice Fortas and he resigned that, since accusations have also been made against Judge Haynsworth, he should not be confirmed. This would be a complete non sequitur. Mere accusations alone do not establish Judge Haynsworth's lack of qualifications. He must be judged by the facts which are either proven or can be proved to the satisfaction of this body.

In this connection, I think that it is important to realize that, as distinguished from the Fortas case, Judge Haynsworth had made the fullest sort of disclosure of the facts and records involving his personal, public, and judicial activities and the facts and records pertaining to his financial and private business transactions. I have been advised by the Committee on Judiciary that he has voluntarily made available to them his income tax returns, list of holdings, and all other financial data, including those connected with him personally, his family and with the businesses with which he had been associated. I was told that the extent of the disclosure which he has made and completeness of the examination of his financial records are unprecedented in the case of any judicial nominee.

Judge Haynsworth's actions in furnishing voluminous records has permitted a careful and factual examination of the charges made against him on their merits, and I think they have established beyond question that Judge Haynsworth was not guilty of any act of impropriety which disqualifies him from serving on the highest court of the land.

Judge Haynsworth is not a personal friend of mine. I have never met him. I do know others, however, who strongly vouch for his ability, honesty, and integrity. This fact, the records in this matter and the decisions and opinions by Judge Haynsworth as a judge of the court of appeals for the fourth circuit have convinced me that he is fully qualified for the office for which he has been nominated and will discharge his duties with distinction if he is confirmed, as I veritably believe he will be.

As President Nixon said in his news conference on October 20:

> I have examined the charges. I find that Judge Haynsworth is an honest man. I find that he has been, in my opinion as a lawyer, a lawyer's lawyer and a judge's judge. I think he would be a great credit to the Supreme Court and I am going to stand by him until he is confirmed. I trust he will be.

That quotation, Mr. President, as I have said, was from a statement by the President of the United States. I wish to make just two additional major points about this matter.

As I have stated, I do not know Judge Haynsworth, and I have never mentioned the name of anyone to President Nixon for membership on the Supreme Court. I shall mention a conversation I had with the President only because he gave out a public statement a few days later that covered the points I shall mention. I did talk to President Nixon, soon after he became President, about appointments to the Supreme Court; but no individual was discussed, and I had no man in mind. I think it is the duty of every Senator to discuss his ideas and philosophy on this subject with every incoming President. That is what I shall continue to do.

I was tremendously impressed with the President's saying that he considered appointments to that Court as purely his personal responsibility. As I say, he made that statement a few days later, or I would not be quoting him. They are purely his personal responsibility. We know he has to take the advice of someone on many matters to which he cannot give his personal attention, but he outlined, a few days later, that he considered nominations his responsibility. That was in connection with another appointment, not this one, but it was his position that he was solely responsible; that he made his own investigations and reached his own conclusions as President.

That is reassuring. It is to me, and I believe it is to the American people. I am not close to the President, but I believe this: If he had sent a name to the Senate and found out later that he had made a mistake, he has manhood enough to say so, and he would have. Instead of that, he looked into this matter, under the challenges that have been outlined here, and he came out, under his responsibility as President, and said to the Senate and the American people, "I have looked into these charges, and I find nothing in them that disqualifies this man." He said, "I am standing by my guns." I think he is doing a service to the Nation when he does that; and when he makes another appointment, I believe he will do the same thing and have the same attitude about it.

Even if Judge Haynsworth's personal, political, and judicial philosophy does lean to the conservative side, that recommends him to me. As has been said by others, our Supreme Court needs balance, and the Court needs a man who is not an extreme liberal but respects the Constitution and is conservative in his approach to it. Perhaps he will restore the judicial restraint which has often been conspicuously lacking in recent years.

I believe that Judge Haynsworth's nomination should and will be confirmed and urge upon my fellow Senators that they seriously consider this issue and vote for its confirmation.

I wish to refer now to a speech that I heard Monday by the distinguished Senator from West Virginia (Mr. BYRD). I said then that I thought it was a landmark in the history of the Senate on these matters, and I should like to adopt that speech, by reference, as a part of my thought. The way the Senator went into many points was illuminating, logical, sound, and solid in conclusions. The way he discussed the question of "substantial interest," as used in the statute, and the words "personal interest," as used in the code of ethics, and then applied them to the facts in this case, was an outstanding contribution to this debate and to all other debates on this subject.

I shall say just one further word to illustrate the transaction concerning the Brunswick stock. Much has been made of the fact that while the case involving Brunswick Corp was pending before the circuit court of appeals, Judge Haynsworth bought a thousand shares of stock in that company. It has been shown during the debate that the amount he bought was an infinitesimal part of the total outstanding stock; that the value of it was not high, relatively, when compared with the amount involved in the litigation. The outcome of the litigation could have had only a minimal financial impact on Judge Haynsworth.

What happened was that a case involving Brunswick was pending before the fourth circuit court of appeals. A simple legal question was involved. It was a question of conflict as to which lien was superior; the seller's lien on the bowling alley or the landlord's lien on the land where the bowling alley operated. It was the kind of case that lawyers who specialize in that kind of law have often tried.

The court heard the argument and decided the case that afternoon or the next morning; I have forgotten which. The assignment to write the opinion was given to another judge, not Judge Haynsworth. The court then went on to its other business. The docket was very busy at times. The conclusion the court reached was not written as an opinion until 3 or 4 months later. In that interim, a thousand shares of Brunswick Corp stock had been bought by the broker for Judge Haynsworth. The judge said that he had overlooked it.

I come now to the part that is a little personal. We do not like to use ourselves as illustrations. However, I had the responsibility, for almost 10 years, of being a trial judge in a court of unlimited jurisdiction, involving civil and criminal cases. Those who practice law know that that involves a world of cases, some of them highly important. The amounts involved are unlimited, and the criminal docket carries homicide cases and every other kind of criminal offense.

I have held 3 or 4 weeks of court and have been almost overwhelmed by the great number of cases that involved the signing of decrees, including those which would take a man's house away from him, or would sentence him to the penitentiary or sometimes sentence him to the loss of his life. That is not pleasant. I have often taken home 15 motions for new trials or other motions that I had taken under advisement before rendering decisions.

What does a judge do? He passes on the easy ones first and forgets them. He works hard and worries over and over again about the hard cases.

I do not have any doubt that that was what happened in Judge Haynsworth's case. The Brunswick case was easy; it involved a conflict of liens. The court decided that it was an easy case. Another judge wrote the opinion, and the case passed out of Judge Haynsworth's mind. Just as he said, he overlooked it.

The case later came up on a motion for reconsideration or a new trial, or whatever terms might apply in that circuit. But those hearings are often informal, particularly in simple cases of this kind. So I think that those circumstances have been built on, built on, and built on, and talked about, shown on television, and written up by columnists, until they have been built into a mountain. As a matter of fact, we have here just a mole hill. It is something that might happen to any judge. It does not reflect on his integrity. It does not detract from the man one bit. It merely shows how busy the courts are these days and how much the judges have to do.

I think Judge Haynsworth will be a valuable addition to our court. I have no doubt that he will apply himself there as assiduously and sincerely and effectively as he has always done. He will not be any trail blazer, but he will uphold the Court as he sees it.

I hope and trust that his nomination will be confirmed by the Senate so that he can be put to work soon.

Mr. SPARKMAN. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. SPARKMAN. Mr. President, I was greatly interested in the Senator's entire discussion. However, I was particularly interested in his relation of his own experience and his reference to the so-called Brunswick case.

The thought occurred to me that I do not recall ever having heard any Senator who was opposed to the Haynsworth nomination say that Judge Haynsworth is not an honest man and is not a man of integrity.

Mr. STENNIS. Mr. President, the Senator is correct. All of the testimony and all of the debate is to that effect. The leaders of the opposition in the Senate agree that he is a man of honesty and integrity.

Mr. SPARKMAN. Mr. President, I do not recall that any Senator has said Judge Haynsworth is not an able, conscientious, and sincere judge.

Mr. STENNIS. The Senator is correct.

Mr. SPARKMAN. Are those not the two principal requirements by which to predict whether a man will be successful on the Supreme Court of the United States?

Mr. STENNIS. The Senator is correct. That is the kind of man we are looking for. All Justices cannot all have the same judicial temperament or political philosophy. However, we are looking for a man of honesty and integrity. That is exactly the type of man we are looking for.

The Senator also mentioned ability. It takes great legal ability to be a good Justice of the Supreme Court.

Mr. SPARKMAN. Mr. President, we know that the judges will not always decide cases in the same manner.

Mr. STENNIS. The Senator is correct.

Mr. SPARKMAN. Mr. President, it occurs to me sometimes when people talk to me about voting for or against a nominee that a great many people overlook the fact that we have only one duty to perform and that is to confirm or refuse to confirm. We do not have the power to select or nominate. That power vests in the President of the United States and in him alone.

Mr. STENNIS. Mr. President, the Senator is correct. The President of the United States represents all of the people in performing that duty under the Constitution of the United States.

Mr. SPARKMAN. Mr. President, I agree with the Senator from Mississippi. I think that President Nixon has been absolutely careful and conscientious in approaching this nomination.

Mr. STENNIS. Mr. President, I thank the Senator.

Mr. President, I yield the floor.

Mr. HOLLAND. Mr. President, I have been in heavy conferences between the Senate and the House, four of them in the last few weeks. I have not been able to prepare an address on this pending subject in which I am so vitally interested.

I do not want the debate to close without making the clear and unqualified statement on the floor that I strongly approve the confirmation of Judge Haynsworth to be an Associate Justice of the Supreme Court of the United States; that I have had my office follow very carefully the charges made and have the deep conviction that they have not been sustained; that I have received hundreds if not thousands, of letters from my State, most of which strongly approve his nomination and support the nomination; that I have watched the editorial columns in my State, which I regard as most illustrative of public opinion there and are edited by citizens of the highest training and character; and that, beyond that, I have sought the advice of four Federal judges who have served with Judge Haynsworth during his present service as a judge of the circuit court of appeals of his circuit, and all of them—and they are of varying philosophies—speak of him in the highest terms and say they think it would be a tragedy if he were not confirmed as a member of the U.S. Supreme Court.

I have also sought the advice of certain lawyers who have practiced before his court, one of whom, incidentally, said that the judge had decided against him in the gravest case he had there. All of them speak of Judge Haynsworth in the very highest terms and feel that his nomination should by all means be confirmed.

I have even been approached by various churchmen and educators and businessmen who know Judge Haynsworth well. I do not have that privilege myself. While I have met him from time to time, I do not know him well. Without exception, all of these contacts—and they have been with people whom I trust very greatly—have been contacts favorable to Judge Haynsworth. And not only have they been just favorable, but they have also been strongly insistent upon confirmation of his nomination and strongly insistent upon the idea that he has made a fine record as a judge of the circuit court of appeals in his area.

Mr. President, I have known for a long time that the sound editorial writers in our State are very apt to voice the opinion of our people in a way which very clearly exemplifies what our people are thinking.

Out of a large number of editorials from our State, I have found one that did not favor the nomination. All the others which I have seen—and I have seen a great many—have favored it. I have chosen two editorials in particular because they are written by highly trained men, whom I know personally to be moderate liberals, rather than conservatives, and who, I think speak the attitude of the sound-thinking people in the areas covered by their papers.

One is from the Tampa Tribune, of Tampa, Fla. The title of that editorial is "Victory for Pressure, Defeat for Fairness."

I am going to read most of that editorial. It reads in part:

When the Senate votes this week on the nomination of Judge Clement F. Haynsworth to the Supreme Court, it will come face to face with this issue:

Are organized labor and civil rights groups to hold a veto over Supreme Court appointments?

No matter what may be said in debate, that is the underlying question.

Much has been made of "conflicts of interest" in Judge Haynsworth's service on the Fourth Circuit Court of Appeals.

But the "conflicts" occurring in Judge Haynsworth's various stock holdings are so technical that they constitute an excuse, not a reason, for Senators to vote against him.

Consider the two principal complaints that have been raised against Judge Haynsworth.

That he cast the deciding vote in a 1963 decision permitting a textile firm to close one of its plants, in a labor dispute, although he owned an interest in a vending machine company doing business with the textile firm. Judge Haynsworth's personal stake in the profits from the vending contracts with the textile firm was estimated at $390; his role in the case was cleared by the Justice Department.

That he bought stock in the Brunswick company while a law suit by the company was pending before his court. The facts are that the case, involving foreclosure proceedings against a bowling alley, had been unanimously decided in the company's favor before the stock was purchased, although the decision had not been published. Judge Haynsworth admits the purchase was a mistake—but inasmuch as the benefit to his stock interest from the foreclosure suit amounted to a total of $4.96, he could hardly be suspected of venal intent.

No reasonable person, examining the whole record of Judge Haynsworth's conduct, could reach any conclusion other than that he is an honorable man.

It is pure hypocrisy for Senators who never uttered a word in criticism of Justice Douglas[1] $12,000-a-year handout from a gambling-financed foundation to express concern about Judge Haynsworth's "conflicts."

Some are honest enough to say, as Senator Jacob Javits of New York did last week, that they oppose Haynsworth because of his philosophy.

Javits joins the NAACP and other civil rights groups in interpreting Haynsworth's philosophy as being "relentlessly opposed" to the Supreme Court's integration decisions.

We do not so interpret it. We think Judge Haynsworth's opinions show that he has attempted to apply the principle laid down by the Supreme Court in a manner fair to both races; he has *not* adopted the extreme view that it is the duty of the court to remake the social system rather than simply forbid compulsory segregation.

In the same way, we think Judge Haynsworth has attempted to render balanced judgments in labor-management disputes.

But balance is not what labor bosses or civil rights zealots want in a judge. They want bias—in their favor. They want a judge who proceeds on the theory that unions and minorities enter the courtroom clothed in a presumption of right.

Thus we find, one by one, Senators who are dependent on labor and Negro support lining up against Haynsworth. One of his chief critics, Senator Birch Bayh of Indiana, is said to have received $70,000 in campaign funds from labor unions in his last election.

Mr. President, the other editorial entitled "Haynsworth Showdown Approaches," appeared in the Florida Times-Union of November 18. It reads:

The United States Senate faces a crisis of conscience this week when it comes time to vote on the nomination of Chief Judge Clement F. Haynsworth of the Fourth Circuit Court of Appeals to become a Justice of the Supreme Court of the United States.

Attempts have been made to impugn Haynsworth's honesty. They have failed. His critics once rode a tide of "conflict of interest" charges but the conclusiveness of the rebuttals has driven them back to the lesser, although still serious, charge of "insensitivity to judicial ethics."

Attempts have also been made to equate the Haynsworth case with that of former Justice Abe Fortas who accepted $20,000 as a fee from a private foundation and then, when asked to explain or resign, chose to resign. The two cases cannot be equated.

Haynsworth is perhaps the first Supreme Court nominee in history to lay bare the entire record of his financial transactions. A fifth generation attorney, from a wealthy family, he has numerous stockholdings.

Despite a concerted effort to connect Haynsworth's rulings while a judge with a desire to increase the value of his financial holdings, the attempt has failed.

Even the New York Times—which predictably wants no part of Haynsworth—couldn't find that accusation backed up by the facts. The Times says it opposes the nomination because Haynsworth does not have a distinguished enough background to sit on the Supreme Court.

And the Washington Post said: "It is not that he lacks integrity or honesty or that he has been involved in conflict of interest situations. These issues, it appears, were raised as strawmen by his own friends simply because they can be disproved so readily."

If Sen. Birch Bayh of Indiana can be classed as a friend of Haynsworth, perhaps the Post is correct. Bayh has been the principal author of the conflict innuendoes. However, if he is a friend of Haynsworth, the judge doesn't need any enemies.

Each so-called conflict case explodes like a bubble when explored. We've dealt with several of them here previously but perhaps the prize case trotted out by the liberals should be looked at again.

There are a lot of winks and nudges and caught-you-with-your-hand-in-the - cookie-jar looks when the Brunswick case is mentioned by the school that opposes Haynsworth on the basis of conflicts of interest.

The Circuit Court of Appeals decided the Brunswick versus Long case unanimously on Nov. 10, 1967. Haynsworth bought 1,000 shares of Brunswick stock in December of the same year. The written opinion was not handed down until February 1968.

To sustain the conflict charge, Haynsworth would either have had to have made the ruling anticipating buying of Brunswick stock or have bought Brunswick stock with the knowledge that the ruling, when finally written, would enrich him.

However, even had the entire $90,000 been recovered, it would have amounted to less than one-half cent per share of stock or a grand total of $5 on Haynsworth's 1,000 shares.

The truth of the matter is that all Haynsworth's opponents have done up until now is show him to be a scrupulously honest man. Their probing has perhaps been the most intensive in history.

If they set a precedent of rejecting him on conflict of interest or insensitivity to judicial ethics on the basis of what has so far been dug up, then it is probable that no judge can ever be found to fill the post.

Meanwhile, Bayh did not disqualify himself in the Haynsworth case despite the fact that he received $42,000 last year from the United Auto Workers, part of $68,000 in campaign funds overall from organized labor which is his announced ally in the fight against Haynsworth.

Let the senators vote their honest convictions but let them not attempt to hide behind a conflict of interest smokescreen. They should at least have the integrity to say—as some have—that Haynsworth is too conservative for their tastes, or even that a vote for him would alienate organized voting blocs in their states.

The record of appeals court decisions denying that there was any basis for disqualification in cases where judges had a much more substantial interest than Haynsworth, give a pallid hue to the disqualification argument. In fact, they raise serious doubt that Haynsworth could have legally disqualified himself in any of the cases in question.

The Senate and the nation will have to live with the precedents being set in this case. If they result in the destruction of an honest man through innuendo, then the precedents will indeed be ones that will come back to haunt the Senate for years to come.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. HOLLAND. I am glad to yield.

Mr. BAYH. The Senator has read two editorials referring to campaign contributions to the Senator from Indiana; and both editorials reach the conclusion, or at least the inference that the Senator from Indiana cannot in good conscience oppose the nomination on ethical grounds because of obligations he has to organized labor as a result of contributions.

I just wonder. Does the Senator from Florida associate himself with these inferences and conclusions?

Mr. HOLLAND. Since the Senator puts it that way, the Senator from Florida does think the Senator from Indiana should have disqualified himself and should not have attempted, under his present situation, to have spoken for the interests which are backing him and backing him strongly in this effort.

The Senator from Florida had not proposed to say that unless questioned, but I have never been one of those who run from a question and I must say I have been grievously disappointed in the position taken in this matter by the Senator.

Mr. BAYH. I have great respect for the Senator from Florida, and the fact that my actions would disappoint the Senator is not taken lightly.

Will the Senator yield further?

Mr. HOLLAND. I yield.

Mr. BAYH. Does the Senator feel, after reading the record, that it is impossible for a man in good conscience to disagree with the qualifications of Judge Haynsworth on ethical standards? Does the Senator believe that if a man proposes ethics as his basis for opposition rather than philosophy, labor, or civil rights, that man is being devious?

Mr. HOLLAND. The Senator from Florida does not look into the mind of the Senator from Indiana or the mind of anyone else. The Senator from Florida simply says that when the record in the Senate shows immense financial support obtained by his friend from Indiana from the sources named, and when the Senator from Indiana has fought the battle of these particular people here against the confirmation of the nomination of Judge Haynsworth, he feels the Senator from Indiana has followed a highly unfortunate course, and the Senator from Florida has said so simply because the Senator asked.

Mr. BAYH. I thought the nature of the Senator's association with these editorials should be made clear.

Mr. HOLLAND. Just a moment on that point. The Senator from Florida introduced these editorials as expressive of the high opinion of good people in Florida; and he thought from reading them and other editorials, that they expressed the opinions of most people who have expressed themselves on this subject in writing. The letters of the Senator from Florida indicate the same feeling. He realizes the Senator from Indiana is not elected by the people in Florida. But the Senator from Florida always claims the right and the Senator from Florida always will claim the right to speak in the Senate on what he regards as the opinion of the good people he represents, and he would not expect to make this a personal matter, but an expression of the sound thinking of the fine people in Florida.

The Senator from Indiana brought this on himself when he asked a question which the Senator from Florida cannot answer honestly but in one way.

The Senator from Florida thinks these editorialists expressed a sound view, which is also the view of the Senator from Florida.

Mr. BAYH. I wonder if the Senator from Florida and those who editorialized have looked at all of the campaign contributions and records concerning the Senator from Indiana that are listed according to Federal statute. Or have they looked only at the $68,000 that has been contributed by a number of different groups representing the working men and women of our State?

Mr. HOLLAND. These are working men and women representing organized labor, which made contributions.

Mr. BAYH. Representing working men and women of my State, and I see no other way.

Mr. HOLLAND. The organized labor group made the contribution and——

Mr. BAYH. Yes; they made it from contributions made by members.

Does the Senator realize that my campaign cost between $700,000 and $800,000? The contributions made by the so-called labor bosses represent about one-twelfth of this, whereas the representation of the laboring men and women of my State represents about one-sixth of my constituency. It seems to me that if the Senator is going to suggest I have to be a tool of organized labor, I would have gotten twice that amount.

Mr. HOLLAND. Maybe the Senator should. I do not know what he has done for organized labor. I am simply saying, that to have a man defeated here by statements and efforts and innuendoes of organized labor and civil rights groups would be a great tragedy. When that man has made a fine record in the enforcement of law in this Nation, who is highly respected by his brother lawyers, many of whom I have talked with, and who is highly respected by citizens of this State and his area, it seems to me would be a travesty and a tragedy to have such a man defeated by such an attack.

Mr. BAYH. Mr. President, will the Senator yield further?

Mr. HOLLAND. I yield.

Mr. BAYH. The Senator is entitled to his opinion. I have the greatest respect for it. I think it is possible to have respect for a brother Senator without necessarily agreeing with everything he says.

Mr. HOLLAND. Of course.

Mr. BAYH. I only rise because of the strong inference, if not direct allegation, that my involvement in this matter is because of the antilabor or anticivil rights position of the judge, and that this is directly related to contributions I received from these groups. In my judgment, such an allegation comes very close to the rule of this body which prohibits one Senator from impugning the motives of another Senator.

I suggest I have gone as far as I can, despite allegations of the Senator, to put these matters on a case-by-case basis, to talk only facts in this field of ethics.

For any Senator to cast off these arguments on ethics as specious allegations flies in the face of Senators such as JOHN WILLIAMS, ROBERT GRIFFIN, MARGARET CHASE SMITH, and others, who have expressed agreement with the Haynsworth philosophy on labor and civil rights, but who are concerned about the matter that concerned the Senator from Indiana.

Mr. HOLLAND. I am glad my distinguished friend finds some comfort in the expressions of some of his friends and my friends. All I can say is what I have said already. I think these two editorials speak soundly the views of most Florida people. I can produce many other editorials to the same effect but none to that effect I thought were so well studied, and none I knew to be written by moderate liberals, as are the two editorial writers here, James A. Clendinen, of the Tampa Tribune, and William E. Sweisgood, of the Florida Times-Union in Jacksonville, Fla.

I had not expected to bring any personal matters into this, but I am not going to run away from a question that asks for my personal expression.

Mr. BAYH. I say with envy that the distinguished Senator has been here much longer than I. I have not had a chance to make one-half the contribution to this body and to the country that the distinguished Senator from Florida, who has decided not to run for reelection, has made during his long tenure of services. I do not believe, however, that the Senator from Florida can introduce in the RECORD, reading them as he did, editorials containing the allegations about his colleague from Indiana, without expecting some people to make the reasonable inference that, indeed, the Senator from Indiana did make.

Mr. HOLLAND. The Senator by his questions made it necessary and the Senator from Florida stated how he felt about this matter.

In closing, I am no stranger to judicial ethics. I served for 8 years as judge of a minor court as to jurisdiction in criminal and civil cases, but major jurisdiction in the field of wills, minors, and the like, because it was unlimited in probate matters.

I later received with some pride an offer for an appointment from a Governor of the State of Florida, the offer of an appointment to be a circuit judge, which I declined. I also received an offer from the President of the United States to serve as a district judge of the United States, which I declined. I declined both offers because my years of experience led me to believe I did not want to be a judge of other people's matters, but an advocate. That is what I have tried to do since then and until now.

I must say I think this man Haynsworth, to whom I am not close at all, has been assaulted and attacked in a way which will bring great discredit upon the Senate in the event such attacks are seriously considered and confirmation is denied.

I think he has, by a long course of conduct, extending through his college days, extending through his war days, and extending through his many years of experience on the next to the highest Federal court, the Circuit Court of Appeals, shown such character, sense of honor, and sense of integrity as well as high legal ability that his nomination as a member of the Supreme Court is entitled to confirmation.

I strongly hope that Judge Haynsworth's nomination will be confirmed.

Mr. ALLOTT. Mr. President, will the Senator from Florida yield?

Mr. HOLLAND. I yield.

Mr. ALLOTT. Mr. President, I want to compliment the distinguished Senator from Florida on his remarks and his conclusions. Having served in the Senate with him for 15 years, I shall always be grateful for those 15 years of association. There are few people, if any, whose opinions in such a sensitive and delicate area I value as much as those of the Senator from Florida.

His remarks, coupled with the just-concluded remarks of the Senator from Mississippi (Mr. STENNIS), if I had heard nothing else or read nothing else, would go far toward persuading me of the justness of the position they have taken.

Having served so long with the Senator from Florida and having had 25 years in the practice of law before coming to the Senate, I know of the deep legal knowledge, sense of fairness, and sense of ethics from which the Senator from Florida speaks.

To have him speak in this way on behalf of a man who has never yet had anything proven against him, and when most of Judge Haynsworth's opponents frankly openly now admit they find in him no dishonesty or lack of legal ability, will be persuasive, I am sure, to a great number of Senators.

That these admissions have been made and that the Senator has studied the record and concluded as he has carries great weight. Furthermore, that he has talked with people who have been on the court with Judge Haynsworth and to lawyers who have practiced before him in that Federal appellate jurisdiction, is greatly persuasive to me. It reveals his reputation among those who are in position to know, first hand.

Mr. President, I received a letter the other day from a Representative in that State—a Democrat—in which he stated the party position, but he concluded by saying, in essence, If I had to go to court and have my case adjudged and I wanted to be completely sure that the judge was fair and impartial and understood the law, I can think of no judge in the United States before whom I would rather appear than Judge Haynsworth.

Mr. President, this merely confirms what the Senator from Florida has said. I appreciate being able to listen to his persuasive arguments, which I believe cannot be answered.

Mr. HOLLAND. I thank my distinguished friend. I have expressed only my own deep convictions on this matter. It has been a great privilege for me to serve with the Senator from Colorado. We have served together on several committees. I have always found him willing to call a spade a spade, speaking from conviction.

He and I happen to be associated in a common view concerning a very serious matter before the country.

I thank the Senator from Colorado.

Mr. MURPHY. Mr. President, I am glad that I was in the Chamber today to listen to the colloquy which has taken place in the past few minutes.

As a longtime member of labor unions, with probably a longer membership than anyone in this body, beginning in 1920, when I first belonged to the Mine Workers of Pennsylvania, I am surprised time after time about statements made about organized labor, that organized labor says this and organized labor does that.

Having had years of experience in the field of labor, I wonder, sometimes, whether it is organized labor speaking or certain labor leaders.

In the old days, there were many who used to speak for organized labor who had not held an election in many years. I remember one important case in which he had not stood for election in 18 years. I remember some of those dealings.

Mr. President, I believe firmly in the right of collective bargaining and in the rights of the laboring man; but it does not necessarily follow that I will always go along with the judgments of so-called labor leaders. My concern over the years has always been with the rank and file.

I was active in helping to form a union in Hollywood. My concern was the same as that of many of my fellow actors, Robert Montgomery, James Cagney, Frank Morgan, and the rest, so that they could put their status as important stars on the line in order to help the small actor, some of whom could not speak very well or very loudly for themselves.

Mr. President, throughout my political career, I am glad to say that I have never asked for the endorsement of organized labor. I did not think it would be fair because I had been a part of it and active so long that I felt I should not go out and say, "Now you owe me something."

I have never been endorsed by organized labor. My opponent in California, before I came to the Senate, was endorsed by organized labor, even though he had no labor record at all. So far as I know, he never belonged to a labor union. But he was endorsed.

Mr. President, I have always opposed labor unions getting involved in politics. I have always held the belief that the job of the labor union was to represent wages, hours, and conditions of work of the working man, that once a labor union gets tied in with one political party or the other, it weakens its position, in my judgment. Such a labor union becomes a pressure group. I have witnessed that since I came to the Senate. I have been accosted in the hallways. They come up to me and say, "Now, you are going to support us, aren't you?" I say, "Yes, if I think you are right, or if I think it is in the best interest of the whole country or my whole State, but not merely because one labor leader, or two or three, decides that this is to be the position."

I was in Hollywood when we were told that if every member of the union did not donate $1, none of us would be permitted to go on the air. I remember that my good friend, Cecil B. DeMille, opposed it. He went to the people of the country, but he was taken off the air. The union had the power to deny him the right to work.

Thus, I have been through these periods of pressure. I know what they are. I think it is a shame if anything like this should be permitted in this Chamber, particularly in the selection of a man who is to sit on the highest legal body in this land.

Mr. President, I have reviewed the record regarding Judge Haynsworth's nomination. I have listened to the debate, I have read the speeches of my colleagues, and I intend to vote for the confirmation of this judge.

A great deal has been written and said about this nomination. It has been one of the most discussed incidents since I have been in this body.

The record of the hearings goes on and on. Here is the record, Mr. President—762 pages of hearings—762 pages of careful examination by those who were determined at the outset, it seems to me, that, regardless, this man's nomination was not to be confirmed.

Why, in the beginning, I was never sure. I thought that perhaps there were some who thought it might be an attempt to preserve the character of the present Court; to deny the new President of the United States the right to make a selection for the Court whose philosophy might be a little different from the Court as it had been constituted.

Then, as the debate went on, it began to revolve around two points—so-called opposition by some labor leaders, and an objection because there was a feeling that perhaps there was racial bias on the part of this judge.

I have listened and I have read and I have studied, and I do not find any evidence of these allegations. I do not find any. As a matter of fact, to the contrary, the more I read, the more I listen, the more I study, the more I am convinced that this man is a highly qualified judge, a very respectable member of his community, enjoys the highest reputation.

How, suddenly, does he become a rascal? Who says that now is the time that we reverse the entire structure of this man's life and reputation? Think of the mental anguish that this must be causing him.

It would be very easy to say, "I would like to withdraw my name," from the very beginning, or the President of the United States to withdraw the name. No great problem. But I think it is to the credit of the President and to the credit of Judge Haynsworth that when we find what has been referred to as the appearance of impropriety is without substance, it would be wrong to withdraw his name. It would be unjust. It would be dishonest.

So the name is not withdrawn. The name is before us. And on Friday, this distinguished body will make its decision.

In reading the record, Mr. President, in listening to the charges, I have been troubled by the charges of prejudice and bias made by some of the opponents. I have also been troubled by the onesided, what seems to me to be highly organized campaign that was conducted by some special interests in the press, television, and the rest, who oppose this nomination.

I believe there are a number of reasons why these charges should be rejected, and I shall explain more fully in a moment.

It is those who do not want a neutral Supreme Court who seem to accuse Judge Haynsworth of being anticivil rights or antilabor. In fact, what many of these opponents want is an avowed partisan, a partisan in agreement with their political philosophies, whose views will correspond exactly with theirs. In other words, they do not want an unbiased man; they want a man with friendly bias, friendly to their particular point of view.

Mr. President, appointments to the Supreme Court cannot and should not be based on whether the appointee's views are biased in any particular direction. To the contrary, insofar as we are able, we should find a man whose point of view should be expressed without bias; that his judgment should be based on the law and the proper practice of the law—equal justice to all under the law.

This distinguished body has a duty under the Constitution to consider the professional capability and the integrity of the nominee, and to advise and consent to the nomination if these criteria are satisfied.

Concern for the Court and for our responsibility counsels us to reject the pressure of those who would attack Judge Haynsworth recklessly, and decide whether their disagreement with the judge's philosophy is sufficient to justify the damage they may inflict upon the Court by using pressure to deny this man his position on the Court.

The very independence of the Supreme Court is threatened if a nominee can be successfully opposed not because he is unqualified, but because his philosophy is opposed. This is dangerous. This is very dangerous.

Judge Haynsworth's record cannot be properly attacked as biased simply because a careful study of the record reveals that he is an intelligent, sensitive, fair, open-minded, reasonable, and even-handed man. Indeed, the irony and unfairness of the organized opposition lies precisely in the fact that those who do not want neutrality have charged him with bias and with prejudice.

The record of the Judiciary Committee's hearings is replete with such evidence. I would like to highlight some of the more important areas to illustrate these points.

Possibly the most vigorous lobbying done against Judge Haynsworth's confirmation has come from some leaders of organized labor. The AFL-CIO has made Judge Haynsworth's nomination a "special" issue. On its face, the AFL-CIO opposition is based on charges that Judge Haynsworth is "antilabor."

In fact, however, this opposition, as I read it, as I understand it, is without merit and based, rather, on the fact that organized labor does not feel Judge Haynsworth is sufficiently biased in what I would consider a prolabor position.

What are the facts concerning Judge Haynsworth's labor record? Simply that, by no objective analysis of his labor record, could one conclude that he is antilabor. The AFL-CIO attempt to make it seem so, in my opinion and in my judgment, is completely unjustified.

No attempt was made to evaluate all of Judge Haynsworth's labor decisions. Instead, they based their attack upon a carefully selected group of cases, the neutral character of which, in my opinion, is distorted.

This body would, I believe, commit a grievous error were it to succumb to such a one-sided opposition without making a complete, full, and independent evaluation of Judge Haynsworth's entire list of decisions in the matter of labor trials.

Such an examination, Mr. President, reveals that there were at least 45 prolabor decisions in which Judge Haynsworth participated. I refer the Members of the Senate to the memorandum in the committee hearings on page 384.

This omission cannot be justified in any serious attempt to reach an objective appraisal of Judge Haynsworth's labor views.

In what perspective shall we place the AFL-CIO attack? While it was arguably proper for the AFL president, George Meany, to state frankly to the committee that "he would not approve of a decision against labor," this is not a position which the Senate can, in good conscience, adopt.

George Meany has a position. He is depended upon to be biased. He is the leader of the labor movement. He must take labor's point of view. He cannot do otherwise. That is his obligation. That is why he was elected.

For the Senate to fail to confirm Judge Haynsworth's nomination, despite the demonstrated lack of substance to these charges, would be to yield to political pressure, I believe, to decree that only nominees with particular political views can serve on the Supreme Court of the United States.

During the committee hearings, Judge Haynsworth's civil rights record was also sharply attacked. Again, a review of the whole record—as opposed to a few cases thrust at us by his opponents—persuades me that these charges against Judge Haynsworth are likewise unjustified. The judge has frequently voted in favor of persons claiming deprivation of their federally protected rights. I refer the Members of the Senate to the cases which appear in the committee report. There are many of them listed there.

Perhaps even more persuasive is the testimony of those who are nationally known for their concern for the protection of the rights of minorities. Prof. G. W. Foster, of the University of Wisconsin, a prominent civil rights advocate who worked on the 1965 school desegregation guidelines, testified in Judge Haynsworth's behalf as follows:

> Judge Haynsworth is not a segregationist and on this point I believe I have some special competence to speak. For more than a decade much of my time has been taken by problems of school segregation. Particularly between the years 1958 and 1966 I came to know a number of the federal judges across the South. For better or worse I am probably more responsible than anyone else for the original HEW School Desegregation Guidelines when they first appeared in 1965.
>
> In the area of racially sensitive cases, I have followed closely the work of the federal courts in the South over the entire span of time Judge Haynsworth has been on the Court of Appeals for the Fourth Circuit. *I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent and open-minded man with a 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.

Mr. President, here is an expert. He finds no bias. He finds no cause to oppose Judge Haynsworth. He dealt with him. He is the man who wrote the guidelines for desegregation.

He goes on to say:

> *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.* 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. [Hearings at 603, 611, emphasis added]

I have read Judge Haynsworth's civil rights decisions, and I agree with Professor Foster's conclusions. Judge Haynsworth has shown a commitment toward ending racial discrimination that is an impressive asset, along with his other qualifications.

I urge the Members of this body to take a careful look at the whole record in connection with this important nomination. Judge Haynsworth is not the average, colorless official—as some of his opponents would have us believe. He has a justly deserved reputation for scholarly analysis and sensitive, even handed, and extremely well-written decisions. This man has applied himself. He is a scholar. He is admired by his fellows.

One illustration of Judge Haynsworth's even-handed, constructive, and unbiased approach to the law is his treatment of the law of criminal procedure—an area of the law which has been the subject of some of the most intense controversy in these late days. An analysis of Judge Haynsworth's record in this area leads me to the same conclusion reached by Prof. Charles Wright, one of the country's leading authorities on criminal procedure, who stated:

> Judge Haynsworth has been in the vanguard, often ahead of the Supreme Court, in protecting persons accused of a crime against any tilting of the scales of justice that might lead to the conviction of an innocent man. At the same time, he has been reluctant to set free a person who is undoubtedly guilty because of some minor imperfection.

I am not a trained lawyer, Mr. President, but this seems to me to be a judge who has concern for the general welfare as well as for the rights of the condemned, or the man on trial.

Let me give an illustration of just one of many cases.

Judge Haynsworth has done much to make the writ of habeas corpus freely available to those who claimed to have been denied their constitutional rights. In the case of Rowe against Peyton, the Fourth Circuit was asked to consider the vitality of the 1934 Supreme Court decision known as McNally against Hill, which precluded a habeas corpus action against a consecutive sentence to be served in the future. In a most scholarly opinion, Judge Haynsworth correctly anticipated that the Supreme Court would no longer follow its earlier precedent. In addition to displaying the judge's scholarship, that opinion exemplifies Judge Haynsworth's ability to predict changes in doctrine and to create just solutions to problems in an area of traditional judicial cognizance. Judge Haynsworth emphasized that it was to the advantage of both the defendant and the State to have a present remedy to test the validity of future sentences, stating:

The problem we face simply did not exist in the 17th century.

He went on to state:

Now that recently it has arisen, if there is a substantive right crying for a remedy, it seems most inappropriate to approach a solution in terms of a 17th century technical conception which has no relation to the context in which today's problem arises. It is to the great interest of the Commonwealth and for the prisoner to have these matters determined as soon as possible, when there is the greatest likelihood that the truth of the matter may be established. Justice delayed for want of a procedural remedial device over a period of years, is indeed justice denied to the prisoner and, in an ever larger sense, to the Commonwealth of Virginia.

The problem we face simply did not exist in the Seventeenth Century. Now that recently it has arisen, if there is a substantive right crying for a remedy, it seems most inappropriate to approach a solution in terms of a Seventeenth Century technical conception which had no relation to the context in which today's problem arises. (at 713)

It is to the great interest of the Commonwealth and to the prisoner to have these matters determined as soon as possible when there is the greatest likelihood the truth of the matter may be established. Justice delayed for want of a procedural, remedial device over a period of years is, indeed, justice denied to the prisoner and, in an even larger degree, to Virginia. (at 715)

The law today abhors a right without a remedy just as the common law did. The genius of the common law was the improvisation of remedies to obtain adjudication of substantive rights. * * * Our recitation of its history discloses that the writ of habeas corpus has not been a static thing. There is nothing in that history to suggest that it should be restricted to the need of a much earlier time. (at 716–17)

The State brought the case to the Supreme Court. Said a unanimous Supreme Court:

Writing for a unanimous court, Chief Judge Haynsworth reasoned that this Court would no longer follow *McNally* [the earlier Supreme Court decision], which in his view represented a 'doctrinaire approach' based on an 'old jurisdictional concept' which had been 'thoroughly rejected by the Supreme Court in recent cases.' We are in complete agreement with this conclusion and the considerations underlying it. (*Peyton* v. *Rowe* (1968), 391 U.S. 54, 57.)

The willingness of a unanimous Supreme Court so precisely to quote Judge Haynsworth's criticism of one of its former decisions in the course of agreeing with his views is indeed a tribute that is without parallel. The decisions of Judge Haynsworth in the area of appellate review of prisoners' petitions are quite obviously not those if a mediocre judge. This is an outstanding man. His entire record points this out and delineates it clearly. Nor are they the decisions of an insensitive judge who has been too much the businessman, as some would have us believe. Instead, Judge Haynsworth has eagerly undertaken the painstaking consideration of these petitions, usually brought by friendless, helpless, and impoverished men who have already been afforded the usual channels of redress, and whose claims have been found meritless. An examination of Judge Haynsworth's criminal decisions, and numerous other areas, reveals the work of a judge who is utterly dedicated to his office and to his duty and to his chosen calling—a purveyor of justice.

After a thorough review of the record, I have concluded that Judge Haynsworth is extraordinarily well qualified. I urge the Members of the Senate to make their own independent study, make the study and do it carefully. We should look at the entire record and not take the pieces out of context. A nominee to the Supreme Court of the United States should not be judged on the basis of accusations alone.

Judge Haynsworth's professional qualifications are impeccable. He received the full endorsement of the American Bar Association Standing Committee on the Federal Judiciary after their thorough investigation of his opinions and numerous interviews with judges and lawyers in the Fourth Circuit. He received the extraordinary tribute of 16 former American Bar Association presidents, who publicly announced their support of his nomination. I do not think this has ever happened before. As Judge Walsh said, summarizing the ABA committee investigation:

All of the persons interviewed regarding Judge Haynsworth expressed confidence in his integrity, his intellectual honesty, his judicial temperament and his professional ability.

Mr. President, what more can we seek? What other qualities are you looking for? What happens to this unfounded attack that we hear so often referred to as the appearance of impropriety—not the substance, not the act, not the fact, but the appearance of impropriety.

I have discussed Judge Haynsworth's qualifications and the nature of the charges made against him because I am persuaded that the Senate is being subject to irresponsible political pressure to reject the nomination of a distinguished jurist who will make an outstanding Associate Justice. For the Senate to yield to this political pressure, despite the demonstrated lack of substance in the attacks made against Judge Haynsworth, would mean that henceforth only nominees with particular views, or acceptable to certain organized groups, are entitled to sit on the Supreme Court. Oh, this is a very important decision. This is more than merely a vote on a man's confirmation. This is an extremely important decision. This result would undermine the independence of the judiciary as a whole and the Supreme Court in particular. Instead of carrying out the law as they see it, judges will be expected to make "popular" decisions. May the good Lord help us and preserve us from that. Nominees will be subject to the whim and clamor of constituents of Senators who are fighting the old war against the South or the new war in Vietnam or of the strange half-heated up war in the Middle East.

I urge the Senate not to follow this disastrous course. The true liberal will realize, upon reflection, that this Nation cannot be so divided and remain the Nation of all the people. There must be a tolerance for a diversity of views, within the Nation, and on the Supreme Court in particular.

Mr. President, I insist that just as the Supreme Court cannot decide constitutional issues on the basis of political expediency, the Senate cannot afford to deny confirmation on the basis of political expediency. To do so would be to undermine the Nation and the Court's concern for the rights of all groups, and to establish the practice that a nomination to the Supreme Court can be blocked by the lobbying of powerful special interest groups concerned with only one side of the issue. This is justice with half of the scales gone. It is unthinkable. It must not be permitted.

The Senate has a duty under the Constitution to consider the professional capability and integrity of the nominee, and to advise and consent to the nomination if these criteria are satisfied. It would be a serious error for this body to give controlling weight to the clamor of groups who are opposing the nominee because he is not biased in their favor, and for reasons having nothing to do with this nominee or the Supreme Court.

I commend President Nixon for making this nomination. Although the attacks have been furious, the charges against Judge Haynsworth have been shown to be without foundation insofar as I have read and studied them. The evidence is overwhelming that Judge Haynsworth is a conscientious and able judge who is widely regarded for his intellectual honesty, his integrity, and his professional ability.

President Nixon has been unwavering in his support of the nominee. In my opinion, Mr. President, Judge Haynsworth deserves that support, and I ask that the Senate advise and consent to Judge Haynsworth's nomination.

The other day I rose in the Chamber to speak briefly about the term we have heard so often of late—"the appearance of impropriety." No rules have been broken, but somebody said it might look as though a rule had been broken. The whisper, the rumor, the tool of the character assassin.

I have had some experience in those areas. In my town of Hollywood, years ago, we went through a great deal of that type of character assassination. No substance, no direct confrontation, no direct accusation, but the whisper—the appearance of impropriety.

I am sure that had there been impropriety and had the facts of impropriety been obtainable, they would have been brought forth. We would have heard them in this Chamber. But, so far as I know, we have not. I have not heard them. I have not been able to find them in the record. It is the appearance.

As I said a few days ago in this Chamber, I recall an instance when an attempt was made to destroy by character assassination a man who is a good friend of mine. There was a rumor, then it was published, then it was recited, and then it was spread across the country like wildfire, that he had done something wrong. It was an attempt to destroy his political life.

Then in preparation was a second rumor—that he had an inordinate amount of furniture in his house. Where did he get the money to buy it? Nobody said he had done anything wrong. But they posed the question, and the question took on all the characteristics of assault, of accusation. Where did he get it? The fact of the matter is that he did not have it. There was no truth. It was, once again, the appearance of impropriety, started by a rumor, a dishonest, evil rumor, without any basis or foundation.

Then there was a third attempt, which was never activated but was prepared—a letter which, once again, added coals to the fire, in the attempt to destroy this man's political character, his political life.

I was privy to the entire story. I knew about it. It was part of my duty at the time to find out about it. Three attempts were made to create the appearance of impropriety. The man against whom this was designed is now the President of the United States, who enjoys, I believe, the confidence at this moment of a higher percentage of the people of this great country than any other President in my lifetime. Yet, this entire, great political career might have been destroyed by the creation of the appearance of impropriety.

Mr. President, this has been a most important experience for me. I have listened to the debate and I have read the record, and I would not presume to influence the decision of any colleague. It would be improper. But I would beg my colleagues to read the entire record, read the carefully prepared remarks of the distinguished Senator from Colorado that are in the record, and read the remarks of the Senator from South Carolina (Mr. HOLLINGS)—a magnificent presentation. I am not a lawyer; I have had no legal training; but I have an appreciation and an understanding when I see a properly prepared case. I understand logic, I know truth from falsehood, I know fact from fiction, and I know where the appearance begins and where the actuality stops.

The vote which will occur on Friday, I believe, is as important as any vote that has occurred in this Chamber since I came to the Senate, and we have had some very important votes.

So, Mr. President, I beg that the attempts of the outside pressure groups be laid aside. They are not representative. They do not count here. This matter is clearly defined: Is the man capable? Is he honest? Is he trustworthy? What is his reputation among his fellows? If we look at it carefully, I am quite sure that a great majority of my colleagues will join me in voting to confirm the nomination of Judge Haynsworth.

I yield the floor.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. MURPHY. I am glad to yield.

Mr. ALLOTT. First, I appreciate the very kind remarks the Senator has made about my discussion the other day of this matter.

I have been following this debate very closely, have studied the record, have been reading stories in the newspapers about it, and have listened to the news commentaries in the evening on television. As I gather at this point, some of those who are self-proclaimed in opposition to the confirmation of this nomination most unshakably seem to concede—there may be an exception to this, but I do not recall one—that there is no question of this man's honesty. Is that the impression of the Senator from California?

Mr. MURPHY. That is exactly my impression.

Mr. ALLOTT. Second, there is no question about his integrity.

Mr. MURPHY. The Senator is absolutely correct.

Mr. ALLOTT. There is no question about his legal ability.

Mr. MURPHY. I agree. That is the impression I have received from all of the media, throughout the hearings.

Mr. ALLOTT. It is unfortunate that the stories which were issued, the press releases, in the first instance created the impression that these things did exist. Now we are some 6 weeks later, perhaps more than that, and some of these impressions of dishonesty and lack of ethics still persist, despite the fact that those who originally made the statements, and even though their opposition continues, now say that these things are not true, that there is no question of the man's honesty, no question of his integrity, and no question of his legal ability.

Mr. MURPHY. After the damage has been done. It is like throwing a pebble into a clear stream, into the still water. Once those ripples start, it is impossible to stop them.

I wonder if those who started the rumors at the outset should not have been more careful in their accusations, if they had perhaps come to their second conclusion first, if they had perhaps waited until the hearings were finished, until the debate was finished, and then said, "We think this man is honest, decent, intelligent, and capable," or, "We still think that there are reasons why his nomination should not be confirmed."

This is the whole point, and the Senator has made it so well, just as he did the other day—the impropriety of this approach, of the accusation which presumes, assumes, and sometimes even creates the guilt which does not exist.

Mr. ALLOTT. I have been somewhat impressed by some of the inconsistencies I find. I was much impressed with the words of praise of Judge Haynsworth by the distinguished senior Senator from Maryland. I do not know how he could have been more forceful in praise of the man, his integrity, ability, and standing on the court. Yet, he has subsequently come out in oppositon to the nomination.

Mr. MURPHY. He is going in both directions at one time.

Mr. ALLOTT. He was either wrong in the first instance, in which event he should perhaps ask to have his remarks corrected, or he is wrong now.

As far as I know there is only one relevant constitutional qualification for a member of the Supreme Court. Actually, I have not checked it recently, but I am sure it is true, that a member of the Supreme Court does not even have to be a member of the bar.

Mr. MURPHY. I did not know that. Does the Senator mean there is still a chance for me?

Mr. ALLOTT. There is still a chance for the Senator from California.

The one thing that is necessary is that a member of the Supreme Court must be able to take the oath to support the Constitution and the laws of the United States.

I know of no other relevant qualifications for a judge. I would say that if a man supports the Constitution, the integrity and honesty would have to go as a corollary to that.

I wish to make one other point. This matter has been argued and debated very much. I compliment the distinguished senior Senator from California because he feels about this matter the way I do.

Here is a man who spent his life as a lawyer. His father's life was spent as a lawyer; and his grandfather's life was spent as a lawyer. All of that took place in one State. I wonder if these people who so glibly—and I do say "glibly"—said, "perhaps he raised an appearance of lack of ethics"—thought about the man, his family, his children, the sons he has, his sons' sons, and his daughters' sons and daughters. He will probably go through life, if his nomination should not be confirmed, remembered as the man the Senate refused to confirm.

I do not know whether we all realize how much we hold when we hold the good name, something a man spends a lifetime creating, in the palm of our hands. If anyone had shown dishonesty, if anyone had shown a breach of ethics, that he has represented two people at the same time on opposite sides of the fence, then I could seriously consider whether or not the nomination should be confirmed. But all of the substantive argument seems to have evaporated and we are left only with the preconceived notion people have formed in their minds.

I am reminded of an old saying by a man who was a very great theologian, a man who was the bishop of Colorado at one time, Bishop Irving P. Johnson, who said:

> When most people say they are thinking, they are merely rearranging their prejudices.

I realize, as does the Senator from California, and he feels as strongly about this matter as I do, that we are dealing with a man's life.

A while ago the Senator from Florida spoke of the reasons why he left the bench. He stated that he was tired of settling things in people's lives. That was why I left the district attorney's office of my State. I thought I did not want to have that much power over anybody's life; and like the Senator from Florida, I decided I would rather be an advocate. That is why I am here.

I hope and pray that when the Senate votes they will think not only of making a decision one way or another, but remember that they hold in the palm of their hands a man and his family and what they do will affect that family for a long, long time to come.

I know the Senator feels as deeply as I do about that. I appreciate the Senator's wonderful remarks here today and I appreciate the Senator permitting me to intervene.

Mr. MURPHY. Mr. President, I thank the distinguished Senator. As always, his remarks are a very helpful addition. The presentation which the Senator made several days ago was one of the most masterly presentations I have ever seen. I hope all Senators will take the time to read his presentation and understand it. Let us be certain that we in this Chamber are not guilty of bias in this consideration.

Let us make certain in our voting that we approach this matter with the same degree of honesty, integrity, and intelligence that we hope to find in Judge Haynsworth, and which he seems to enjoy from the record of his life and his family; and the respect in which he is held.

I hope that when we pass judgment we will be able to pass the same test that we have imposed on this distinguished judge in our considerations here.

Mr. ALLOTT. Mr. President, will the Senator yield further?

Mr. MURPHY. I yield to the Senator from Colorado.

Mr. ALLOTT. I heartily agree with the Senator.

I have just picked up from my desk an article entitled "Opponents Cruelly Unfair to Haynsworth," which was written by James J. Kilpatrick, and published in the Washington Star on October 26, 1969.

Among other things Mr. Kilpatrick said in the article:

> What we are witnessing, in the trumped-up "case against Haynsworth," is a triumph of the propagandist's craft. Into a smoking pot, the judge's opponents have flung a shrewd mixture of truth, half-truth, whole lies, base insinuations, and old-fashioned politics. By heating up this farrago, they have created great clouds of unfounded doubt; and they have succeeded in making this phony doubt the very basis of their opposition.

In a subsequent paragraph, Mr. Kilpatrick said:

> The trouble is that the smokescreen is so thick, that busy men—and Senators are busy men—cannot conveniently take the time to penetrate the fog.

Would the Senator object if I were to ask unanimous consent that the article be printed in the RECORD at this point?

Mr. MURPHY. I would be pleased to do so on behalf of the Senator.

Mr. ALLOTT. I thank the Senator.

Mr. MURPHY. Mr. President, I ask unanimous consent that the article to which the Senator referred be printed in the RECORD at this point.

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

OPPONENTS CRUELLY UNFAIR TO HAYNSWORTH

(By James J. Kilpatrick)

The question is, or will be within the next two weeks: Will the Senate advise and consent to the nomination of Clement F. Haynsworth to become an associate justice of the Supreme Court?

It is a pity that 40-odd members of the Senate already have indicated their intention to vote against confirmation. Once a Senator has taken a position publicly, he hates publicly to change his mind. Yet the case against Haynsworth is so flimsy, so specious, so lacking in real substance, that many of these forty-odd Senators might be prompted by a close study of the record to reconsider their opposition.

What we are witnessing, in the trumped-up "case against Haynsworth," is a triumph of the propagandist's craft. Into a smoking pot, the judge's opponents have flung a shrewd mixture of truth, half-truth, whole lies, base insinuations, and old-fashioned politics. By heating up this farrago, they have created great clouds of unfounded doubt; and they have succeeded in making this phony doubt the very basis of their opposition.

It is cruelly unfair to Haynsworth. The South Carolinian is not the most brilliant nominee that Nixon might have found. He lacks color; he lacks style; and these can be important on the Court. Yet other qualities also are important on the Court: self-restraint, precision, a sense of strict construction. These Haynsworth has; and if he is not a Holmes or Hughes or Brandeis, he is a cut above the average nominee of this century.

On one point I am absolutely satisfied: I am satisfied of Haynsworth's integrity. When the record is seen clearly, and not through a smokescreen, the record discloses not even the appearance of impropriety.

The trouble is that the smokescreen is so thick that busy men—and Senators are busy men—cannot conveniently take the time to penetrate the fog. It may be instructive to see how such a smokescreen is contrived.

In his statement of Oct. 8, Indiana's Senator Birch Bayh charged that in at least five cases, 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." It is a serious charge; if proved, it would justify Haynsworth's rejection.

But it is not true. One of the five cases listed by the Senator was Merck v. Olin Mathieson Chemical Corporation. Judge Haynsworth never held stock in either corporation. Bayh's staff was in error. Another of the listed cases was Darter v. Greenville Community Hospital. Haynsworth's "substantial" holding amounted to precisely one share—one pro forma share, paying a 15-cent annual dividend—in his home town's hospital. A third case was Farrow v. Grace Lines. Haynsworth held no stock in Grace Lines. He did hold 300 shares in W. R. Grace & Co., which owned Grace Lines along with 52 other subsidiaries. The Farrow case involved a $50 judgment.

Still another of Senator Bayh's charges was that Judge Haynsworth violated ethical canons by not disqualifying himself in Kent Mfg. Corp v. Commissioner of Internal Revenue. But it turned out, after the Senator's charge had been added to the stew, that Bayh had the wrong Kent Manufacturing Corporation. Sorry 'bout that.

Very well. I do not impugn Bayh's motives, only his staff work. But the damage is done. In a race of this kind, which must be quickly run, truth cannot catch up with falsehood. A Senator who might be predisposed to vote against Haynsworth, if only to soothe black and labor interests, is likely to recall vaguely that Bayh listed a whole string of cases in which the judge was a big stockholder in companies before his court. The refutation of these baseless charges will go unnoticed.

Perhaps Nixon himself should not have accused Haynsworth's opposition of engaging in vicious character assassination. Presidents are expected to speak in softer accents. Yet that is exactly what the case against Haynsworth amounts to. It is like John Randolph's dead mackerel in the moonlight, a work of artistry that both shines and stinks.

Mr. ALLOTT. Mr. President, in the article by Mr. Kilpatrick, I believe the sentence following that which I last quoted is the most pertinent:

> It may be instructive to see how such a smokescreen is contrived.

Mr. MURPHY. Mr. President, the Senator from Colorado has raised a very important point. In these days of communication at the speed of light, where we have mass media, where we are told that every night there are 40 million people looking at television screens, where we are told about the big audiences attracted by the big stars, audiences of 75 to 80 million people and events such as the lunar landing will command an audience in numbers unheard of, I think how cautious we must be of the work of the propagandists. We have seen this in the war in South Vietnam; we have seen one of the most respected newspapers print figures taken out of propaganda written in Hanoi, without explaining to the reader and without telling the listener the source.

So in these days, the point the Senator from Colorado raises about propaganda is important. The Senate has an obligation to make certain that we deal in basic facts; that we cut through propaganda; that we cut through all appearances of impropriety and base our judgment on actual facts.

As I said in conclusion before, we should ask ourselves: Is this man honest, capable, and intelligent? Is he a decent man? Is he a good jurist? Will he make a good Associate Justice? The answers to these questions should be the basis of our judgment.

I yield the floor.

Mr. BAYH. Mr. President, a copy of a letter to Senator EASTLAND has been sent to me by one of its writers, professor of law, Herman Schwartz, of the State University of New York at Buffalo. Professor Schwartz and several other professors, who signed the letter, believe, as I do, that Judge Haynsworth was under no duty to sit in the Darlington case, which has been discussed so much in the Judiciary Committee and on the floor of the Senate.

I ask unanimous consent that the letter be printed in the RECORD, for the consideration of the Senate and the public.

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

NOVEMBER 12, 1969.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: In a recent appearance before the Senate Judiciary Committee on the Nomination of Clement F. Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States, John P. Frank, Esq., testified with respect to whether Judge Haynsworth should have voluntarily recused himself from the *en banc* adjudication of *NLRB* v. *Darlington Mills, Inc.*, 325 F. 2d 682 (1963) because of his interest in Carolina Vend-A-Matic Co., a supplier of one of the litigants. Mr. Frank stated that since, in his judgment, Judge Haynsworth "was not disqualified, it was under the strict federal rule of duty, his plain responsibility to participate, and he would have shirked his duty if he had not done so." Although noting a special circumstance supporting Judge Haynsworth's decision to sit, Mr. Frank stressed that this obligation not to recuse himself existed "regardless of that circumstance." Hearings 121. Judge Lawrence E. Walsh, Chairman of the ABA Standing Committee on the Federeal Judiciary, concurred in this judgment. Hearings 139. With all due respect to their views, and in full recognition of Mr. Frank's expertness in this area as reflected both in his published writings and the quality of his testimony, the position that under the law Judge Haynsworth would somehow have been derelict in his duty had he voluntarily recused himself from participating in the determination of the case seems unsound.

1. *A judge's discretion when not legally disqualified.*

Mr. Frank's Memorandum and testimony argue and imply that if a judge is not subject to involuntary disqualification, he must sit. But there is surely an obvious distinction between *requiring* a judge to disqualify himself for interest, bias or other reason, and *allowing* him to, in order that "justice . . . satisfy the appearance of justice." *Offutt* v. *United States*, 348 U.S. 11, 14 (1954). Both the possibility of such an option, and examples thereof, are set forth in the very cases cited by Mr. Frank and elsewhere. Thus, in *Wolfson* v. *Palmieri*, 396 F. 2d 121 (2d Cir. 1968), the Court found that the affidavits presented were legally insufficient to show the trial judge's bias under 28 U.S.C. § 144, but added:

"To be sure, there are circumstances in which a judge may wish to rescue himself although a legally sufficient affidavit of bias and prejudice could not be presented against him. But whether such considerations make it wise to withdraw must be left to the informed discretion of the individual trial judge . . . The state of mind of the defendant cannot be made the test for the selection of the trial judge. On the other hand, if there be a real doubt created as to prejudice, this alone may be an important factor to be considered by the judge." 396 F.2d at 125–126. (emphasis added.)

The same point was made in a concurring opinion by Chief Judge Hastie in *Green* v. *Murphy*, 259 F.2d 591 (3rd Cir. 1958).[1] After finding the affidavits inadequate, he said:

"This does not mean that the trial judge cannot or should not in all the circumstances of this case, including the understandable indignation and irritation disclosed by the opinion on the question of disqualification, consider whether, however free of bias he may feel, the also important appearance of complete impartiality in the administration of justice would not best be maintained by stepping aside. *Judges from time to time elect not to try cases, which they are sure they can try fairly and objectively, because of their concern to avoid any substantial doubt which circumstances beyond their control may create in the public mind about the impartiality of their administration of justice in the matters at hand.* But this consideration must be left to the discretion and sensitive perception of each trial judge in the circumstances of each case." 296 F.2d at 595–596. (emphasis added.)

[1] This case was not noted by Mr. Frank.

This option was availed of by a judge in litigation involving James Hoffa, as noted in another case cited by Mr. Frank, *United States v. Hoffa*, 382 F.2d 856 (6th Cir. 1967). The Court of Appeals noted that "after ruling that the affidavit was insufficient, [the trial judge] voluntarily and contemporaneously recused himself." 382 F.2d at 861. See also *Lampert v. Hollis*, 105 F. Supp. 3 (E.D.N.Y. 1952) where, despite a ruling that his shareholding in one of the litigants was much too remote (20 shares out of 13,881,-016), the trial judge nevertheless notified the parties of his interest and apparently offered to withdraw; the parties agreed he should sit.

That there must be this option seems obvious. Legal disqualification is an extreme measure, particularly when it arises in the context of one judge passing on another's refusal to recuse himself, as so many of these cases do; it is especially unappealing when the issue arises, as it not infrequently does, in the context of an attack on a judgment already rendered on the merits, by a disappointed litigant seeking a way to reverse the judgment. See, *e.g., In re Farber*, 260 Mich. 652, 245 N.W. 793 (1932); *Tucker v. Kerner*, 186 F.2d 79 (7th Cir. 1950); *Webb v. Town of Eutaw*, 9 Ala. App. 474, 63 So. 687 (1913); *Darlington v. Studebaker-Packard Corp.*, 261 F.2d 903 (7th Cir. 1959); cf. *Voltmann v. United Fruit Co.*, 147 F.2d 574 (2d Cir. 1945) (the appellate court observed that the trial judge learned during the trial that his son-in-law was a partner in the law firm of one of the parties and while he probably would have disqualified himself had he learned of this *before* trial, he need not have disqualified himself *after* trial began.) The distinction was drawn sharply in *Farber*, a case much relied on by Mr. Frank, where the judge owned shares in a bank that had loaned money to the bankrupt. Rejecting an attempt to set aside the judge's decree solely because of the ownership, the Court said:

"The claim was not made before decree. The bank is not a party to the suit. The record did not disclose that the corporation is indebted to the bank. It is not claimed that Judge Parker knew there was such a debt. *The question, therefore, is one of law, not affected by consideration of propriety or delicacy.*

"Where a judge, or a corporation of which he is a stockholder, is not a party to the suit, the interest which will disqualify him must be a direct interest in the subject-matter of the litigation or in the outcome of the suit, so that he or the corporation will be directly affected through pecuniary or property loss or gain or accrual of right or liability. [citing authority]

"Without anticipating the effect of special circumstances, in any given case, *especially when brought to the attention of the court before hearing*, a general rule of law that a a judge is disqualified from sitting in the case because a corporation, of which he is a stockholder, is a creditor of one of the parties, has no foundation and reason, nor does it bear any relation to the preservation of the court from the shadow of suspicion which is the purpose of the statute." 245 N.W. at 795. (emphases added.)

2. *The substantiality of Judge Haynsworth's interest.*

Considerations of this kind permitted—and perhaps should even have encouraged—Judge Haynsworth not to sit on the *Darlington Mills* case. For it cannot be said, as Mr. Frank seems to, that Judge Haynsworth's interest in the litigation was so clearly negligible, and his eligibility to participate so clearly beyond doubt, that voluntary recusal was not even to be considered. See his references to the *Farber* and *Webb* cases at Hearings 120, discussed below. Judge Haynsworth was a founder, a one-seventh owner of, and still much involved, both financially and through his wife, with a supplier of one of the litigants. His situation was similar to that in *Commonwealth Coatings Corp. v. Cont. Cas. Co.*, 393 U.S. 145 (1968), where the Court set aside an arbitration award because one of the three arbitrators of a unanimous decision had not disclosed that he had performed services for one of the parties during the preceding four to five years. Admittedly, *Commonwealth* arose five years later, but it hardly seemed to apply principles which were novel, at least as to judges. Nor was the Court treating arbitrators more stringently than judges, as both Mr. Frank and Judge Walsh asserted. All the opinions filed in the case—the majority, concurrence and dissent—indicated that if anything, they were applying looser standards for arbitrators than for judges. The only indication to the contrary appears in one statement in the majority opinion: at one point, the Court commented that because arbitrators are triers of fact and law, they should be even "more scrupulous." Apart from this brief remark, however, the opinions continually relied on well-established judicial principles, the majority opinion saying in its very first sentence:

"At issue in this case is the question whether elementary requirements of impartiality *taken for granted in every judicial proceeding* are suspended when the parties agree to resolve the dispute through arbitration." *Id.* at 145. (emphasis added.)

The Court continued:

"We have no doubt that if the litigant could show that a foreman of the jury or a *judge in a court of justice* had, unknown to the litigant, any such relationship, the judgment would be subject to challenge . . . 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. . . .* " *Id.* at 148. (emphasis added.)

And the Court relied on Canon 33 of the Judicial Ethics which reads as follows:

"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 a social or business relations or friendships constitute an element in influencing his judicial conduct."[2] *Id.* at 149–150 (brackets in original.)

The concurrence implied that the standards are even higher for judges by saying:

"The Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges. It is often because they are men of affairs, not apart from but of the marketplace, that they are effective in their adjudicatory function." *Id.* at 150.

And the dissent agreed in this issue, concluding:

"Arbitration is essentially consensual and practical . . . The Court applies to this process rules applicable to judges and not to a system characterized by dealing-on-faith and reputation for reliability." *Id.* at 154–155.

[2] The Court also seemed to indicate that judges should "sever all their ties with the business world," in pointing out that arbitrators could not. 393 U.S. at 148–149.

The *Farber* and *Webb* cases, cited by Mr. Frank, do not deny the delicacy of the situation and the necessity for choice, despite their holdings that a judge's mere shareholding in a customer is insufficient ground to disqualify him. In both cases, the issue was whether the interest was sufficient to actually set aside a judgment already rendered, a quite different question, as noted above and in *Farber*, from voluntary recusal prior to decision. Moreover, both cases seemed to involve mere shareholding. Thus, the *Webb* case involved a judge's shareholding in a bank which had loaned money to a litigant. In rejecting this as a basis for disqualification, the Court indicated how limited was its holding, saying:

"We are not of opinion that a presiding judge is shown to be disqualified to preside in a cause by proof of the *bare fact that he is a stockholder in a corporation* to which one of the parties is indebted" (emphasis added.)

The record shows that Judge Haynsworth's involvement in Vend-A-Matic obviously involved much more than the "bare fact that he is a stockholder in a corporation."

3. *A judge's obligation to sit.*

This is not to say that a judge may recuse himself for the wrong reasons, that is, simply in order as Senator Hollings put it, "to avoid hard or distasteful decisions." Hearings 38. As the oft-cited language in *In re Union Leader Corp.* put it, "There is as much obligation on the judge not to recuse himself *when there is no occasion* as there is for him to do so when there is. 292 F. 2d 381, 391 (1st Cir.) *cert. denied*, 368 U.S. 927 (1961) (emphasis added.) But this statement does not eliminate the need for judgment to determine "when there is no occasion" and no one could possibly have faulted Judge Haynsworth for concluding that his interest in Vend-A-Matic was such that he should withdraw himself from the case.

This is also not to deny that there are occasions when a judge should sit. Mr. Frank relies heavily on the opinion of Judge Rives in *Edwards* v. *United States*, 334 F. 2d 360, 362 n. 2 (5th Cir. 1964). In that case Judge Rives had been the dissenter in a 2–1 decision. When the case was set down for rehearing *en banc*, both members of the majority were no longer around to sit, one having died and the other being ineligible to sit because he was a visiting judge. The absence of the members of the earlier majority induced doubts in Judge Rives as to whether he should sit, but after reflection, he decided to participate. With all respect to the scruples of one of our most respected judges, Judge Rives' doubts seem quite unwarranted, for they apparently rested on the premise that the disagreeing judges of the earlier panel are the primary advocates of the contending viewpoints, and not the litigants themselves. This is, of course, a highly dubious proposition which finds no support in any statutory or other authority, but rather, as Judge Rives indicated, conflicts with clearly applicable precedent.

In the end, many of the arguments for an alleged obligation on Judge Haynsworth to sit seem to come down to arguments of necessity—primarily, that there would not have been a full court for an *en banc* hearing. But in the first place, Mr. Frank, as noted, eschews reliance on such special circumstances. Moreover, the common-law doctrine of necessity has usually required much more. As stated in the old leading case of *In re Ryers*, 72 N.Y. 1 (1878):

"Upon the facts of this case, as already stated, we may formulate a rule thus: That where a judicial officer has not so direct an interest in the cause or matter as that the result must necessarily affect him to his personal or pecuniary loss or gain, or where his personal or pecuniary interest is minute, and he has so exclusive jurisdiction of the cause or matter, by Constitution or by statute, as that his refusal to act will prevent any proceeding in it, then he may act so far as that there may not be a failure of remedy, or, as it is sometimes expressed, a failure of justice." 72 N.Y. at 15.

In a more recent case, a formal disqualification was ordered of one of three members of an administrative board even where one of the remaining two had abstained, the Court noting that a quorum would still have been possible. *Township Committee of Freehold Twp. v. Gelber*, 26 N.J. Super. 388, 98 A.2d 63 (1953); compare *Gordy v. Dennis*, 5 A.2d 69 (Md. Ct. Apps. 1939) (because disqualification would affect all the judges in a case involving a tax on judges' salaries, it was not required.) The same point can surely be made here where four judges remained.

4. *Conclusion.*

The Supreme Court said in *In re Murchison*, 349 U.S. 133 (1955):

"Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. 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 appearance of justice.' *Offutt v. United States*." 348 U.S. 11, 14

On the applicable facts and law, Judge Haynsworth would not have "shirked his duty" had he decided that because of his interest in a supplier of one of the parties, the considerations set forth in *Murchison* and *Offutt* justified his voluntary recusal.

Respectfully submitted,

Kent Grenawalt, Michael Sovern, H. Richard Uviller, professors of law, Columbia Law School.

Vern Countryman, professor of law, Harvard Law School.

Alex Brooks, Leonard Chazen, Eva Hanks, professors of law, Rutgers—The State Univ. (Newark).

James B. Atleson, Robert B. Fleming, Mitchell Franklin, Paul Goldstein. Jacob D. Hyman, Kenneth F. Joyce, Al Katz, David R. Kochery, Joseph Laufer, W. Howard Mann, Robert Reis, Herman Schwartz, professors of law, State University of New York at Buffalo.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1072) to authorize funds to carry out the purposes of the Appalachian Regional Development Act of 1965, as amended, and titles I, III, IV, and V of the Public Works and Economic Development Act of 1965, as amended.

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

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

SUPREME COURT OF THF 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.

INTRODUCTION

Mr. FONG. Mr. President, the Senate is now considering the nomination of Judge Clement F. Haynsworth, Chief Judge of the Fourth Circuit Court of Appeals, to be Associate Justice of the U.S. Supreme Court.

Article II, section 2, clause 2, of the Constitution provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court."

A distinguished and very learned former colleague, Senator Paul Douglas, described this power of advice and consent conferred on the Senate as being substantial and as having great significance in our scheme of government. He said:

> The advice and consent of the Senate required by the Constitution for such appointments (to the Federal Judiciary) was intended to be real and not nominal. A large proportion of the members of the (Constitutional) Convention were fearful that if Judges owed their appointments solely to the President the Judiciary, even with life tenure, would then become dependent upon the executive and the powers of the latter would become overweening. By requiring joint action of the legislative and the executive, it was believed that the Judiciary would be more independent.

Under our Constitution, the power of the President to nominate constitutes only half of the appointing process. The other half lies within the jurisdiction of the U.S. Senate, on which has been conferred the solemn constitutional duty to confirm or deny confirmation of a nomination.

As Alexander Hamilton pointed out in his Federalist Paper No. 76, this requirement of senatorial approval would "be an excellent check upon a spiri: of favoritism of the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachments, or from a view to popularity."

Another authority, James Bryce, described the Senate's confirmation function as follows:

> It has been doubted whether this executive function (confirmation of appointments) of the Senate is now a valuable part of the Constitution. It was designed to prevent the President from making himself a tyrant by filling the great offices with his accomplices or tools. That danger has passed away, if it ever existed; and Congress has other means of muzzling an ambitious Chief Magistrate. The more fully responsibility for appointments can be concentrated upon him, and the fewer secret influences to which he is exposed, the better will his appointments be.

Thus, to assure the independence of

the judiciary as a separate and coordinate branch of Government, the power of the Senate to advise and consent with respect to the judiciary is at least equally important as the power of the President to nominate.

Mr. President, as a member of the Committee on the Judiciary, I have followed closely the course of the hearings on Judge Haynsworth. I have listened to and have read the testimony of all the witnesses who have appeared. I felt that as a member of the Bar I had a professional responsibility to weigh with utmost judiciousness all the speculations, the charges, the rebuttals, and the many reports and other data which came to my attention regarding the nomination.

I have discussed this nomination with the President, who asked my opinion of the Haynsworth nomination. I told the President that, on the basis of all the evidence and material, I was of the firm opinion that the nomination of Judge Haynsworth should be confirmed.

In arriving at this decision, one of the key factors I took into account, and one which I feel very strongly about, is the substantial presumption that Judge Haynsworth is a highly qualified nominee, that he is a very competent and able jurist, and that he is indeed very capable of being a fair and impartial Justice of the Supreme Court. This substantial presumption rests upon the thorough investigation and evaluation which has been given the nomination, not only by the President, but also by the American Bar Association and by the Senate Judiciary Committee.

Ever since my election to the Senate I have accorded such substantial presumption to all nominations to the High Court. It was for this reason that I strongly supported the nominations of Justices Arthur Goldberg, Thurgood Marshall, Byron White, former Justice Abe Fortas, and Chief Justice Warren Burger when their names were first submitted to the Senate.

Unless the substantial presumption of competence, integrity, and capability are overcome, regardless of any ideological or other philosophic differences I might have with the views of the nominee, I shall vote for confirmation.

In my judgment, a nominee's philosophy is not a proper ground for rejection by Senators, as long as his philosophy—judicial, social, political, or otherwise—is reasonable and prudent.

INTENT OF FOUNDING FATHERS

My view on this matter is sustained by Alexander Hamilton, who wrote in Federalist No. 66 as follows:

> It will be the office of the President to nominate, and with the advice and consent of the Senate to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the President. They might even entertain a preference to some other person, at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected. Thus it could hardly happen that the majority of the Senate would feel any other complacency toward the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy.

Concerning the method provided for appointment of Federal judges, Hamilton declared:

> It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling offices of the Union.

Defending the selection of judges by a single executive officer, he maintained that—

> One man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particualr offices than a body of men of equal or perhaps even superior discernment. The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will on this account feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the station to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have fewer personal attachments to gratify than a body of men.

Hamilton then went on to point out the inherent weaknesses of legislative bodies in making appointments to the judiciary:

> In every exercise of the power of appointing to offices by an assembly of men we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. . . . The intrinsic merit of the candidate will be too often out of sight. . . . The coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and you shall have the one you wish for that." This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of the party victories or of party negotiations.

It is clear that the framers of the Constitution assume that the Members of the Senate would act on the President's judicial nominations primarily, if not solely, with regard to the qualifications and fitness of the nominees. It was, therefore, believed that the requirement of Senate approval would constitute a salutary safeguard against bad appointments.

REJECTION OF NOMINEES

In his scholarly review of the history of the Supreme Court, Charles Warren cites that of the 116 persons nominated by Presidents to be Justices of the Supreme Court, 21 failed to receive approval of the Senate. Only four were rejected for lack of qualifications or fitness: those of John Rutledge in 1795; Alexander Wollcott in 1811; George H. Williams in 1873, and Caleb Cushing in 1874. Seventeen nominees were rejected for political and philosophic reasons.

Thus, the Senate has confirmed more than 80 percent of persons named by Presidents to the High Court.

Since 1900, only five nominations to the Supreme Court have faced serious opposition in the Senate—those of Brandeis in 1916, Stone in 1925, Hughes in 1930, Parker in 1930, and Black in 1937. In each of these cases the opposition was due to the philosophy and the views of the nominee on social and economic issues. Of these five nominations, only that of Judge Parker was rejected.

Therefore, in the last 68 years, only one nominee has failed to be confirmed by the Senate for any reason.

It would be instructive to review some of these cases to show the great wisdom of our Founding Fathers in their intended approach to Senate confirmation, and to show the irrelevance of a man's philosophy in being considered for appointment to the Supreme Court.

THE BRANDEIS CASE

One of the most celebrated senatorial confirmation contests in our history took place over the appointment of Louis D. Brandeis to the Supreme Court.

Hearings were conducted by a Senate Judiciary Subcommittee over a period of 4 months, and were twice reopened. The hearing record filled two thick volumes of more than 1,500 printed pages.

The contest aroused public attention throughout the country, and the prestige and leadership of President Wilson were at stake. Had Mr. Brandeis been rejected, the appointment, according to constitutional historians, would have become an issue in the campaign and might well have changed the result of the presidential election of 1916.

The President sent this nomination to the Senate early in 1916, and for several months the outcome was uncertain. When the vote finally came on June 1, less than a month before the Democratic National Convention, the appointment was confirmed.

No nominee to the Supreme Court ever faced stronger or more determined opposition. A group of leading members of the bar and prominent businessmen were not content merely to protest the appointment, but also engaged counsel to oppose it. Each side marshaled witnesses and vied with the other to secure the support of nationally prominent persons.

But the bulk of opposition came from Boston, where members of old and highly respected law firms and financial interests resented Mr. Brandeis as an outsider, a Jew, and a skillful lawyer who asked no quarter and gave none in his battles with some of the largest financial interests of the country.

It was not his vigorous law practice, however, by which he incurred the hostility of many members of the bar, but rather his unpaid public activities in opposing the merger of the New Haven and the Boston & Maine Railroads, his fight for lower gas rates and for public control of utilities, his support of minimum wage legislation, and his war against trusts and monopolistic practices of the time.

His practice as a corporation lawyer enabled him to observe the abuses of power by large corporations and monopolies, and he developed a philosophy opposed to bigness, irresponsible power, and some of the banking and financial practices of his day.

He was considered by many as an objectionable crusader, a radical, a Socialist, and a person with dangerous economic ideas.

Moreover, during the presidential campaign of 1912, Brandeis had supported La Follette, refusing to follow the Progressives into the Roosevelt camp and instead actively campaigned for Wilson—in spite of the fact that Brandeis was a registered Republican.

The Democratic organization in Massachusetts even sent President Wilson a photostatic copy of Brandeis' registration as a Republican.

Reacting to the nomination, former President William Howard Taft was quoted as saying that the appointment was to him a fearful shock. Taft continued:

> It is one of the deepest wounds that I have had as an American and a lover of the Constitution and a believer in progressive conservatism that such a man as Brandeis could be put on the Court. He is a muckraker, an emotionalist for his own purposes, a socialist.

Taft went on to say, rather bitterly, that while Brandeis doubtless was motivated by high ideals, he also had "much power for evil," and that he thought when his own name—Taft's—had been suggested for the Supreme Court, "it was to laugh."

Another charge hurled at Brandeis was his "infidelity, breach of faith, and unprofessional conduct" as a lawyer. Opposing witnesses testified that Brandeis was "not straightforward," was "untrustworthy," and had "engaged in sharp, unethical legal practices."

Most of the Senate hearings on the nomination were given over to the testimony of these and other opposing witnesses, who were asked to cite specific evidence of unethical conduct by the nominee. But the evidence placed before the committee completely failed to substantiate these charges of unprofessional conduct, of untrustworthiness, and unethical practices.

One authority wrote:

> It is significant that the opponents to Brandeis elected to base their opposition on charges of this kind rather than state the real reason for their opposition: They regarded him as a dangerous radical.

The relations of Brandeis with the United Shoe Machinery Co. also came in for a good deal of attention. Because one of his clients owned a large block of stock in that company, Brandeis served on its board of directors for a period of several years; moreover, his law firm acted as consulting counsel to the company. In this capacity, Brandeis came more and more to question the monopolistic practices of the company and, in 1907, withdrew from the company's board and discontinued to serve it as legal consultant.

At the Senate hearings, the company president attacked Brandeis for criticizing practices which he had sanctioned when he was an officer of the company, and for using confidential information he had secured as company counsel later to oppose it. But, on intense questioning, the company president was forced to withdraw these charges, and only his assertion that Brandeis had misrepresented the facts was allowed to stand.

Another attempt to indicate that Brandeis was not straightforward was the accusation that, when he appeared before a congressional investigating committee in 1910 as a defense counsel for Louis R. Glavis, whose article exposing land frauds in the Department of the Interior had been published by Collier's magazine, he did not announce that he was being employed and paid by Collier's.

A number of other charges of unprofessional conduct were made against Brandeis but, after they were explored by the Senate committee, none was sustained. It was apparent from the testimony that most witnesses who believed Brandeis had been unethical actually had little firsthand knowledge of the circumstances and situation, and, in fact, had secured their information from a scurrilous advertising campaign conducted by one of his avid enemies, who had mounted a vigorous publicity campaign for years to destroy Brandeis' reputation at the bar.

Near the end of the Senate hearings, a memorial signed by seven former presidents of the American Bar Association, opposing the confirmation of Brandeis, was submitted to the committee, as follows:

> The undersigned feel under the painful duty to say to you that in their opinion, taking into view the reputation, character and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States.

Former President Taft headed the list, which also included Elihu Root, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Moorfield Storey, and Peter W. Meldrin.

To counteract a report that the administration did not care whether or not the appointment was confirmed and to spur the Senate committee into action, President Wilson sent a strong letter of endorsement to the Senate committee, saying that the charges against Brandeis were not only unfounded but they "threw a great deal more weight upon the character and motives of those with whom they originated than upon the qualifications of Mr. Brandeis." The President went on to say:

> I perceived from the first that the charges were intrinsically incredible by anyone who had really known Mr. Brandeis. I have known him, I have tested him by seeking his advice upon some of the most difficult and perplexing public questions about which it was necessary for him to form a judgment. I have dealt with him in matters where nice questions of honor and fairplay, as well as large questions of justice and the public benefit, were involved. In every matter in which I have made test of his judgment and point of view I have received from him counsel singularly enlightening, singularly clear-sighted and judicial, and, above all, full of moral stimulation.

When the Judiciary Committee voted on the nomination on May 24, 1916, the vote was 10 to 8 to report it favorably.

On June 1, the Senate confirmed the appointment of Brandeis by a vote of 47 to 22.

SIGNIFICANCE OF BRANDEIS CASE

The Brandeis case brought into sharp focus several important aspects of the senatorial confirmation process. The case illustrates that a person who has played a leading role in civic and economic reform movements and has taken stands on controversial public issues, and particularly if he has had to deal with powerful groups in society, will face strong opposition. Such a person can be confirmed only with the greatest effort.

The case also shows that where charges as serious and as personal in nature as unethical practices, unprofessional conduct, and untrustworthiness are made—such as those against Brandeis—they should be thoroughly and fairly investigated. This was done, as I pointed out earlier, and they were shown to be utterly without merit. The Senate wisely voted to confirm him.

It is a widely accepted fact of our judicial history that Justice Brandeis went on to become one of the great Justices of the Supreme Court, and that many who opposed his nomination, charging that he was not trustworthy and had been guilty of unprofessional and unethical conduct, completely reversed their attitudes. Among these, former President Taft was foremost. Following his appointment as Chief Justice of the Supreme Court, Taft's biographer, A. T. Mason, wrote of the relationship of the former President with Brandeis as follows:

> Bubbling with enthusiasm, Taft reported that "Brandeis and I are on most excellent terms and have some sympathetic views in reference to a change in the relations of the Court to the Clerk as to financial matters. He cannot be any more cordial to me than I am to him so that honors are easy."

Taft came to regard Brandeis as an able and valuable member of the Court, though often they were on different sides.

Mr. President, I have dwelt on this very historic case for two reasons; first, because I perceive some very obvious parallels between this case and the instant situation relating to Judge Haynsworth; and, second, because as a lawyer and as one who has some appreciation for the development of the principles of American jurisprudence, I have long admired the tremendous contribution Justice Brandeis has made in this regard—and I feel that very few events in our history have had greater significance in the annals of American jurisprudence.

THE HARLAN F. STONE CASE

The nomination by President Coolidge of Harlan F. Stone to the Supreme Court in 1925 was strongly opposed by a bipartisan group of Senate liberals, led by Republicans Norris and La Follette. This was the first of several attempts to block appointment to the Court of persons they regarded to be too conservative.

A former dean of the Columbia University Law School, and widely recognized as an able attorney and a man of the highest integrity, Stone had been appointed Attorney General by President Coolidge before he was named to the Court.

The opposition to him was based mainly on the fact that his law firm had been engaged as legal counsel by the Morgan interests.

In addition, during Judiciary Committee hearings on the nomination, Stone was interrogated at great length concerning an action the Justice Department had instituted, seeking an indictment of Senator Wheeler in connection with a land fraud case in Montana, in which Stone had served as counsel. A special investigating committee of the Senate had absolved Senator Wheeler of any wrongful acts and the suit against him in Montana apparently had been dropped. But, on further investigation, the Department was attempting to secure his indictment and to bring him to trial before the Federal Court in the District of Columbia.

The Judiciary Committee reported the nomination favorably and it came before the Senate for action on February 4, 1925.

The principal speech against Stone was made by Senator Norris, who objected strongly to the practice which the Republican administration had followed by appointing persons identified with large corporations and great wealth to high positions in the Government. He said that, considering the high legal qualifications and personal integrity of the nominee, if the nomination of Stone had stood alone, he—Norris—would have entered no objection, but when he considered it in the light of a number of similar appointments, he felt impelled to protest.

The Senate overrode these objections overwhelmingly and voted 71 to 6 to confirm.

Justice Stone's subsequent record on the Supreme Court, as everyone knows, was very distinguished.

On June 27, 1941, when the nomination of Justice Stone to be Chief Justice was sent to the Senate, Senator Norris, who had opposed him in 1921, was moved strongly to support the nomination and indicated his change of heart as follows:

> The nomination by the President of Mr. Justice Stone to become Chief Justice of the United States is a very proper and commendable recognition of the ability, courage, and wisdom of Mr. Justice Stone, who has served as Associate Justice of the Supreme Court for quite a number of years.
>
> When Mr. Stone was appointed an Associate Justice of the United States Supreme Court, many years ago, I opposed the confirmation of his nomination and voted against it. In the years that have passed I became convinced, and am now convinced, that in my opposition to the confirmation of his nomination I was entirely in error.
>
> I am now about to perform one of the most pleasant duties that has ever come to me in my official life when I cast a vote in favor of his elevation to the highest judicial office in our land. I do this because, while it may not affect the country or the Senate, or even Mr. Justice Stone, it is a great satisfaction to me to rectify, in a very small degree, perhaps, the wrong which I did him years ago when I voted against the confirmation of his nomination to be an Associate Justice of the Supreme Court.

THE CHARLES EVANS HUGHES CASE

In February 1930, President Hoover nominated Charles Evans Hughes to be Chief Justice of the Supreme Court.

A former member of the Supreme Court who had resigned in 1916 to become Republican candidate for President, a former Governor of New York, and a former Secretary of State under Presidents Harding and Coolidge, the Hughes nomination was acclaimed across the country. Unquestionably, he was one of the ablest and most respected members of the American bar, and included among his clients many large corporations and persons of great wealth.

The Senate Judiciary Committee reported the nomination favorably, but Senator Norris, its chairman, filed a minority report. When the nomination came before the Senate, the same bipartisan coalition which had been against the Stone nomination, again opposed the Hughes appointment.

Their opposition was centered on what were alleged to be the economic views of Hughes.

Senator Borah asked:

> When during the last sixteen years has corporate wealth had a contest with the public . . . when Mr. Hughes has not appeared for organized wealth and against the public?

Considering that Hughes was a distinguished American of wide reputation and high standing, Borah said:

> I am only concerned with the proposition of placing upon the Court as Chief Justice one whose views are known upon these vital and important questions, views which ought (not) to be incorporated in and made a permanent part of our legal and economic system.

In his minority report, Norris wrote that Hughes had appeared before the Supreme Court 54 times "for corporations of untold wealth." Referring to Hughes' lucrative law practice, the Senator said:

> I am not willing that there should be transferred from that kind of surroundings one who shall sit at the head of the greatest judicial tribunal in the world. I am not willing to say that that kind of man, regardless of his ability, should go on the Supreme Bench.

The Senate vote came up April 13, and Hughes was confirmed 62 to 26.

In retrospect, there is wide agreement among scholars that the bipartisan group of Senate liberals misjudged their man in opposing Hughes, whose record on the Court was clearly that of a liberal Justice, frequently siding with Justices Holmes, Brandeis, Cardozo and Stone.

He became a Chief Justice who is considered to rank with Marshall and Taney. Like the Stone confirmation, the Hughes case concerned, not the ability and qualifications of the nominee, which were considered, but rather his economic and political philosophy.

Mr. President, again I feel that there are some important parallels between the Stone and Hughes confirmation cases and the Haynsworth case which we are now considering.

Had the opposition prevailed in defeating the Stone and Hughes nominations, the country would have been deprived of their great contributions to the Court.

THE JOHN J. PARKER CASE

President Hoover, in the spring of 1930, nominated John J. Parker to be Associate Justice of the Supreme Court—a nomination which was to be subjected to a vigorous attack in the Senate and in the Nation. Subsequently, it was to be rejected by a very narrow vote, the first nomination to be rejected in 36 years.

Judge Parker was a prominent Republican of North Carolina, a former candidate of his party for Governor and national committeeman from the State. In 1925, President Coolidge appointed him to the Fourth Circuit Court of Appeals, and he was serving on that bench at the time of his nomination.

He was highly regarded as a jurist, a reputation which continued to grow even after his nomination was rejected by the Senate. In 1945, he was named by President Truman as an alternate American member of the Nuremberg court for the trial of Nazi war leaders.

The opposition to Judge Parker in the Senate was based on three contentions: First, that he favored "yellow-dog" contracts and was unfriendly to labor; second, that he was opposed to Negro suffrage and participation in politics; and third, that the appointment was dictated by political considerations. Again, the opposition was led by a bipartisan coalition of progressive Republicans and most of the Democratic Members.

On the opening day of the public hearings, the Judiciary Committee chairman placed in the record some 20 pages of endorsements of Judge Parker by prominent persons in his State—a list headed by the State Governor, who was a member of the opposition party.

Appearing in opposition to the appointment were two principal groups.

Labor came out in stanch opposition to the nomination, contending that in the famous Red Jacket case in which an "injunction was sustained in a yellow-dog contract situation, Judge Parker had betrayed a judicial and mental bias in favor of powerful corporations and against the masses of the people." President William Green, of the American Federation of Labor, said that his confirmation would add "another injunction judge" to the Supreme Court, and, "as a result the power of reaction will be strengthened, and the broadminded, humane, progressive influence so courageously and patriotically exercised by the minority members of the highest tribunal of the land will be weakened."

In the so-called Red Jacket case, the Supreme Court upheld an injunction granted by a lower court enjoining the union from "inciting, inducing, or persuading the employees of the plaintiff to break their contract of employment"—that is, to join the union. Green contended that Judge Parker had shown in his language on that decision that he was quite in accord with the legal and economic policy of yellow-dog contracts. In other words, Judge Parker was charged to be antilabor.

The other principal opposition to Judge Parker came from the National Association for the Advancement of Colored People, which based its opposition entirely on a statement Judge Parker had made as a Republican candidate for Governor of North Carolina in 1920.

Replying to charges made by his Democratic opponents, Judge Parker denied that the Republican Party intended to enfranchise the Negro, and he said:

> The participation of the Negro in politics is a source of evil and danger to both races and is not desired by the wise men in either race or by the Republican Party of North Carolina.

To the NAACP, this statement was "an open, shameless flouting of the 14th and 15th amendments of the Federal Constitution," and that no man who entertained such ideas "is fit to occupy a place on the bench of the U.S. Supreme Court."

When asked by Senator Borah if he knew "anything else in the career of Judge Parker to indicate that he was unfriendly to the Negro," the NAACP witness replied:

> Nothing, except this statement here. . . . Frankly, we never heard of him until he was nominated by President Hoover.

By a vote of 9 to 8, the Judiciary Committee reported the nomination adversely. Three progressive Republicans—Norris, Borah and Blaine—were joined by two Republicans and four Democrats against the nomination.

On the Senate floor, one of the main opposing speeches was made by Senator Borah, who said:

> I am opposed to the confirmation of Judge Parker because I think he is committed to principles and propositions to which I am very thoroughly opposed. . . . He is particularly identified with this kind (yellow dog) of contract.

Borah said:

> If the Senate decides that Mr. Parker should be confirmed, it is in moral effect a decision of the Senate in favor of the yellow dog contract.

One other charge frequently made during the Senate debate was that the appointment was motivated by political considerations, that President Hoover, by selecting a prominent Republican from the South, hoped to build up the party in that region of the country. This charge gained considerable credence when Senator McKellar of Tennessee placed in the record a letter from First Assistant Secretary of the Interior Joseph M. Dixon to Walter H. Newton, secretary to the President, in which Dixon said that the appointment of Judge Parker "would be a master political stroke at this time."

The Senate rejected the confirmation by a vote of 39 to 41.

The rejection of Judge Parker, in the final analysis, resulted from the adamant opposition of organized labor and the NAACP and not for any want of capability, of integrity, or of stature in the community.

Nor did the facts support the charges made against Judge Parker; his record ever since the rejection continued to be that of a highly able and openminded judge.

Here, again, it is unnecessary for me to draw out the very apparent parallels between this case and the Haynsworth case. The facts did not support the charges which were made against Judge Parker, and I feel that the country was deprived of a distinguished and able Supreme Court Justice; and similarly, as I shall subsequently show, the facts in the instant case before us do not support the charges which have been made against Judge Haynsworth.

FOUNDING FATHERS WERE RIGHT

By hindsight, these four cases involving judicial nominations to the Supreme Court—Justice Brandeis, Justice Stone, Justice Hughes, and Judge Parker—appear to underline strongly and sustain the wisdom of the Founding Fathers, who intended that the confirmation power of the Senate be limited to a consideration of competence, integrity, and capability.

These cases plainly indicate to me the folly of using a nominee's philosophy, if reasonable, as the basis of rejection by the Senate.

Justice Brandeis was very nearly voted down by Senators deeming him to be too "liberal"—but he became a Justice of great wisdom, fairness, and foresight. Justice Stone and Justice Hughes were attacked by liberals in the Senate who accused both men of being too closely identified with great wealth and therefore apt to be too "conservative"—but these Justices became two of the most distinguished liberals ever to sit on the Supreme Court.

Judge Parker was denied the opportunity to serve on the High Court because he was alleged to be antilabor and anticivil rights—but he has been widely acclaimed by judicial historians as one of the most liberal men of his time.

Mr. President, these very significant contests over nominations to the Supreme Court appear plainly to provide the Senate with a guideline which bears directly upon this debate over the confirmation of the nomination of Judge Haynsworth.

That is to say, allegations relating to a nominee's philosophy are at best inadequate gages by which to judge the quality of a man, and most certainly no indication of the future course of action the nominee may take once he mounts the Bench.

The four cases I have been discussing seem clearly to indicate that the most reliable yardstick for judging a nominee's fitness to serve on the Supreme Court is his competence, his integrity, and his capability to be a fair and impartial judge.

Nevertheless, although firmly believing philosophic considerations are not appropriate grounds for confirmation, many charges have been made alleging that Judge Haynsworth is anticivil rights and antilabor—charges which should not be allowed to stand. Because, on careful examination of the entire record of cases in which Judge Haynsworth has participated as a judge of the fourth circuit court, he is shown to be neither pro- nor anti-civil rights, and he is shown to be neither pro- nor anti-labor. Rather, Judge Haynsworth emerges from his writings as a workmanlike and careful judge who is always solidly grounded in the principle of stare decisis.

HAYNSWORTH'S CIVIL RIGHTS RECORD

The author of the original HEW school desegregation guidelines, Prof. G. W. Foster, Jr., of the University of Wisconsin Law School, a man who has long been active in solving the problems of school desegregation—a man who has followed closely the work of the Federal courts in the South—has presented to the Senate an insightful analysis of Judge Haynsworth's record in the area of school desegregation—hearings, page 602 and the following. After comparing Judge Haynsworth's decisions with those of the Supreme Court and other circuits, Prof. Foster states:

> It is both wrong and unfair to charge that he (Judge Haynsworth) is a racial segregationist or that his judicial record shows him to be out of step with the Warren Court on racial matters. . . . His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent, open-minded man with a practical knack for seeking workable answers to hard questions. . . . In my judgment he ranks along with the best of the open-minded, pragmatic judges in the federal system, neither dogmatic nor doctrinaire.

A survey of all the decisions involving civil rights issues in which Judge Haynsworth participated shows no pattern of bias. In some cases, decisions were rendered in favor of the party claiming infringement of civil rights; others did not.

In the past 12 years, in some 25 civil rights cases, Judge Haynsworth was shown to be unwilling to go beyond the mandates of both the Supreme Court and Congress, preferring instead to follow Supreme Court and statutory directives, and where these were absent, to follow precedents of his own circuit or those of other circuits.

Judge Haynsworth's record shows that he voted more often to sustain a civil rights position than he did not. His work on the court reveals him to be an intelligent and openminded person, seeking to dispense true justice in extremely difficult situations.

The lengthy litigation in the Prince Edward County, Va., school desegregation case illustrates this point very well.[1] In 1959 Judge Haynsworth voted to strike down a lower court order giving that county 10 years to desegregate its schools. But, in 1963, after the public schools were replaced with "private" white schools, he wrote for a majority of the fourth circuit that closing the public schools to avoid integration was not violative of the Federal Constitution, that the county's action might violate State law, and that the Virginia Supreme Court should pass on the complex issues of the case. After the Virginia Supreme Court acted, the U.S. Supreme Court reversed this Haynsworth opinion. Two years later, he dissented when a majority of his court found Prince Edward officials in contempt for appropriating money to run the "private" schools while the case was pending.

Haynsworth's view on this issue of school desegregation is, as he wrote, that "schools that are operated must be made available to all citizens without regard to race, but what public schools the State provides is not the subject of constitutional command." In the contempt case, he agreed that the action of the county officials was "contemptible" and "unconscionable," but said the court lacked jurisdiction to hold them guilty of contempt. Thus, Judge Haynsworth's position with respect to the Prince Edward cases was always grounded in solid legal precedent and was in compliance with Supreme Court edicts.

[1] *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F. 2d 332 (4 Cir. 1963), *Reversed*, 377 U.S. 218 (1964).

A similar pattern is to be found in his opinions dealing with the freedom of choice issue.[2] Until the Supreme Court ruled that such plans were unconstitutional and ordered the school board to take affirmative action to desegregate, his position was that the freedom of choice plan was acceptable, as long as each student was free to choose each year the school he attended, and as long as his choice was uninhibited by coercive action. Following the Supreme Court edict outlawing freedom of choice plans, he voted against them.

In other key cases, while the judge voted in dissent that a hospital receiving funds under the Hill-Burton Act could discriminate against Negroes on the ground that there was no "State action" present,[3] he subsequently reversed himself and concurred with the majority opinion in a case involving the same hospital, ruling that the hospital could not discriminate, because he felt it was his duty to accept the majority opinion of his own court as binding upon him.[4]

In 1966, in an opinion by Judge Haynsworth, the court ruled that the North Carolina Dental Society was required to accept Negro members, even though the State action involved was no greater than it was in the hospital case.[5] He wrote in the dental society case:

> The activities of the Society on State action, its practice of racial exclusivity is patently unconstitutional.

JUDGE HAYNSWORTH'S RECORD IN LABOR CASES

Just as in the civil rights cases, an evaluation of Judge Haynsworth's record in cases involving organized labor reveals him to be neither pro- nor anti-labor, but rather as a fair and judicious man intent on providing the fairest possible solution in this very complex area of law. Indeed, his record shows an even-handed treatment of litigation in which he rendered the decision according to law, that he considers a question clearly, without regard to whether a particular result is advocated by union or management.

Judge Haynsworth has participated in more than 100 cases involving labor-management relations. In more than one-third of these he has endorsed the union's position in its entirety. In a comparable number of cases he has supported management's position. In the rest, he has not been satisfied with either the union's position nor management's position and has taken a middle ground. In cases where there have been divisions of opinion among the judges of the fourth circuit, Judge Haynsworth has found himself supporting each side at different times.

Organized labor's evaluation of Judge Haynsworth's labor views relied upon several decisions which were reversed by the Supreme Court, and others where there was a division of opinion in the fourth circuit.

It is noteworthy that the Fourth Circuit Court of Appeals, in the years 1968–69 ordered enforcement of National Labor Relations Board cease-and-desist orders in 93 percent of the cases—a very high figure as compared with the circuit courts in other parts of the country, which provided enforcement in 81 percent of the cases.

Moreover, in the 12 years that Judge Haynsworth has been a member of the fourth circuit, he has upheld the union's contentions in nearly 50 cases, in whole or in part, and has written at least eight opinions which were favorable to labor:

In *NLRB* v. *Electromotive Manufacturing Co.*, 389 F. 2d 61 (4th Cir. 1968) the court enforced an order of the NLRB to reinstate a prolabor supervisor. Judge Haynsworth rejected the contention that supervisors were not protected under the Labor Management Relations Act and noted that the discharge of supervisors who encouraged union activity would impair the functioning of machinery provided to protect employees' rights and instead would restrain employees in the exercise of their protected rights.

In *United Steel Workers* v. *Bagwell*, 383 F. 2d 492 (4th Cir. 1967), an injunction action by the union against a city ordinance which made it unlawful to distribute circulars or place them on automobiles, in soliciting memberships in labor unions, the court held such ordinance unconstitutional. Judge Haynsworth, writing for the Court, said:

> A municipality may prohibit the distribution of commercial advertisement on its streets and the throwing of litter upon those streets and sidewalks, but its interest in keeping the streets clear does not warrant an ordinance forbidding the distribution to willing recipients of handbills expressing ideas and opinions.

In *NLRB* v. *Empire Manufacturing Corp.*, 260 F. 2d 528 (4th Cir. 1958), the court sustained the Board ordering reinstatement of certain employees who were dismissed because of their union activity. Judge Haynsworth's opinion found that the close coincidence of union activity, company threats, and the dismissals within a short time was enough to sustain the Board's orders.

In *NLRB* v. *Community Motor Bus Co.*, 335 F. 2d 120 (4th Cir. 1964), finding that it was the responsibility of the Board to determine the credibility of the supervisor and employee involved in the case, the court found that the employee had been wrongfully discharged because of his union activity.

In *Chatham Manufacturing Co.* v. *NLRB*, 404 F. 2d 1116 (4th Cir. 1968), involving a question of the proper court in which a petition should be filed for a review of a Board decision, in an opinion by Judge Haynsworth the court granted the Board's motion to transfer the case to the Court of Appeals for the District of Columbia on the ground that the union had filed its petition for review in the District of Columbia court first; the employer had subsequently filed a petition for review in the fourth circuit court, which was denied.

In *NLRB* v. *Webb Furniture Corp.*, 366 F. 2d 314 (4th Cir. 1966), the court enforced the Board's finding that the employer had refused to bargain after the union had substantially modified its demands and charged the company with the unfair labor practice of refusing to bargain in good faith.

In *NLRB* v. *Carteret Towing Co.*, 307 F. 2d 835 (4th Cir. 1962), the court, in an opinion by Judge Haynsworth, held that the NLRB had jurisdiction over employers engaged in towboat operations assisting naval and large commerical vessels in and out of harbors. The employer was held to be engaged in activities affecting commerce and thereby fell under the Board's jurisdiction.

In *Intertype Co.* v. *NLRB*, 371 F. 2d 787 (4th Circuit 1967), the court, in an opinion by Judge Haynsworth, enforced the Board's decision finding that the employer conducted illegal surveillance of union meetings and then illegally discharging employees because of union activities; the opinion stated that the supervisors did not innocently chance upon the meeting, but went there for the purpose of identifying those present.

In addition to these cases, Judge Haynsworth joined in at least 37 opinions which may also be considered as being favorable to labor. Taken in toto, at the very least, this record cannot be said to indicate any bias against labor. These cases, particularly the eight cases I have discussed, appear to represent an excellent cross-section of the many complex issues arising from labor-management relations.

There were, of course, cases in which Judge Haynsworth participated where decisions were unfavorable to organized labor.

The union witnesses who testified against confirmation cited 10 cases in which the Supreme Court reversed Judge Haynsworth's decision as evidence of his "anti-union" prejudice. A careful reading of these 10 cases fails to support this contention. Only by failing to examine the issues involved and the basis of reversal in each case can one reach the conclusion advanced by the union representatives.

Of the 10 cases cited, two did not involve labor-management issues at all. In one the question was whether a certain engine was involved in "train" or "switching" movements under the Safety Appliance Act.[6] The other involved the issue whether the nonprofessional employees of an architectural firm—clerks, draftsmen, fieldmen, and stenographers—were "engaged in commerce" so as to subject the defendant to the recordkeeping and overtime provisions of the Fair Labor Standards Act.[7] Thus these cases did not involve unions at all.

Nor did another case which raised the question whether employees who were dissatisfied with working conditions had to inform their employer of their complaints before walking off the job.[8]

[2] *Bowman* v. *County School Board*, 382 F. 2d 326 (4 Cir. 1967), *Reversed*, 391 U.S. 430 (1968).

[3] *Eaton* v. *Board of Managers of James Walker Memorial Hospital*, 261 F. 2d 521 (4 Cir. 1958).

[4] *Eaton* v. *Grubbs*, 329 F. 2d 210 (4 Cir. 1964).

[5] *Hawkins* v. *North Carolina Dental Society*, 355 F. 2d 718 (4 Cir. 1966).

[6] *U.S.* v. *Seaboard Air Line Railroad Co.*, 361 U.S. 78, *reversing* 258 F. 2d 262.

[7] *Mitchell* v. *Lublin, McGaughy & Associates*, 358 U.S. 207 (1959), *reversing* 250 F. 2d 253 (4 Cir. 1957)

[8] *NLRB* v. *Washington Aluminum*, 370 U.S. 9 (1962), *reversing* 291 F. 2d 869 (4 Cir. 1968)

Of the remaining seven cases, three involved identical issues and were decided together, with the Supreme Court acknowledging that its position was not significantly different from that taken by the fourth circuit.[9] In two other cases the Supreme Court reversal was based upon fundamental policy changes made by Congress subsequent to the fourth circuit's decision.[10]

Another case involved the announcement by the Supreme Court of sweeping new rules, circumscribing the permissible scope of judicial review in arbitration cases.[11] In making this fundamental policy change the Supreme Court also reversed fifth and sixth circuit cases involving issues similar to those in the case from the fourth circuit.[12]

In the 10th case cited the Supreme Court remanded the case so that the NLRB and the fourth circuit could consider an issue not previously dealt with. Judge Haynsworth subsequently upheld the union's position based on the evidence presented at the remand hearing.[13]

In none of these 10 cases did the Supreme Court purport to reverse an "antilabor" decision by Judge Haynsworth.

In this very sensitive and technically complex labor-management area, then, I believe that Judge Haynsworth has a commendable record of moderation and impartiality.

THE ETHICS CHARGES

There have been many charges made relative to Judge Haynsworth's conduct, implying that, at worst, he was guilty of violating specific canons of judicial ethics and was guilty of conflicts of interest, and at best, that he was guilty of poor judgment.

These objections centered upon the charge that Judge Haynsworth should have disqualified himself from sitting in at least two cases which he heard as a judge of the court of appeals for the fourth circuit—the Darlington case and the Brunswick case.

The relevant Federal law at 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.

Canon 29 of the American Bar Association, Canons of Judicial Ethics, provides in pertinent part:

> A Judge should abstain from performing or taking part in any judicial act in which his personal interests are involved.

THE DARLINGTON CASE

Darlington Manufacturing Co. v. *NLRB*, 325 F. 2d 682, was orally argued before the fourth circuit on June 13, 1963, and was decided by that court on November 15, 1963.

Deering-Milliken, Inc., a party to this action, owned or controlled about 27 textile plants in the southeastern part of the United States. It granted space in these various plants to vending machine companies on the basis of competitive bidding for such rights.

Carolina Vend-A-Matic Co. was one such company and, during 1963, it obtained a little more than 3 percent of its gross sales from vending machines located in three of the Deering-Milliken plants—in which approximately 700 out of 19,000 Deering-Milliken employees were employed.

In 1950, 7 years before he was appointed to the court of appeals, Judge Haynsworth was one of the original incorporators of Carolina Vend-A-Matic. Again, prior to his judicial appointment in 1957, the judge was both a director and one of the vice presidents of the company. When he was appointed a circuit judge, he orally resigned as vice president, but continued to serve as a director until October 1963, when he resigned his directorship in Carolina Vend-A-Matic as well as in another corporation, in compliance with a resolution of the U.S. Judicial Conference adopted in September 1963.

During his tenure on the fourth circuit court, Judge Haynsworth served for several years as an uncompensated trustee of Carolina Vend-A-Matic pension and trust-sharing fund, and his wife served for 2 years as secretary of that company. Her role was limited to helping out at the office, handling only routine office matters.

It is undisputed, according to the record, that Judge Haynsworth took no part in the day-to-day conduct of the company's business after his appointment to the court; he played no part at all in obtaining locations for the company's vending machines and was largely unfamiliar with their location.

During 1963, Judge Haynsworth owned one-seventh of the stock of Carolina Vend-A-Matic. In that year the company had competed for three sites in the Deering-Milliken plants, but succeeded in obtaining only one. None of the Deering-Milliken officials who had charge of the vending machine rights knew that the judge was associated with Carolina Vend-A-Matic.

It has been charged that Judge Haynsworth should have disqualified himself in Darlington because he had an interest in Deering-Milliken within the meaning of the language of either the canons or the statute.

This contention is contrary to all the precedents involving judicial qualification, as two highly qualified witnesses so testified before the Judiciary Committee. The overwhelming weight of authority holds that where a judge holds stock, not in a party litigant, but in a corporation which has conducted business with the party litigant, the judge is not required to be disqualified from deciding the case—see, for example, *Webb* v. *Town of Eutaw*, 63 So. 687 (Ala. 1913); *In Re Farber*, 260 Mich. 652, 245 N.W. 793 (1932); *Central Savings Bank of Oakland* v. *Lake*, 257 Pac. 521 (Calif. 1927); *In Re Union Leader Corporation*, 292 F. 2d 381 (1st Cir. 1961); *Wolfson* v. *Palmieri*, 396 F. 2d 121 (2d Cir. 1968).

As Judge Lawrence E. Walsh, chairman of the American Bar Association Committee on Judicial Section, testified:

> We believe that there was no conflict of interest in the *Darlington* case which would have barred Judge Haynsworth from sitting and we also concluded that it was his duty to sit (Hearings, p. 140).

Similarly, John P. Frank, a leading authority on the subject of disqualification, testified as follows:

> In the light of the overwhelming body of American law on this subject and indeed I think without exception, I have reviewed the cases comprehensively for this appearance, being aware of its gravity and have worked on the matter previously, and I cannot find a reported case in the United States in which any federal judge has ever disqualified in circumstances in the remotest degree like those here. There was no legal ground for disqualification.
>
> It follows that under the standard federal rule Judge Haynsworth had no alternative whatsoever. He was bound by the principle of the cases. It is a judge's duty to refuse to sit when he was disqualified, but it is equally his duty to sit when there is no valid reason not to (Hearings, p. 115).

When Carolina Vend-A-Matic was acquired by Automatic Retailers of America, Inc., in 1964, Judge Haynsworth exchanged his shares for 14,173 shares of the ARA Co., which was worth $437,000, on the market. This is the basis of the criticism of Judge Haynsworth for having made a substantial profit out of his investment in Carolina Vend-A-Matic.

The suggestion underlying this criticism is that the continued rise in sales of Carolina Vend-A-Matic after he became a Federal judge was due to the use of the prestige of his office to promote the company's business—so that his initial investment of $2,300—hearings, page 60—ballooned to $435,000. No evidence whatsoever was offered at the committee hearings to support this outrageous charge. Indeed, all the evidence effectively refutes the suggestion.

Mr. Alex Kiriakides, president of one of Vend-A-Matic's principal competitors, in a letter to the chairman of the committee, stated:

> Because of the growing recognition that vending services provide the most pleasant and most efficient means of providing food and refreshment for industrial employees, the industry throughout the United States has experienced phenomenal growth. In the Southeast general industrial expansion has made the growth of all vending companies even more spectacular. The experience of Carolina Vend-A-Matic was not in the least

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[9] *NLRB* v. *Giessel Packing*; *NLRB* v. *Heck's, Inc.*, and *General Steel* v. *NLRB*, 37 Law Week 4536 (89 S.Ct. 1918) (1969), *reversing* 398 F. 2d 336 (4 Cir. 1968)

[10] *NLRB* v. *United Rubber, Cork, Linoleum & Plastic Workers*, 362 U.S. 329 (1959), *reversing* 269 F. 2d 694 (4 Cir. 1959). (Subsequent expression of congressional intent in the 1959 Labor Management Recording and Disclosure Act.)

Walker v. *Southern RR Co.*, 385 U.S. 196 (1966), *reversing* 354 F. 2d 950 (4 Cir. 1965). (Congressional dissatisfaction with operation of National Railroad Adjustment Board expressed subsequent to Fourth Circuit decision.)

[11] *United Steelworkers* v. *Enterprise Wheel*, 363 U.S. 593 (1960), *reversing, in part*, 269 F. 2d 327 (4 Cir. 1959).

[12] *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, *reversing* 264 F. 2d 624 (6th Cir.)

United Steelworkers v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, *reversing* 269 F. 2d 633 (5th Cir.)

[13] *Darlington Manufacturing* v. *NLRB*, 325 F. 2d 682 (4 Cir. 1963), remanded in 380 U.S. 263 (1965), on remand 397 F. 2d 760, (4 Cir. 1968) *cert. den.* 393 U.S. 1023 (1969).

unique to it. My own business experienced comparable growth. A vending business in Spartanburg, just 30 miles to the west, had similar experiences. It is simply the case of having a service to offer at a time of rapidly rising demands for that service (October 6, 1969).

In other words, the astronomic rate of growth for Carolina Vend-A-Matic was indicative of the success vending machine companies were experiencing in those years.

Kiriakides also wrote:

This business (Carolina Vend-A-Matic) was not developed on the basis of anyone using anyone's influence on anybody. I know that Judge Haynsworth's name was never used in any attempt to influence anybody.

Another very relevant factor to consider with respect to the Carolina Vend-A-Matic situation is that at the time Judge Haynsworth was named to the Fourth Circuit neither the applicable statute nor the canons prohibited a judge from being either an officer or director of a corporation organized for profit, so long as he adhered in all respects to the law and the canons. But when, in 1963, the judicial conference recommended that Federal judges relinquish their offices and directorships in such corporations, Judge Haynsworth quickly and willingly complied.

Moreover, when in 1964, the entire record of Judge Haynsworth's participation in Carolina Vend-A-Matic was reviewed by the Fourth Circuit in connection with the Darlington case, Judge Sobeloff, speaking for the court, found after investigation that all the charges were "completely unfounded"—Hearings, page 15—and expressed complete confidence in Judge Haynsworth.

THE BRUNSWICK CASE

On November 10, 1967, a three-judge panel of the Fourth Circuit Court, consisting of Judges Haynsworth, Winter, and Jones, heard oral argument in the case of *Brunswick Corp.* v. *Long* 392 F. 2d 337. Immediately following oral argument the panel met and unanimously decided to affirm the judgment of the district court in favor of Brunswick; and Judge Winter was assigned to write the opinion of the court.

On December 20, 1967, a stockbroker in Greenville, S.C., who handled Judge Haynsworth's account, placed an order for the purchase of 1,000 shares of Brunswick stock for the judge's account at $16 per share. At the time Judge Haynsworth was unaware of the fact that the opinion and judgment in the Brunswick case had not yet been filed. The stock order was executed on December 26, 1967.

In the meantime, Judge Winter had prepared a draft opinion in the case and had circulated it to Judges Haynsworth and Jones on December 27. Judge Haynsworth noted his concurrence on January 3, 1968, and the written opinion was released on February 2, 1968. Petitions for a rehearing, and for certiorari to the Supreme Court were subsequently denied.

It is important to note at this point that according to the testimony of both Judge Winter and Judge Haynsworth, the Brunswick case was in fact decided on November 10, whereas the order to purchase the Brunswick stock was executed on December 26.

However, Judge Haynsworth's pecuniary interest in the case could hardly be called "substantial" within the purview and meaning of the statute.

In the Brunswick case, both litigants had filed competing claims to repossess used bowling alley equipment. Had the plaintiff been awarded priority for the full amount of his claim, and had the sale of the security been sufficient to liquidate the claim, he would have received $90,000. Assessing this figure against Judge Haynsworth's ownership of 1,000 out of more than 18,000,000 shares of stock outstanding, the total pecuniary effect of such a decision on Judge Haynsworth's interest in the Brunswick Co. would have been less than $5.

In any case, it is clear to me that because the decision had been rendered prior to the purchase of the stock, because Judge Haynsworth stood to make little, if any, financial gain by reason of the stock purchase and thus could not have been influenced in his judicial action, neither the statute nor the canons were violated.

THE APPEARANCE OF IMPROPRIETY

The Judicial Canons of Ethics No. 4 requires:

A Judge's official conduct should be free from impropriety and the appearance of impropriety.

It has been charged by those who oppose Judge Haynsworth's confirmation that where allegations are made charging violation of canons of ethics or conflict of interest statutes, even though all the evidence conclusively showed that no such violations occurred, there nonetheless may be an "appearance of impropriety" which thereby violates Canon 4.

No such position has ever been taken by the American Bar Association's Committee on Ethics, nor is such an interpretation warranted by the language of the canon itself. Unfounded accusations alone cannot and should not disqualify an otherwise qualified candidate. To accede to such a view would be to place a nominee's fate in the hands of anyone who would wish to make any kind of accusation, regardless of its merit. To take such a position is contrary to all our traditions of fair play and justice.

Mr. President, I am therefore impelled to the conclusion that all of the so-called ethics charges which have been made against Judge Haynsworth have not at all been substantiated, and that nothing in his judicial conduct during the 12 years he has served as a judge in the fourth circuit in any way justifies withholding the Senate's approval of his nomination.

RELEVANCE OF THE FORTAS CASE

Mr. President, I wish to make one more observation which would seem to be appropriate at this point. Many who oppose confirmation have charged that by my opposition to the nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court in the last session of Congress, and by my support of the nomination of Judge Haynsworth, I am guilty of applying a double standard. This is simply not true.

The Fortas nomination was an entirely different case and, from my viewpoint, easily distinguishable from the Haynsworth case. When the nomination of Mr. Justice Fortas was sent to the Senate, my position was well known. As I said then, long before President Johnson submitted that nomination to the Senate, I opposed any judicial nomination at that time, regardless of its merit. I felt strongly that because a new President would be elected within a few months, he should make such appointments, as he would then have received the current mandate of the American people.

When I announced my position on September 25, 1968, I said that I had no way of prognosticating who would be elected President in November, but I pointed out that I had observed a deep-seated disquiet throughout the Nation. I felt that we had arrived at a crossroad in our history, and particularly at that point in our history I felt the Senate should not take any action which might thwart the orderly process of change.

I said further that after the November election, if the new President should decide to nominate Mr. Justice Fortas to be Chief Justice, I would at that time be quite disposed to vote for his confirmation, as I had in 1965, when he became an Associate Justice.

A new President having been elected last November, and President Nixon having sent the nomination of Judge Haynsworth to the Senate for its advice and consent, I now urge that the Senate vote for confirmation.

THE NOMINATION SHOULD BE CONFIRMED

In assessing the performance of Judge Haynsworth, Judge Winter, who was appointed to the district court from Maryland by President Kennedy, and to the Court of Appeals for the Fourth Circuit by President Johnson, testified before the Judiciary Committee:

But to begin, I would like to say that I have known Judge Haynsworth since he was appointed to the United States 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.

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 his 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. (Hearings, pp. 236-237).

Judging from all the records, the data, the testimony, and from my observations of the nominee when he appeared before the committee, I am inclined to agree with this estimation.

I believe that Judge Haynsworth is indeed a man who is admirably suited to the high judicial office to which he has been named; that he possesses an outstanding judicial temperament by which he deals with controversial and complex legal problems with absolute intellectual honesty and in a scholarly fashion.

I find the nominee to be a man of high moral character.

Canon 34 provides an exceedingly high standard to be met by our judiciary as follows:

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 the law, and deal with his appointments as a public trust; he should not allow other affairs or his private interest 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.

In my careful, searching review of the record I have firmly concluded that Judge Clement F. Haynsworth has in every respect lived up to these standards of excellence. In my considered judgment, not a shred of evidence has been advanced to overcome the substantial presumption of Judge Haynsworth's competence, integrity, capability, and fair-mindedness to sit as Associate Judge of the U.S. Supreme Court. I have found that he has met the constitutional standard of fitness. It is my hope that the Senate will vote to confirm his nomination to the Supreme Court of the United States.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. FONG. I yield.

Mr. ALLOTT. Mr. President, I compliment the distinguished Senator from Hawaii on his very lucid explanation of these matters, and particularly of the matters that grow out of the so-called labor aspects of the case.

We are all indebted to the distinguished Senator from Hawaii for his explanation of these matters because we all know him to be one of the outstanding lawyers in the Senate, as he has proven during his whole professional career.

I was just reviewing again in the record the Vend-A-Matic situation. The Vend-A-Matic situation begins in the record on page 2 of the hearings.

Mr. FONG. It came up very early in the course of the committee hearings.

Mr. ALLOTT. On page 2 of the hearings, the question of Vend-A-Matic was raised. And it continued through page 34. After that, of course, it came up several other times. And this is not the conventional printing either. Nearly all of this is in the very small type that is reserved for inserts in the record.

I think it is appropriate to call attention to the fact at this time that the whole Vend-A-Matic matter was raised by an alleged anonymous telephone call. I think the Senator would agree with me that from the viewpoint of his practice and his experience in the Senate, about the last thing that deserves creditable consideration is an anonymous phone call. I have never yet found one that bore any credence.

So, after Miss Patricia Eames called this to the attention of Judge Sobeloff—in passing I might comment that I am not sure whether it was her duty to call it to the attention of the judge, rather than that of the federal bar—The whole fabrication of the Vend-A-Matic situation was formed ultimately on the basis of an anonymous telephone call.

Mr. FONG. The Senator is correct. It was on the basis of an anonymous telephone call.

Mr. ALLOTT. And this caused all of the letters to the judge, the investigation and report, the referral to the Attorney General, and the findings of the Attorney General. In his letter of February 28 to Judge Sobeloff the Attorney General said:

I share your expression of complete confidence in Judge Haynsworth.

Yet, we find this matter raised in such a way through the news media that it becomes an established fact, which has taken weeks now to disabuse, that somehow or other Judge Haynsworth had done something improper.

I think the Senator's statement on this matter has rendered a very valuable service for the Senate. I wish that everyone who is prone to condemn Judge Haynsworth on this one item or on any of the other items would merely take the time and trouble to read the RECORD.

I am reminded in this respect of what has been a stock instruction to the juries in our Colorado courts on the value of evidence, to the effect that, "If you find from the evidence that any witness has deliberately testified falsely to any material fact, you are at liberty to disregard all of his testimony."

It seems to me that a close parallel may be brought here with respect to people who were willing in this case to raise in order to serve their own self-interests a question as to the character and ability of the judge and thus to try to put a black cloud on him, which they were not able to do. They had to admit later that they had tried to do so wrongly.

In calling these things to the attention of the American public to demonstrate the real situation, the Senator has indeed been of very valuable service to the Senate and to the country.

I congratulate him.

Mr. FONG. Mr. President, I thank the distinguished Senator for calling attention to the Darlington case, because that case was really a very far-fetched case relied upon by those opposed to the nomination of Judge Haynsworth. Judge Haynsworth had no direct interest in Darlington.

He owned no Darlington stock. All he had was an interest in a company that did business with Darlington—in other words, a third-party interest which was not involved in the case at all. How, then, can he be accused of a conflict of interest?

Even if this matter had come to the attention of the litigants and of the judges at the time the case was heard, Judge Haynsworth would have been compelled by law and by all the legal precedents to sit in the case. He was compelled to sit, according to law, because he did not have a "substantial interest" in the defendant's case.

Mr. ALLOTT. I think this is entirely true. I congratulate the Senator. His remarks have been very lucid, and I wish everyone in the country could have an opportunity to read them.

Mr. FONG. I thank the distinguished senior Senator.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had 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. 11612) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1970, and for other purposes; that the House receded from its disagreement to the amendment of the Senate numbered 12 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 11702) to amend the Public Health Service Act to improve and extend the provisions relating to assistance to medical libraries and related instrumentalities, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. JARMAN, Mr. ROGERS of Florida, Mr. SPRINGER, and Mr. CARTER were appointed managers on the part of the House at the conference.

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. 12829) to provide an extension of the interest equalization tax, and for other purposes.

(By order of the Senate, the following proceedings were held as in legislative session.)

DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES APPROPRIATION BILL, 1970—CONFERENCE REPORT

Mr. HOLLAND. 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. 11612) making appropriations for the Department of Agriculture and related agencies 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 18, 1969, page 34678, 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. HOLLAND. Mr. President, this is a unanimous report signed by all conferees of both Houses.

Mr. President, I shall not report on the details of the conference agreement, since the full text of the conference report and the statement of the managers on the part of the House has been printed as House Report 91-657, and appears in the CONGRESSIONAL RECORD beginning on page 34678.

Mr. President, the Senate passed the agricultural appropriation bill on July 7. The bill as passed by the Senate contained 61 different numbered amendments, comprised of 104 individual differences. The House appointed its conferees on October 9, and the conference committee began meeting on October 22.

After four meetings, the conference committee agreed to recess pending the completion of action on House Joint Resolution 934, an authorization to increase the ceiling for the food stamp program during fiscal year 1970 from $340 to $610 million.

The President signed House Joint Resolution 934 on November 13, and on November 14 transmitted to the Congress in Senate Document 91-42, an amendment to the budget for the increased food stamp program authorization.

The conference committee met again yesterday, in the morning and again in the afternoon, and reached final agreement.

Mr. President, in recognizing the need to economize in Federal expenditures, plus the fact that almost 5 months of the current year have elapsed, many of the items in conference have been reduced to reflect these factors.

SUMMARY TOTALS

The conference agreement on the bill totals $7,488,903,150. This is $715,613,500 under the 1969 appropriation and is $251,341,100 over the 1970 estimates, including the budget amendment of $270 million transmitted to the Senate in Senate Document 91-42. The two items which cause the conference bill to be over the estimates are the continuation of the agricultural conservation program and the special milk program, which I will refer to again in my statement.

Mr. President, I will deal only briefly with a few items of general interest to Members of the Senate in my statement on the conference report. After its adoption, I will offer for the record a detailed comparative tabulation showing each appropriation item, compared with the prior year, the 1970 estimate, and the actions of the Congress through the conference agreement.

FOOD STAMP PROGRAM AND FOOD ASSISTANCE

As I indicated earlier, the conference agreement provided $610 million for operating expenses of the food stamp program this fiscal year. This is the amount requested by the Department of Agriculture and the amount authorized in Senate Joint Resolution 934, which was agreed to in the Senate on last November 6.

The Department advises that approximately 200 counties will be added to the program during the year, bringing the total number to 1,744 by next June 30.

Mr. President, I ask unanimous consent that a copy of Senate Document 91-42, and the justification of the estimate submitted by the Department of Agriculture, be printed in the RECORD at this point.

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

[Senate Document No. 91-42, Proposed Amendments to the 1970 Budget for the Department of Agriculture]

(A Communication From the President of the United States Transmitting an Amendment to the Requests for Appropriations Transmitted in the Budget for the Fiscal Year in 1970 in the Amount of $270,000,000 for the Department of Agriculture for the Food Stamp Program.)

THE WHITE HOUSE,
Washington, November 14, 1969.

THE PRESIDENT OF THE SENATE.

SIR: I ask the Congress to consider an amendment to the requests for appropriations transmitted in the budget for fiscal year 1970 in the amount of $270,000,000 for the Department of Agriculture for the food stamp program.

As I stated on May 6, 1969, in my message to the Congress on hunger and malnutrition, enactment of legislation to modify the food stamp program and to increase its funding is the major action necessary to put an end to hunger in America itself for all time.

Further details of this proposal and the necessity therefor are set forth in the enclosed letter from the Director of the Bureau of the Budget, with whose comments and recommendations I concur.

Respectfully yours,

RICHARD NIXON.

[Estimate No. 26, 91st Cong., first sess.]

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., November 14, 1969.

The PRESIDENT,
The White House.

SIR: I have the honor to submit for your consideration an amendment to the request for appropriations transmitted in the budget for the fiscal year 1970 in the amount of $270 million for the Department of Agriculture, as follows:

Department of Agriculture—Consumer and Marketing Service

[Budget appendix p. 133]

Heading: Food stamp program:

Request pending	$340,000,000
Proposed amendment	270,000,000
Revised request	610,000,000

This amendment to the budget is to begin the expansion and modifications of the food stamp program outlined in your May 6 message to the Congress on hunger and malnutrition. Legislation (H.J. Res. 934) authorizing this increase in the 1970 program has now passed both Houses of Congress. Action is also pending on your request for the enactment of substantive changes in program design and authorities.

I recommend that this amendment to the budget for the fiscal year 1970 be transmitted to the Congress.

Respectfully yours,

ROBERT P. MAYO,
Director of the Bureau of the Budget.

U.S. Department of Agriculture, Food and Nutrition Service—1970 budget amendment

[Budget Appendix Page 134]

For necessary expenses of the food stamp program pursuant to the Food Stamp Act of 1964, as amended, [$340,000,000]. *$610,000,000.*

Heading: Food stamp program:

Original estimate	$340,000,000
Revised estimate	610,000,000
Increase	270,000,000

EXPLANATION OF CHANGE

The proposed language would provide an increase in funds of $270,000,000 for fiscal year 1970 to meet the costs of expanding and modifying the food stamp program.

PURPOSE AND NEED FOR BUDGET AMENDMENT

The food stamp program is an important part of the Administration's program to improve the nutrition of low-income families. There is currently pending in the Congress a proposal to substantially change the program. Action to provide the necessary additional funds for fiscal year 1970 is imperative if the program is to expand and provide additional food-purchasing power to needy families.

Expansion into new areas is essential if the goal of having a food program in every county is to be realized. In addition to making the program available in more areas certain program changes are necessary to reach the eligible needy persons who are not presently participating in existing areas. Proposed modifications would lower the purchase requirement and increase the total allotment for eligible households.

Justification of budget amendment for food stamp program

Project: program costs:

Budget estimate, 1970	$326,150,000
Amendment to budget estimate, 1970	+270,000,000
Revised estimate, 1970	596,150,000

In line with intent of the Food Stamp Act of 1964, as amended, to progressively expand the program to all areas of the country that desire to participate, funds will be reserved to provide for an orderly geographic expansion into roughly 200 new areas which are not yet designated. The exact number of areas will depend upon the size of those requested by State welfare agencies. Priority will continue to be placed on designating areas which have no food program for needy households.

Primary emphasis will be placed on modifications designed to increase program effectiveness and to reach all eligible persons. The exact extent of these changes has not yet been finalized but they will be substantial. Intensive efforts will be required at the Federal, State, and local level to implement changes as rapidly as possible.

Mr. HOLLAND. Mr. President, in the Senate Committee Report No. 91-277, accompanying the Agriculture appropriation bill, there appeared on page 18 a table showing the amounts for feeding and food assistance activities, including transfers from section 32, with comparisons. I ask unanimous consent that this table, as revised, be printed in the RECORD at this point.

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

U.S. DEPARTMENT OF AGRICULTURE, FOOD ASSISTANCE PROGRAMS 1969 AND ESTIMATES AND AMOUNTS APPROVED FOR 1970

[In thousands]

	Fiscal year 1969 estimated	1970 revised budget	House bill	Senate bill	Conference agreement	Conference agreement compared with fiscal year 1969	Conference agreement compared with 1970 budget
A. Child feeding programs:							
1. Cash grants to States:							
(a) School lunch (sec. 4)	$162,041	$168,041	$168,041	$168,041	$168,041	+$6,000	----------
(b) Special assistance (sec. 11)	10,000	44,800	44,800	44,800	44,800	+34,800	----------
(c) School breakfast	3,500	10,000	10,000	10,000	10,000	+6,500	----------
(d) Nonfood assistance	750	10,000	10,000	10,000	10,000	+9,250	----------
(e) State administrative	750	750	750	750	750	----------	----------
(f) Nonschool food program	5,750	10,000	10,000	15,000	15,000	+9,250	+$5,000
(g) Special milk	103,314	----------	119,300	83,319	83,319	−19,995	+83,319
(h) Special sec. 32	43,941	89,000	89,000	89,000	89,000	+45,059	----------
Total, cash to States	330,046	332,591	451,891	420,910	420,910	+90,864	+88,319
A. 2. Commodities to States:							
School lunch (sec. 6)	64,325	64,325	64,325	64,325	64,325	----------	----------
Sec. 321	80,500	90,411	90,411	90,411	90,411	+9,911	----------
Sec. 416	144,872	146,838	146,838	146,838	146,838	+1,966	----------
Total, commodities	289,697	301,574	301,574	301,574	301,574	+11,877	----------
3. Federal operating expenses:							
School lunch	2,161	3,100	3,100	3,100	3,100	+939	----------
Nonschool feeding	500	750	750	750	750	+250	----------
Special milk	681	----------	700	681	681	----------	681
Total, operating expenses	3,342	3,850	4,550	4,531	4,531	+1,189	+681
Total, child feeding	623,085	638,015	758,015	727,015	727,015	+103,930	+89,000
B. Family feeding programs:							
1. Food stamp program	279,908	[1] 610,000	340,000	750,000	610,000	+330,092	----------
2. Direct distribution to families (regular program):							
(a) Sec. 321	142,141	225,028	225,028	225,028	225,028	+82,887	----------
(b) Sec. 416	116,539	140,000	140,000	140,000	140,000	+23,461	----------
Total, direct distribution to families	258,680	365,028	365,028	365,028	365,028	+106,348	----------
3. Nutritional supplement (special packages):							
(a) Special sec. 32—Food stamp areas	1,000	11,000	11,000	11,000	11,000	+10,000	----------
(b) Sec. 321	7,317	22,000	22,000	22,000	22,000	+14,683	----------
(c) Sec. 416	500	1,500	1,500	1,500	1,500	+1,000	----------
Total, special packages	8,187	34,500	34,500	34,500	34,500	+25,683	----------
Total, family feeding	547,405	1,009,528	739,528	1,149,528	1,009,528	+462,123	----------
C. Direct distribution to institutions:							
1. Sec. 32 [2]	1,967	3,800	3,800	3,800	3,800	+1,833	----------
2. Sec. 416	43,000	29,000	29,000	29,000	29,000	−14,000	----------
3. VA, Armed Forces, penal	17,875	21,000	21,000	21,000	21,000	+3,125	----------
Total, direct distributions to institutions	62,842	53,800	53,800	53,800	53,800	−9,042	----------
D. Nutrition aide program	10,000	30,000	30,000	30,000	30,000	+20,000	----------
Total, food assistance program	1,243,332	1,731,343	1,581,343	1,960,343	1,820,343	+577,011	+89,000

[1] S. Doc. 91-42 transmitted to Congress on Nov. 14, 1969 an increase in the original estimate of $270,000 to a total estimate of $610,000.
[2] Includes related administrative expense.

Mr. HOLLAND. Mr. President, the foregoing tabulation shows that the conference report authorizes expenditures for child nutrition, special feeding, food stamp, and direct distribution programs in 1970, totaling $1,820,343,000, an increase of $577,011,000 over 1969, and is $89,000,000 over the estimate.

The increase over the estimate is comprised of two items: first, an increase in direct appropriations of $84,000,000, plus a transfer of $20,000,000 from section 32 under the special feeding program in order to continue the special milk program at $104 million. This compares with $120 million proposed by the other body to finance the special milk program entirely from section 32. The amount agreed to by the conference committee is $84 million over the estimate which proposed continuation of the special milk program at $20 million, to be limited to children from needy families.

PRICE SUPPORT LIMITATION

The most difficult amendment to be dealt with by the conference committee was amendment No. 37, which struck from the House passed bill the limitation on payments to any producer in excess of $20,000 on any crop planted in fiscal 1970—except for sugar. In reporting the bill to the Senate, the Committee on Appropriations struck this provision. Its action was based upon the recommendation of the Secretary of Agriculture and upon testimony from the major farm organizations. The committee position was sustained by a vote of 53 to 34 when the bill was under debate in the Senate on July 7.

The conferees from the other body were of necessity firmly upholding the action of the House of Representatives. This amendment was discussed repeatedly in the conference, but it was obvious from the testimony received by the committee that the Secretary of Agriculture was correct in stating that the "snap-back" provision on cotton would provide for higher price supports and would in turn result in greater production of cotton at a greater cost to the Government, as well as returning to the surplus condition of earlier years. In addition, the winter wheat crop has all been planted and it constitutes about 78 percent of the total wheat production. Thus, the only crops to which the limitation would apply are spring wheat, feed grains, and other miscellaneous crops.

Next year, the standing committees on Agriculture and Forestry will recommend new farm legislation which will be acted upon by both branches of Congress. This is a more appropriate time for the Congress to consider and pass upon limitations on payments to producers.

AGRICULTURAL CONSERVATION PROGRAM

The revised budget estimate proposed that the agricultural conservation program, under which farmers are paid cost sharing for the installation of approved soil and water conservation measures, be discontinued as an economy measure.

This program has been basic to the preservation and development of our soil and water resources. Its interruption for even 1 year was opposed by farm groups and general conservationists.

The conference agreement provides an advance program authorization for 1970 at $195.5, instead of its elimination as had been proposed by the budget.

The conferees have instructed the Secretary of Agriculture to give further emphasis to enduring conservation practices and it is hoped that a favorable report showing progress under this directive which was carried in the Senate committee report will be reported to the subcommittee next year by departmental officials during the hearings of the 1971 estimates.

REIMBURSEMENT FOR NET REALIZED LOSSES OF COMMODITY CREDIT CORPORATION

The conference report includes an appropriation of $5,215,934,000 to reimburse the Commodity Credit Corporation for net losses. This amount covers the losses for all prior years except a balance of $250 million for fiscal 1968.

I feel confident that this action will encourage the executive branch to request the full amount next year necessary to clean up the balance and the loss for fiscal 1969, as intended by Public Law 87-155, approved August 17, 1961.

Mr. President, in brief, I believe the Senate prevailed on a large number of the items that were before the conference committee.

I see in the Chamber the distinguished Senator from North Dakota (Mr. YOUNG) who was one of the signers of the report and a member of the conference. I believe that he also feels that the report should be approved.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. YOUNG of North Dakota. Mr. President, I agree with the Senator. The conference report should be approved. I thank the Senator from Florida.

Mr. HOLLAND. I move that the conference report be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. HOLLAND. Mr. President, there is an amendment of the House to Senate amendment No. 12 on which action is required. I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the aforesaid bill, and concur therein with an amendment, as follows:

In lieu of the sum stricken and inserted, insert: "$62,510,000".

Mr. HOLLAND. Mr. President, I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Florida.

The motion was agreed to.

Mr. HOLLAND. Mr. President, I wish to commend the gentleman from Nebraska, Senator ROMAN HRUSKA, the ranking Republican member of the Agriculture Appropriations Subcommittee, for his efforts and assistance in carrying this appropriations bill through the Senate and out of conference.

In addition to all of his other services, I want the RECORD to show that the Senator from Nebraska was a moving force on a number of items of great importance to the Midwest.

The first item is the $250,000 to initiate a multiframe sampling program to improve the accuracy and reliability of livestock estimates. Senator HRUSKA had considered $1 million as necessary for the program, and the Senate accepted that figure. The insistence of the House required reduction, but the amount $250,000 will get the program started. If livestock estimates can be improved, and marketing by the livestock industry benefited thereby, it is a small investment for such an important gain to one of the Midwest's greatest industries.

Another item related to livestock is the amount of $300,000 for development funds for the U.S. Meat Animal Research Center at Clay Center, Nebr. This amount was included by the conference committee in addition to the budget amount of $667,100 for that Center. Senator HRUSKA has long believed that there has been an imbalance between the resources invested in crop research against those invested in animal research. The Meat Animal Research Center at Clay Center is bringing about a better balance, and the funds argued for by Senator HRUSKA and added by the conference committee will expedite that balance.

Senator HRUSKA also believes strongly in soil and water conservation. Coming from Nebraska, he knows the importance of proper conservation practices to the continuing vitality and fertility of the soil, our most important resource. For this reason, the Senator from Nebraska was in the forefront of those seeking adequate funds for watershed works of improvement, the Great Plains conservation program, the resource conservation and development program, flood prevention, and the agricultural conservation program.

Senator HRUSKA was one of the prime movers in the area of pollution control. He persevered in his efforts to see increased funding for animal waste management research and as a result the Senate added $250,000 to the item; the conference committee permitted $125,000, which is still a 20-percent increase over fiscal 1969. The Senator from Nebraska also sought increased funds for rural water and waste disposal grants under the Farmers Home Administration. The Senate was able to prevail on this item, and the conference committee added $6 million above the House bill.

On these and many other items, Senator HRUSKA was an important advocate for the farmers and ranchers of America. I thank him on their behalf for his work on this bill.

Mr. President, in conclusion, I ask to have printed in the RECORD a table which shows for the entire bill and for each individual appropriation item the adjusted appropriations for fiscal year 1969, the fiscal year 1970 budget estimates, the amounts contained in the House and Senate bills, and the conference allowance.

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

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969 AND BUDGET ESTIMATES AND AMOUNTS FOR 1970

[Note.—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted [1] fiscal year 1969	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended, House bill, 1970	New budget (obligational) authority recommended by Senate for 1970	Conference allowance, 1970	(7) Conference bill (+) or (−): Budget estimates, 1970	House bill	Senate bill	Appropriation 1969
(1)	(2)	(3)	(4)	(5)	(6)	(7a)	(7b)	(7c)	(7d)
TITLE I—GENERAL ACTIVITIES									
Agricultural Research Service:									
Salaries and expenses:									
Research:									
Direct appropriation	$129,105,300	$130,631,300	$130,182,000	$134,452,000	$131,802,200	+$1,170,900	+$1,620,020	−$2,649,800	+$2,696,900
Transfer from sec. 32	*(15,000,000)*	*(15,000,000)*	*(15,000,000)*	*(15,000,000)*	*(15,000,000)*				
Total, research	(144,105,300)	(145,631,300)	(145,182,000)	(149,452,000)	(146,802,200)	(+1,170,900	(+1,620,200)	(−2,649,800)	(+2,696,900)
Plant and animal disease and pest control	88,039,500	91,176,500	89,493,000	92,126,500	90,809,750	−366,750	+1,316,750	−1,316,750	+2,770,250
Special fund (reappropriation)	(2,000,000)	(2,000,000)	(2,000,000)	(2,000,000)	(2,000,000)				(−2,000,000)
Total, salaries and expenses	219,144,800	221,807,800	219,675,000	226,578,500	222,611,950	+804,150	+2,936,950	−3,966,550	+3,467,150
Salaries and expenses (special foreign currency program)	4,500,000	8,287,000	4,500,000	5,500,000	5,000,000	−3,287,000	+500,000	−500,000	+500,000
Total, Agricultural Research Service	223,644,800	230,094,800	224,175,000	232,078,500	227,611,950	−2,482,850	+3,436,950	−4,466,550	+3,967,150

Footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969 AND BUDGET ESTIMATE AND AMOUNTS FOR 1970—Continued

[Note.—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted [1] fiscal year 1969	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended, House bill, 1970	New budget (obligational) authority recommended by Senate for 1970	Conference allowance, 1970	(7) Conference bill (+) or (−): Budget estimates, 1970	House bill	Senate bill	Appropriation 1969
(1)	(2)	(3)	(4)	(5)	(6)	(7a)	(7b)	(7c)	(7d)
TITLE I—GENERAL ACTIVITIES—Con.									
Cooperative State Research Service: Payments and expenses	$58,911,000	$63,730,000	$61,175,000	$61,710,000	$62,510,000	−$1,220,000	+$1,335,000	+$800,000	+$3,599,000
Extension Service:									
Payments to States and Puerto Rico	81,605,500	113,131,000	112,391,000	114,131,000	114,006,000	+875,000	+1,615,000	−125,000	+32,400,500
Retirement and employees' compensation costs for extension agents	9,536,500	10,240,000	10,000,000	10,240,000	10,240,000		+240,000		+703,500
Penalty mail	3,299,000	3,500,000	3,400,000	3,400,000	3,400,000	−100,000			+101,000
Federal Extension Service	2,838,000	4,038,000	3,338,000	3,838,000	3,838,000	−200,000	+500,000		+1,000,000
Total, Extension Service	97,279,000	130,909,000	129,129,000	131,609,000	131,484,000	+575,000	+2,355,000	−125,000	+34,205,000
Farmer Cooperative Service: Salaries and expenses	1,414,000	1,635,000	1,500,000	1,635,000	1,500,000	−135,000		−135,000	+86,000
Soil Conservation Service:									
Conservation operations	118,873,000	118,786,000	118,786,000	118,786,000	118,786,000				−87,000
River basin surveys and investigations	9,086,000	8,187,000	8,187,000	8,187,000	8,187,000				−899,000
Watershed planning	6,419,000	6,209,000	6,209,000	5,000,000	6,209,000			+1,209,000	−210,000
Watershed works of improvement	57,908,000	55,078,000	57,873,000	63,873,000	63,873,000	+8,795,000	+6,000,000		+5,965,000
Flood prevention	24,224,000	20,223,000	20,223,000	20,223,000	20,223,000				−4,001,000
Great Plains conservation program	16,160,000	14,000,000	15,000,000	15,000,000	15,000,000	+1,000,000			−1,160,000
Resource conservation and development	6,367,000	8,452,000	7,452,000	10,252,000	10,252,000	+1,800,000	+2,800,000		+3,885,000
Total, Soil Conservation Service	239,037,000	230,935,000	233,730,000	241,321,000	242,530,000	+11,595,000	+8,800,000	+1,209,000	+3,493,000
Economic Research Service: Salaries and expenses	13,473,000	13,562,000	13,450,000	13,562,000	13,450,000	−112,000		−112,000	−23,000
Statistical Reporting Service: Salaries and expenses	14,853,000	15,055,000	14,950,000	16,375,600	15,412,800	+357,800	+462,800	−962,800	+559,800
Consumer and Marketing Service:									
Consumer protective, marketing, and regulatory programs	118,264,500	135,254,200	130,867,000	134,695,500	133,595,500	−1,658,700	+2,728,500	−1,100,000	+15,331,000
Payments to States and possessions	1,600,000	1,600,000	1,600,000	1,600,000	1,600,000				
Special milk program:									
Transfer from sec. 32	*(104,000,000)*		*(120,000,000)*				*(−120,000,000)*		*(−104,000,000)*
Direct appropriation				[2] 84,000,000	[2] 84,000,000	+84,000,000	+84,000,000		+84,000,000
Child nutrition programs (school lunch program):									
Direct appropriation	188,474,000	117,500,000	117,500,000	122,500,000	122,500,000	+5,000,000	+5,000,000		−65,974,000
Transfer from sec. 32	*(64,325,000)*	*(194,266,000)*	*(194,266,000)*	*(194,266,000)*	*(194,266,000)*				*(+129,941,000)*
Total, child nutrition programs	252,799,000	(311,766,000)	(311,766,000)	(316,766,000)	(316,766,000)	(+5,000,000)	(+5,000,000)		(+63,967,000)
Food stamp program	280,000,000	[3] 610,000,000	340,000,000	750,000,000	610,000,000		+270,000,000	−140,000,000	+330,000,000
Total, Consumer and Marketing Service	588,338,500	864,354,200	589,967,000	1,092,795,500	951,695,500	+87,341,300	+361,728,500	−141,100,000	+363,357,000
Foreign Agricultural Service:									
Salaries and expenses	21,903,300	23,937,000	22,937,000	23,937,000	23,437,000	−500,000	+500,000	−500,000	+1,533,700
Transfer from sec. 32	(3,117,000)	*(3,117,000)*	*(3,117,000)*	*(3,117,000)*	(3,117,000)				
Transfer from CCC	(2,112,000)	*(107,000)*	*(107,000)*	*(107,000)*	(107,000)				(−2,005,000)
Total, Foreign Agricultural Service	(27,132,300)	(27,161,000)	(26,161,000)	27,161,000)	(26,661,000)	(−500,000)	(+500,000)	−500,000	(−471,300)
Commodity Exchange Authority: Salaries and expenses	1,895,000	2,321,000	2,100,000	2,321,000	2,321,000		+221,000		+426,000
Agricultural Stabilization and Conservation Service:									
Expenses, ASCS:									
Direct appropriation	[4] 142,857,400	128,870,000	147,420,000	146,000,000	146,000,000	+17,130,000	−1,420,000		+3,142,600
Transfer from CCC	(63,486,100)	(62,483,000)	(62,483,000)	(62,483,000)	(62,483,000)				(−1,003,100)
Total, expenses, ASCS	(206,343,500)	(191,353,000)	(209,903,000)	(208,483,000)	(208,483,000)	(+17,130,000)	(−1,420,000)		(+2,139,500)
Sugar Act Program	89,500,000	96,300,000	89,500,000	93,000,000	93,000,000	−3,300,000	+3,500,000		+3,500,000
Agricultural conservation program: Liquidation of contract authorization	(190,000,000)	(195,500,000)	(195,500,000)	(195,500,000)	(195,500,000)				(+5,500,000)
Advance authorization 1970 program (contract authorization)	195,500,000		195,500,000	185,000,000	195,500,000	+195,500,000		+10,500,000	
Cropland adjustment program:									
Appropriation	81,900,000	79,330,000	78,000,000	78,600,000	78,600,000	−730,000	+600,000		−3,300,000
Limitation on authorization for 1970 program		(99,300,000)		(99,300,000)	(..........)				

Footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969 AND BUDGET ESTIMATE AND AMOUNTS FOR 1970—Continued

[Note.—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted [1] fiscal year 1969	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended, House bill, 1970	New budget (obligational) authority recommended by Senate for 1970	Conference allowance, 1970	(7) Conference bill (+) or (−)			
						Budget estimates, 1970	House bill	Senate bill	Appropriation 1969
(1)	(2)	(3)	(4)	(5)	(6)	(7a)	(7b)	(7c)	(7d)
TITLE I—GENERAL ACTIVITIES—Con. Agricultural, etc.—Con.									
Conservation reserve program	$109,000,000	$37,900,000	$37,500,000	$37,250,000	$37,250,000	−$650,000	−$250,000		−$77,750,000
Emergency conservation measures	5,000,000	5,000,000	5,000,000	50,00,000	5,000,000				
Indemnity payments to dairy farmers	300,000	200,000	200,000	200,000	200,000				−100,000
Total Agricultural Stabilization and Conservation Service	624,057,400	347,600,000	553,120,000	545,050,000	555,550,000	+207,950,000	+2,430,000	+$10,500,000	−68,507,400
Rural Community Development Services: Salaries and expenses	481,000	450,000	450,000	450,000	450,000				−31,000
Office of the Inspector General: Salaries and expenses	12,994,000	13,925,000	13,389,000	13,925,000	13,657,000	+268,000	+268,000	−268,000	−663,000
Packers and Stockyards Administration: Salaries and expenses	2,864,300	3,509,300	3,200,000	3,509,300	3,354,650	−154,650	+154,650	−154,650	+490,350
Office of the General Counsel: Salaries and expenses	4,850,000	5,559,000	5,000,000	5,459,000	5,229,500	−329,500	+229,500	−229,500	+379,500
Office of Information: Salaries and expenses	2,055,000	2,164,000	2,106,000	2,106,000	2,106,000	−58,000			+51,000
National Agricultural Library: Salaries and expenses	3,332,750	3,226,750	3,200,000	3,226,750	3,226,750		+26,750		−106,000
Office of Management Services: Salaries and expenses	2,957,600	3,069,000	3,000,000	3,050,000	3,205,000	−44,000	+25,000	25,000	+67,400
General Administration: Salaries and expenses	4,838,000	5,052,000	4,838,000	4,838,000	4,838,000	−214,000			
Total, title I, general activities	1,919,178,650	1,961,088,050	1,881,416,000	2,398,958,650	2,263,389,150	+302,301,100	+381,973,150	135,569,500	+344,210,500
TITLE II—CREDIT AGENCIES									
Rural Electrification Administration:									
Loan authorizations:									
Electrification	329,000,000	320,000,000	320,000,000	340,000,000	340,000,000	+20,000,000	+20,000,000		+11,000,000
Telephone	120,000,000	123,300,000	123,300,000	123,300,000	123,300,000				+3,300,000
Total, loans (authorization to spend debt receipts)	449,000,000	443,300,000	443,300,000	463,300,000	463,300,000	+20,000,000	+20,000,000		+14,300,000
Salaries and expenses	13,429,000	13,429,000	13,429,000	13,429,000	13,429,000				
Total, Rural Electrification Administration	462,429,000	456,729,000	456,729,000	476,729,000	476,729,000	+20,000,000	+20,000,000		+14,300,000
Farmers Home Administration:									
Direct loan account:									
Real estate loans	(83,000,000)	(69,600,000)	(83,000,000)	(69,600,000)	(83,000,000)	(+13,400,000)		(+13,400,000)	
Operating loans	(275,000,000)	(250,000,000)	(275,000,000)	(275,000,000)	(275,000,000)	(+25,000,000)			
Soil conservation loans	(4,900,000)	(8,800,000)	(4,900,000)	(8,700,000)	(8,700,000)	(−100,000)	(+3,800,000)		(+3,800,000)
Total, direct loan account	(362,900,000)	(328,400,000)	(362,900,000)	(353,300,000)	(366,700,000)	(+38,300,000)	(+3,800,000)	(+13,400,000)	(+3,800,000)
Rural housing direct loan account	(30,000,000)	(30,400,000)	(30,000,000)	(30,000,000)	(30,000,000)	(−400,000)			
Emergency credit revolving fund	[5] (25,000,000)	31,918,000	31,918,000	31,918,000	31,918,000				+31,918,000
Rural water and waste disposal grants	28,000,000	28,000,000	40,000,000	46,000,000	46,000,000	+18,000,000	+6,000,000		+18,000,000
Rural renewal	1,600,000								−1,600,000
Rural housing for domestic farm labor	4,250,000	3,700,000	1,250,000	3,700,000	2,500,000	−1,200,000	+1,250,000	−1,200,000	−1,750,000
Housing for rural trainees		1,000,000				−1,000,000			
Mutual and self-help housing		3,000,000	1,250,000	3,000,000	2,125,000	−875,000	+875,000	−875,000	+2,125,000
Self-help housing land development fund	600,000	1,400,000	600,000	1,000,000	1,000,000	−400,000	+400,000		+400,000
Salaries and expenses:									
Direct appropriations	60,218,000	84,885,000	65,000,000	67,500,000	66,250,000	−18,635,000	+1,250,000	−1,250,000	+6,032,000
Transfer from agricultural credit insurance fund	(2,250,000)	*(2,250,000)*	*(2,250,000)*	*(2,250,000)*	(2,250,000)				
Miscellaneous transfer	(500,000)	*(500,000)*	*(500,000)*	*(500,000)*	(500,000)				
Total, salaries and expenses	(62,968,000)	(87,635,000)	(67,750,000)	(70,250,000)	(69,000,000)	(−18,635,000)	(+1,250,000)	(−1,250,000)	+6,032,000
Total, Farmers Home Administration	94,668,000	153,903,000	140,018,000	153,118,000	149,793,000	−4,110,000	+9,775,000	−3,325,000	+55,125,000
Total, title II, credit agencies	557,097,000	610,632,000	596,747,000	629,847,000	626,522,000	+15,890,000	+29,775,000	−3,325,000	+69,425,000

Footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1969 AND BUDGET ESTIMATE AND AMOUNTS FOR 1970—Continued

[Note.—All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority enacted [1] fiscal year 1969	Budget estimates of new (obligational) authority, fiscal year 1970	New budget (obligational) authority recommended, House bill, 1970	New budget (obligational) authority recommended by Senate for 1970	Conference allowance, 1970	(7) Conference bill (+) or (−)			
						Budget estimates, 1970	House bill	Senate bill	Appropriation 1969
(1)	(2)	(3)	(4)	(5)	(6)	(7a)	(7b)	(7c)	(7d)
TITLE III—CORPORATIONS									
Federal Crop Insurance Corporation:									
Appropriation	$11,517,500	$12,000,000	$12,000,000	$12,000,000	$12,000,000				+$482,000
Premium income	(2,140,000)	(1,648,000)	(1,648,000)	(1,648,000)	(1,648,000)				(−492,000)
Total, administrative and operating expenses	(13,657,500)	(13,648,000)	(13,648,000)	(13,648,000)	(13,648,000)				(−9,500)
Subscription to Capital fund		10,000,000	10,000,000	10,000,000					+10,000,000
Commodity Credit Corporation:									
Reimbursement for net realized losses:									
Appropriation	4,188,112,500	5,215,934,000	4,965,934,000	5,215,934,000	5,215,934,000		+$250,000,000		+1,027,821,500
Contract authority [6]	+1,579,078,000								−1,579,028,000
Liquidation of contract authority	−350,467,000	−1,560,192,000	−1,560,192,000	−1,560,192,000	−1,560,192,000				−1,209,725,000
Budget authority	5,416,723,500	3,655,742,000	3,405,742,000	3,655,742,000	3,655,742,000		+250,000,000		−1,760,981,500
Limitation on administrative expenses	(31,500,000)	(32,000,000)	(31,500,000)	(32,000,000)	(32,000,000)	( )	(+500,000)		(+500,000)
Public Law 480:									
Sales, title I	100,000,000	427,400,000	400,000,000	420,000,000	420,000,000	−$37,400,000	+20,000,000		+320,000,000
Donations, title II	200,000,000	559,200,000	500,000,000	515,000,000	500,000,000	−59,200,000		−$15,000,000	+300,000,000
Total, Public Law 480	300,000,000	986,600,000	900,000,000	935,000,000	920,000,000	−66,600,000	+20,000,000	−15,000,000	+620,000,000
Bartered materials for supplemental stockpile		1,500,000	750,000	1,250,000	1,250,000	−250,000	+500,000		+1,250,000
Total, new budget (obligational) authority, title III, corporations	5,728,241,000	4,665,842,000	4,328,492,000	4,613,992,000	4,598,992,000	−66,850,000	+270,500,000	−15,000,000	−1,129,249,000
TITLE IV—RELATED AGENCIES									
Farm Credit Administration: Limitation on administrative expenses	(3,436,000)	(3,628,000)	(3,628,000)	(3,628,000)	(3,628,000)				(+192,000)
RECAPITULATION									
Title I—General activities	1,919,178,650	1,961,088,050	1,881,416,000	2,398,958,650	2,263,389,150	+302,301,100	+381,973,150	−135,569,500	+344,210,500
Title II—Credit agencies	557,097,000	610,632,000	596,747,000	629,847,000	626,522,000	+15,890,000	+29,775,000	−3,325,000	+69,425,000
Title III—Corporations	5,728,241,000	4,665,842,000	4,328,492,000	4,613,992,000	4,598,992,000	−66,850,000	+270,500,000	−15,000,000	−1,129,249,000
Total, new budget (obligational) authority	8,204,516,650	7,237,562,050	6,806,655,000	7,642,797,650	7,488,903,150	+251,341,100	+682,248,150	−153,894,500	−715,613,500
Consisting of:									
1. Appropriations	*5,978,938,650*	*6,794,262,050*	*6,167,855,000*	*6,994,497,650*	*6,830,103,150*	*+35,841,100*	*+662,248,150*	*−164,394,500*	*+851,164,500*
2. Reappropriations	*2,000,000*								*−2,000,000*
3. Contract authorizations	*1,774,578,000*		*195,500,000*	*185,000,000*	*195,500,000*	*+195,500,000*		*+10,500,000*	*−1,579,078,000*
4. Authorizations to spend from debt receipts	*449,000,000*	*443,300,000*	*443,300,000*	*463,300,000*	*463,300,000*	*+20,000,000*	*+20,000,000*		*+14,300,000*
Memoranda:									
1. Appropriations to liquidate contract authorizations	*540,467,000*	*1,755,692,000*	*1,755,692,000*	*1,755,692,000*	*1,755,692,000*				*+1,215,225,000*
2. Appropriations, including appropriations to liquidate contract authority	*6,519,405,650*	*8,549,954,050*	*7,923,547,000*	*8,750,189,650*	*8,585,795,150*	*+35,841,100*	*+662,248,150*	*−164,394,500*	*+2,066,389,500*
3. Transfers from sec. 32	*186,442,000*	*212,383,000*	*332,383,000*	*212,383,000*	*212,383,000*		*−120,000,000*		*+25,941,000*
4. Transfer from CCC	*65,598,100*	*62,590,000*	*62,590,000*	*62,590,000*	*62,590,000*				*−3,008,100*
Total, new budget (obligational) authority	8,204,516,650	7,232,562,050	6,806,655,000	7,642,797,650	7,488,903,150	+251,341,100	+682,248,150	−153,894,500	−705,613,500
Less: Loan repayments, Rural Electrification Administration [7]	−189,500,000	−189,300,000	−189,300,000	−189,300,000	−189,300,000				−200,000
Net total, new budget (obligational) authority	8,015,016,650	7,048,262,050	6,617,355,000	7,453,497,650	7,299,603,150				

[1] Totals shown include supplementals for 1969, which were unavailable when the bill was reported to the House and Senate.

[2] The Senate bill and conference amount provides $84,000,000 in direct appropriations for Special Milk Program. This amount, plus $20,000,000 available from sec. 32, will provide a total level of $104,000,000 for special milk program.

[3] S. Doc. 91-42 increased budget request for food stamp program from $340,000,000 to $610,000,000.

[4] In addition, $81,560,000 unobligated balance from cropland conservation program transferred to this amount.

[5] $25,000,000 was transferred to emergency credit revolving fund from FHA direct loan account.

[6] Contract authorization established under basic law.

[7] Deducting REA loan repayments from these totals has the effect of converting these figures to a basis comparable with the treatment of all other major loan programs in the Federal budget. Other loan programs operated through revolving funds net loan repayments against budget outlays, whereas REA loan repayments are covered into miscellaneous receipts of the Treasury.

Mr. HOLLAND. Mr. President, I move to reconsider the vote by which the conference report and the amendment were agreed to.

Mr. YOUNG of North Dakota. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMERICAN PRISONERS OF WAR

Mr. ALLOTT. Mr. President, as Senators will recall, on October 30 I led off a rather extensive colloquy on the floor of the Senate in which Members on both sides of the aisle denounced an announcement made by the New Mobilization Committee To End the War in Vietnam on October 27 regarding American prisoners of war held by the North Vietnamese Government.

As Senators know, on October 27, William Kunstler, chief defense counsel at the Chicago eight riot conspiracy trial, held a press conference in Chicago to announce that in the future it would only be through the New Mobe that we would begin to receive names of American prisoners of war and "possibly other pertinent information" about their condition "as soon as the committee has the chance to set up an office and pass the information along to the prisoners' relatives." It will be recalled that in connection with that announcement David Dellinger, one of the Chicago defendants, said the details of the new operation would be announced at the November 15 Washington peace rally, and characterized the North Vietnamese effort as "a major friendly act" and "a peace feeler."

Many of us in the Senate shared a similar sense of outrage with regard to this announcement since we recognize that this was a last desperate effort on the part of Hanoi to escape public and world condemnation for their continued failure to abide by the Geneva Agreements of 1949. We all recognize that Hanoi has never abided by even the minimal standards required under the Geneva Agreements with regard to the treatment of prisoners of war.

In this connection, I noted that an article appearing in the Washington Post yesterday indicated an awareness that these promises of Messrs. Kunstler and Dellinger made front page news in many newspapers across the land. Obviously, as a result of the promise hopes were raised in the hearts of many of the families of American prisoners of war that a glimmer of news might be received with regard to whether or not these prisoners were alive or dead. I would only hope that, if as now appears to be true, this was a cruel hoax on the part of the New Mobe the press will be equally as desirous of exposing this hoax.

The Washington Post article mentions the fact that the State Department was deluged with requests all day Monday asking what had happened with the information which was supposed to have been supplied by the New Mobe regarding American prisoners of war held by the North Vietnamese Government. I could not agree more with the characterization contained in that article by the State Department representative that "the lack of new information, despite the publicity, is tragic exploitation of the feelings of the families who wait for their loved ones."

Mr. President, I ask unanimous consent that the article to which I have referred be printed at this point in the RECORD.

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

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

WAR FOE FAILED TO GIVE POW DATA

(By A. D. Horne)

Antiwar leader David Dellinger did not deliver Saturday on his promise to announce information about U.S. prisoners in North Vietnam.

Dellinger made his promise in a press conference Oct. 27 in Chicago, where he is on trial on charges of conspiring to riot during the 1968 Democratic convention. He said then that at the Nov. 15 Washington rally he would announce details of how the peace movement would furnish information on and mail from the prisoners to their relatives.

The promise was front-page news in many newspapers, including this one.

Wives of presumed prisoners, some of them still unsure whether their husbands were dead or captured, telephoned the State Department all day yesterday to ask what had happened.

State officials said they did not know. In answer to a press query, they issued a bitter statement concluding. "The lack of new information, despite the publicity, is tragic exploitation of the feelings of the families who wait for their loved ones."

Dellinger, reached in Chicago late last night, said, "We just were not able to work out the procedures and details in time. We've received some encouraging information but we're not clear enough yet on what it will add up to and we don't want to raise false hopes."

Dellinger said he regretted that a "premature" date had been set for the announcement. Some unanticipated problems had come up, he said, and an unpublicized trip to Paris would be required to work these out with the North Vietnamese.

The first trip in October had been made by William M. Kunstler, attorney for the Chicago defendants, after U.S. District Judge Julius J. Hoffman refused to allow Dellinger and co-defendant Rennie Davis to leave the country.

Dellinger blamed the delay at least in part on Hoffman's refusal to let him and Davis make the trip.

In their Oct. 27 press conference, Dellinger and Kunstler had said Hanoi had promised to expand information on the prisoners and to permit "a regular flow of mail" from them through the New Mobilization to End the War in Vietnam. In a telephone interview afterward, Kunstler said the North Vietnamese delegate, Xuan Oanh, had said a complete list of prisoners would be furnished but "maybe not at once."

The Pentagon lists about 1,300 men as captured or missing in both Vietnams, with 413 confirmed as prisoners. Letters have been received from only about 110 of these men.

Mr. ALLOTT. Mr. President, I think it was the general consensus of those of us who had participated in the October 30 colloquy on the floor of the Senate that despite our views with regard to the war—historically or prospectively—Congress must make it abundantly clear that it demands, on behalf of every American, assurance of proper and humane treatment of our military and civilian personnel held captive by the Communists. Obviously this kind of treatment must be completely in accordance with the provisions of the Geneva Agreement of 1949 to which the U.S. Government as well as the Governments of North Vietnam and South Vietnam are parties.

During the course of the colloquy on October 30 I called upon the distinguished chairman of the Senate Foreign Relations Committee to hold hearings on the issue of American prisoners of war with a view to reporting out any of the many resolutions now pending before it dealing with this most important issue. To date, no such hearings have been scheduled, and I would like to take this opportunity to reissue my call that this matter be taken up by the Senate committee as soon as practicable.

I have just been informed that the Subcommittee on National Security Policy and Scientific Developments of the Foreign Affairs Committee in the other body has, in executive session, agreed today to report to the full committee a resolution which makes congressional intent very clear with regard to assuring adequate treatment of our American prisoners of war in accordance with the Geneva Agreements. I note that this resolution is in the form of a House concurrent resolution which means that action by the Senate will be required before the full force and effect of the Congress can be constructively stated on this issue.

I ask unanimous consent that the draft of the House concurrent resolution reported to the full committee by the House Subcommittee on National Security Policy be printed at this point in the RECORD, for the benefit of my colleagues who share my interest in this matter.

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

H. CON. RES. ——

Whereas more than 1,339 members of the United States Armed Forces are prisoners of war or missing in action in Southeast Asia; and

Whereas North Vietnam and the National Liberation Front of South Vietnam have refused to identify prisoners they hold, to allow impartial inspection of camps, to permit free exchange of mail between prisoners and their families, to release seriously sick or injured prisoners, and to negotiate seriously for the release of all prisoners and thereby have violated the requirements of the 1949 Geneva Convention on prisoners of war, which North Vietnam ratified in 1957; and

Whereas the 21st International Conference of the Red Cross, meeting in Istanbul, Turkey, on September 13, 1969, adopted by a vote of 114 to 0 a resolution calling on all parties to armed conflicts to ensure humane treatment of prisoners of war and to prevent violations of the Geneva Convention; and

Whereas the United States has continuously observed the requirements of the Geneva Convention in the treatment of prisoners of war; and

Whereas the United States Government has repeatedly appealed to North Vietnam and to the National Liberation Front to comply with the provisions of the Geneva Convention: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), that the Congress strongly protests the treatment of United

States servicemen held prisoner by North Vietnam and the National Liberation Front of South Vietnam, calls on them to comply with the requirements of the Geneva Convention, and approves and endorses efforts by the United States Government, the United Nations, the International Red Cross, and other leaders and peoples of the world to obtain humane treatment and release of American prisoners of war.

Mr. ALLOTT. I understand, Mr. President, that during the time the House subcommittee was holding public hearings on the prisoner-of-war situation they were the beneficiaries of some excellent testimony dealing with the continuation of the plight of American prisoners of war held captive by the Communists.

I believe the statement of William H. Sullivan, Deputy Assistant Secretary of State for East Asia and Pacific Affairs presented before the House subcommittee on November 13, particularly commends itself to the attention of every American who is deeply concerned with this prisoner-of-war issue. As Mr. Sullivan points out in the course of his statement, a number of efforts have been suggested to deal forthrightly with this question recognizing the tragic consequence which will accrue if we fail to take some immediate action in this area. Mr. Sullivan concludes his statement with this observation, with which I wholeheartedly concur:

The actions taken thus far represent a broad range of effort—but tragically little in the way of results. The prisoners still wait, wait and endure and suffer. The wives and families wait and endure, and our hearts go out to them. Approval of a resolution on this subject by this Congress would express support and concern for the wives and for the men they wait for. More importantly, it may help convince Hanoi to treat the men humanely and to release them soon.

Mr. President, I ask unanimous consent that Mr. Sullivan's testimony, together with the statement issued by Mrs. Rita E. Hauser, U.S. representative in Committee III on the Violation of the Rights of Prisoners of War, on November 11, 1969, delivered at the United Nations, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ALLOTT. Mr. President, I need not remind anyone of the fact that 1,400 American civilian and military personnel have been listed either as prisoners of war or missing in action. Of this number over 200 have remained in a state of limbo for more than 3½ years. This period of time is, of course, longer than any U.S. serviceman was held a prisoner of war during World War II.

I remain confident, Mr. President, that constructive concerted action on the part of the U.S. Congress can help to mobilize and direct positive steps toward the alleviation of this tragic situation as it relates to our fellow Americans held captive by the Communists. In this regard, I conclude as I began by calling once again upon the chairman of the Senate Foreign Relations Committee to hold hearings on this matter at the earliest practicable date.

EXHIBIT 1

STATEMENT OF WILLIAM H. SULLIVAN, DEPUTY ASSISTANT SECRETARY OF STATE FOR EAST ASIA AND PACIFIC AFFAIRS, BEFORE THE HOUSE OF REPRESENTATIVES FOREIGN AFFAIRS SUBCOMMITTEE ON NATIONAL SECURITY POLICY AND SCIENTIFIC DEVELOPMENTS, NOVEMBER 13, 1969

Mr. Chairman, I appreciate the opportunity to appear in support of resolutions expressing the concern of the Congress about the treatment and welfare of Americans who are prisoners of war or missing in action in Southeast Asia. The Department of State strongly supports the passage of such a resolution. We do so, not only because we share and sympathize with the feelings of the families of our men who are missing or captured, but also because we believe that vocal public concern about our prisoners may be the most effective way to bring pressure on the Communist authorities to treat our men humanely, to release information about them, to let them exchange letters regularly with their loved ones, to enable them to receive gift packages, to allow the seriously sick and wounded to be repatriated, and to agree to arrangements for the early release of all prisoners of war.

From the start of the Vietnam conflict, the U.S. Government has made intensive efforts to arrange proper treatment for prisoners of war on both sides. In these efforts we have had the support and cooperation of a number of intermediaries, governmental, private, and organizational. Despite these urgent and wide-ranging efforts, which are continuing, North Vietnam has persisted in its refusal to live up to minimum standards of humane treatment, the standards spelled out in the Geneva Convention of 1949 relative to the treatment of Prisoners of War. Even apart from the Convention, these standards are no more than the minimum requirements of decency and humanity for the treatment of military personnel who have fallen into the hands of the enemy. Although North Vietnam has denied the applicability of the Convention to the captured U.S. pilots—a claim without legal validity, I should point out at once—we have sought to avoid fruitless legal contention on this subject because what is at stake here is the treatment and welfare and very survival of personnel who are helpless in the hands of the enemy. North Vietnam has frequently said that its policy is to treat the prisoners "humanely" and "leniently," and the NLF as well as the Communist authorities in Laos have echoed this claim. In a sense, we are simply asking the Communists to live up to their own statements—and to allow this to be verified in the simple manner prescribed by international law and tradition, namely that the prisoners be visited at their place of detention by representatives of an impartial intermediary.

The Secretary General of the United Nations, Mr. U Thant on October 30, just two weeks ago, gave support to this view when he called on North Vietnam to give "an international humanitarian organization such as the League of Red Cross societies access to the Americans detained in North Vietnam." Whether it is the League of Red Cross Societies or the ICRC or another respected, neutral intermediary is not the question. Any of these groups could serve the purpose of inspecting the conditions of interment and reporting on the health and welfare of the prisoners. The ICRC has a long history of responsibility in the prisoner of war field under the Geneva Conventions and carries out prisoner of war responsibilities throughout the world, and so would be a logical choice. The point is, however, that none of these groups or organizations, or any neutral government, has ever been given access to the prisoners, despite many and repeated efforts and appeals to arrange this.

As a consequence, we have long been concerned about how our men are treated. If North Vietnam's treatment of prisoners is humane, as they claim, then why not let the ICRC in to inspect? If conditions in the prisoner facilities are as good as North Vietnam has tried to depict them in propaganda films, then it would be to their advantage to invite impartial inspection. If the men are really treated in accordance with the standards of the Geneva Convention, then there would be no need for resolutions such as you are considering today, and we would not be witnessing the rising tide of concern about the prisoners that is apparent in this country and around the world.

But the concern is there, and we fear it is justified. There have long been disturbing indications of mistreatment, and those indications have been verified by the factual reports of Lt. Frishman and other returned prisoners.

North Vietnam's intransigence on this subject has moved the Secretary of State to speak out repeatedly. On June 5, 1969, he said at a press conference:

"There is a long tradition among nations that personnel captured in wartime be treated humanely. This principle has been expressed in the Geneva Convention of 1949 and is recognized by more than 120 nations. A basic requirement of the Convention is that names of prisoners be provided to their families and to an appropriate agency in a neutral country. Communist leaders have failed to observe this simple civilized requirement which would mean so much to the wives and families of the men who are missing in combat. North Vietnamese officials have frequently declared that the prisoners are treated humanely. Many seriously question these statements. Assurance could readily be provided if North Vietnam would permit visits by impartial observers to the prison camps. For the sake of the prisoners and for their families, we continue to hope for a positive response from North Vietnam. We are prepared to discuss this subject and to move quickly toward arrangements for the release of prisoners on both sides, and I believe that any sign of good faith by the other side in this matter would provide encouragement for our negotiations in Paris."

North Vietnam responded to this sincere appeal by repeating that there could be no progress on this subject until the United States withdrew all of its military personnel from South Vietnam.

Under Secretary of State Elliot L. Richardson, who has been given overall responsibility for our efforts for our prisoners of war, has also commented on Hanoi's refusal to provide names of American prisoners. On May 2, Mr. Richardson said:

"We are deeply concerned about the lack of information about our prisoners. Some of them have been held four years and longer with little or no word to their families. It is hard to see what Hanoi hopes to gain by denying the prisoners the basic right to communicate with their families. We are using every possible occasion to raise this subject and to bring about the release of prisoners on both sides."

In his forceful statement May 19, the Secretary of Defense drew further attention to Hanoi's cruelty in refusing to identify prisoners. Xuan Thuy responded the next day by telling reporters that the United States would "never" have a list of prisoners as long as the war continued and until the U.S. has withdrawn its troops from Vietnam, adding, perhaps with conscious irony, that Hanoi's policy in the treatment of prisoners "has always been humane and generous."

Ambassador Lodge answered Xuan Thuy's statements on May 22, setting forth with eloquence and emotion exactly what is at stake in Hanoi's position on this issue. Ambassador Lodge said:

"It is difficult to understand how you can claim to be treating our prisoners humanely when you refuse to identify the prisoners you hold so that their families can know the fate of their relatives. You refuse to permit regular mail exchanges. You reject impartial international observation of conditions under which prisoners are held: You refuse to discuss release of sick and wounded prisoners. Yet these are basic elements of humanitarian treatment under established international standards. We do not see how you can be hurt by merely publishing the names of those who are alive so that the uncertainty which their families feel may be ended. To express myself for a moment in human terms instead of the language of diplomacy, what is involved here is the prisoner's wife who does not know whether her husband is alive or whether he is dead. It is really hard to believe that the security of North Vietnam would be threatened if this wife were told the truth about her husband's fate. We hope you will reconsider your attitude on these questions so that it will truly reflect the humane policy which you claim to follow."

Faced with Hanoi's intransigence on this simple humanitarian question, many of the wives of our men have gone to Paris in the past two months, at private expense and independent of the U.S. Government, to ask the North Vietnamese delegation directly for information about their loved ones. They want to know, as one of them put it, "Am I a wife or a widow?" With maximum publicity the North Vietnamese received the wives and promised the information would be obtained and sent to them. They also announced that relatives could write for information, and many hundreds have done so. To date there has been no response to these inquiries.

These were not the first attempts by the families to seek such information. For years, individual wives and relatives have asked the communist authorities to send word of their loved ones. Hundreds of families have written letters, to their men—month after month after month—with never a reply. The letters are sent directly to North Vietnam, as well as through the Red Cross. In a small number of cases, around 110 in number, letters have been received from American prisoners in North Vietnam. But the great majority of letters have gone unanswered and unacknowledged.

In August 1965, the ICRC addressed an appeal to the principal parties to the Vietnam conflict, calling on them to abide by "the humanitarian provisions of the Geneva Conventions." It reminded North Vietnam, the GVN, and the United States that all were parties to the Conventions and sent a copy of the appeal to the NLF on the ground that it too was bound by "the undertakings signed by Viet Nam." The ICRC appeal specified five points: (i) ICRC should be permitted *to serve* as a neutral intermediary; (ii) prisoners of war should be treated humanely; (iii) PW lists should be exchanged; (iv) ICRC delegates should be authorized to visit PW camps; and (v) civilians should be spared.

In reply, the United States and the GVN undertook to respect the Geneva Convention in their treatment of prisoners of war, and arranged, for the ICRC to visit PW camps in South Vietnam. Other Free World countries with forces in South Vietnam subsequently joined in affirming the applicability of the Convention, specifically stating this in the Declaration of the Manila Conference, 1966. There are now six PW camps in South Vietnam, holding over 30,000 PW's, operated by the GVN, with U.S. advisers present. The camps are regularly visited by ICRC delegates and doctors, who are able to visit privately with individual prisoners. Any complaints or comments are promptly reported by the ICRC, and corrective action is taken. After initial processing and classification, all enemy PW's captured by U.S. forces are turned over to the GVN for permanent detention, a procedure envisaged by Article 12 of the Geneva Convention.

North Vietnam and the NLF in separate letters to the ICRC rejected the applicability of the Geneva Convention, and in particular refused to accept the ICRC as a neutral intermediary. Although acknowledging that it had acceded to the Convention in 1957, the Hanoi government said it did not apply to the captured pilots because there has been no declaration of war, and because they were war criminals. These claims are invalid. By its own terms, the Geneva Convention applies in all cases of armed conflict between two or more of the parties to the Convention (see Article 2). Further, the U.S. prisoners are not war criminals, and, in any case, Hanoi's mere assertion to this effect does not deprive them of their rights under the Geneva Convention.

Subsequently, the United States attempted through diplomatic channels to arrange a Protecting Power for the prisoners, as envisaged in the Geneva Convention. We approached a number of governments, including neutrals as well as countries sympathetic to NVN. Despite the cooperation we obtained from other governments, North Vietnam refused to agree. We then asked the ICRC to offer its good offices to the DRV as a substitute for a protecting power, pursuant to Article 10 of the Convention. The ICRC transmitted the U.S. request to Hanoi on May 25, 1966, but it was rejected by the DRV on July 27, 1966. The ICRC has continued its efforts to visit prisoners in North Vietnam, to no avail. Its repeated applications to enter North Vietnam have been persistently denied. North Vietnam has, however, frequently sent the ICRC complaints alleging U.S. bombing of villages, hospitals, and civilian targets in NVN. The U.S. has proposed that these charges be investigated by the ICRC, but North Vietnam has rejected this offer as well.

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In short, a bleak record. Although we have pressed North Vietnam by every available means and channel, diplomatic and private, their responses have been uncompromising and negative. The fact that what we are requesting is no more than the minimum treatment of prisoners of war sanctioned by international law and tradition has convinced other governments and organizations to join in these efforts, but has not thus far penetraed Hanoi's intransigence.

Over the years, however, it has been evident that North Vietnam is sensitive to public pressure and criticism, and that is why the resolutions you are considering at present are important. This is not the first time that North Vietnam's inhumanity towards the prisoners has been the subject of public concern. In 1966, for example, Hanoi threatened to try the U.S. prisoners on charges of "war crimes." Preparations for the trials appeared to be moving forward. Specific allegations of "war crimes" were broadcast on the Communist propaganda media.

As many of you may recall, there occurred a world-wide outpouring of criticism and concern about Hanoi's proclaimed intentions. Newspapers in this country and abroad denounced the plan. Members of the House and Senate representing a wide range of opinion joined in warning North Vietnam that such sham trials could not be tolerated. A number of governments also made known their opposition to such proceedings. Faced with this chorus of protest, Hanoi announced the trials had been "set aside," and they have not taken place.

Just two days ago, on November 11—Veterans Day—our delegate to the United Nations Human Rights Commission, Rita Hauser, raised the subject of prisoners of war in the United Nations. Appropriately, it was in the context of human rights—for that is what we are discussing here: the basic inalienable right of a man who is a prisoner of war in the hands of the enemy to be treated in accordance with minimum standards of decency. A number of wives of our prisoners were in the galleries at the United Nations when that statement was delivered, adding their mute testimony to the words and phrases of our presentation.

I understand the Subcommittee members have copies of Ambassador Hauser's statement, and I would respectfully suggest it be made part of this record following my statement.

You also have copies of Ambassador Graham Martin's statement to the Instanbul International Conference of the Red Cross. I will leave to the witness from the American Red Cross a fuller discussion of the action taken by that Conference. Suffice to say, the Conference gave important international endorsement to our concern about the protection of prisoners of war.

* * * * *

The actions taken thus far represent a broad range of effort—but tragically little in the way of results. The prisoners still wait, wait and endure and suffer. The wives and families wait and endure, and our hearts go out to them. Approval of a resolution on this subject by this Congress would express support and concern for the wives and for the men they wait for. More importantly, it may help convince Hanoi to treat the men humanely and to release them soon.

STATEMENT BY MRS. RITA E. HAUSER, U.S. REPRESENTATIVE, IN COMMITTEE III, ON THE VIOLATION OF HUMAN RIGHTS OF PRISONERS OF WAR, NOVEMBER 11, 1969

Madam Chairman, we now commence general debate in this Committee on three subjects of moment: Elimination of all forms of racial discrimination, measures to be taken against Nazism and racial intolerance, and violations of human rights and fundamental freedoms. Of the three, the violation of human rights and fundamental freedoms appears to my Delegation to be singularly important. Indeed, its importance to all delegations is demonstrated by its recurrence each year as a major subject of discussion.

This agenda item makes particular reference to colonial and other dependent countries and territories. My Delegation continues to deplore the inhumane practice of *apartheid* in South Africa and in Namiba and associates itself with the efforts of the international community seeking peaceful and practicable means for its elimination as soon as possible. We also remain very concerned about the serious violations of human rights in other parts of Africa. These questions are rightfully treated in many bodies of the United Nations, including the Security Council, for they are of the utmost urgency and gravity.

Accordingly, Madam Chairman, while we recognize fully the persistent and serious human rights violations in southern Africa, we are of the view that the Third Committee should not utilize all of its time on this aspect of the subject, so widely treated elsewhere in the United Nations, lest, by so doing, we neglect the many instances of grave violations of human rights elsewhere in the world. I wish to recall that our agenda item itself refers to "the violation of human rights and fundamental freedom . . . *in all countries*".

On reading the hundreds of petitions alleging violations of human rights which come to the Commission on Human Rights from sources in many countries, my Delegation has noted the large number referring to violations of Articles 9–12 and Article 19 of the Universal Declaration of Human Rights. The latter provides that "Everyone has the right to freedom of opinion and expression", including freedom to "seek, receive and impart information and ideas through any media and regardless of frontiers". Article 9 states that "No one shall be subjected to arbitrary arrest, detention or exile". Articles 10, 11 and 12 afford full protection and due process of law as to those charged with a penal offense.

In reviewing the 1969 annual report of that singular institution, Amnesty International, now consisting of 20 National Sections and over 15,000 individual members, the work of which is to strengthen all international movements supporting human rights, my Delegation was very much struck by the fact that Amnesty International has taken up investigation of cases of political prisoners during the year 1968/69 in 72 countries. Included was my own country, where the status of conscientious objectors who have been imprisoned for violations of the conscription laws has been looked into with the full cooperation of my Government.

Newspaper reports and other media sources make perfectly clear to us that the right of political dissent is still a very precarious one for millions of people. Prisons bulge with those who have dared to criticize or oppose peacefully the policies of their governments, and, alas, many such prisoners are brutally ill-treated in violation of all standards of human decency. We note particularly the evidence compiled in the report of The Ad Hoc Working Group of Experts as to African territories under colonial domination, which documents the degree to which political prisoners have been brutalized in these areas.

Rather than promote and encourage open dissent, many governments have maintained power with a reign of fear, which serves to terrorize the mind and, eventually, the body of those who disagree.

In the time available to me, Madam Chairman, I cannot review all of these situations occurring the world over. But in the course of this debate, my Delegation wishes strongly to affirm the inherent faculty of all men, if they are indeed, as Article 1 of the Universal Declaration of Human Rights states, "born free and equal in dignity and rights . . . endowed with reason and conscience", to exercise their basic right of freedom of spirit, mind and belief, wherever they may be located and whatever may be the political and social system under which they live.

These rights are no greater or smaller in Africa than in the Americas, in Asia than in Europe. They belong to all mankind, and derive from man's basic humanity. The right to disagree, to dissent, is perhaps the most cherished of all the political rights of man. History teaches that yesterday's dissenters often become today's majority, for through reasoned dissent, man progresses. If I may so note, my Delegation was proud to witness the free exercise of free minds across our country on October 15th, a day on which many Americans were able to express their dissent with the Government's policy as others were equally able to disagree publicly with the dissenters. We are grateful for orderly and reasonable disagreement, for we know that no country's policies are so sound or so correct that none will be found who disagree.

Madam Chairman, my Delegation is also deeply disturbed at a most fundamental violation of human decency as to another category of prisoners, those who are prisoners of war protected by international law.

I would like to discuss a specific situation involving prisoners which, I am sure you will understand, is of particular concern to my country. United States forces are engaged in combat in Vietnam. It is our earnest hope that this conflict will soon be terminated and the task of rebuilding begun. But many hundreds of American soldiers, airmen, marines and naval personnel are at present missing or captured in Vietnam. How many of these men, and which ones, are in captivity is a secret closely guarded by the North Vietnamese authorities. For each of these men there is a wife, a child, a parent, who is concerned with his fate. They are subjected to uncertainty and despair which grow as each day passes.

Our concern in this matter, expressed here before the assemblage of nations, is humanitarian, not political. This concern was succinctly but urgently expressed in the agonizing question put by the many wives who have gone to Paris to ask the North Vietnamese delegation to the Paris talks: please tell me if I am a wife or a widow.

There exists an international convention, legally binding upon all parties concerned—the Convention on Protection of Prisoners of War, concluded at Geneva in 1949. This Convention applies to "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them." It thus binds the United States, which ratified it in 1955, the Republic of Vietnam, which acceded to it in 1953, and North Vietnam, which acceded in 1957.

This Convention, to which, I may add, there are 125 parties, including more than 100 members of the United Nations, contains provisions which, if implemented, would let children know if their fathers are alive, parents if their sons are well-treated. It requires that—and I quote—"immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write directly to his family." The Convention assures a prisoner the right to remain in communication with his loved ones and with an international or state organization which has assumed the obligation of safeguarding the rights of the prisoner.

In addition to the right to receive mail and packages, and to send a minimum of two letters and four cards each month, the Geneva Convention specifies minimum humane standards of detention, of hygiene, diet, recreation, and employment. It requires that seriously wounded or ill prisoners be repatriated as soon as they are able to travel. It specifies that the Detaining Power shall accept a neutral party to the conflict or a respected international organization such as the International Committee of the Red Cross as a Protecting Power for the prisoners. It requires that the Detaining Power provide the names of the Prisoners it holds to their families, as well as to the Protecting Power, or to the International Committee of the Red Cross, to pass on to their country of origin. It requires that the Detaining Party permit on-the-scene inspection of its detention facilities.

Madam Chairman, my fellow delegates, this Convention is not meant to create a life of privilege for captured military personnel. It is meant to insure minimum standards of human decency to helpless men who are in the power of their military enemy and can no longer pose a threat to that enemy, and to provide minimum solace to families who are far from the front lines. In wartime, when passions are inflamed, this Convention seeks to preserve those frail links of compassion and decency which are so urgently needed. Nurtured, these links may in turn help move enemies toward a realization of their common stake in finding the path to peace.

My country places the highest priority upon implementation of this Convention. There are now some 30,000 North Vietnamese and Viet Cong prisoners of war in South Vietnam who have been accorded the status and the rights of prisoners of war under the Geneva Convention, even though many of them may not technically be entitled to such prisoner of war status as defined in the Convention. The United States has tried again and again to persuade Hanoi to apply the basic minimum standards guaranteed by the Convention—identification of prisoners, the right to send and receive mail, and a Protecting Power to inspect detention conditions. We remain immensely grateful to the governments which have cooperated in these regrettably unsuccessful efforts.

In contrast, the Government of the Republic of Vietnam with the cooperation of its allies, opened all detention camps to inspection by the International Committee of the Red Cross. The names of POW's have been made available to the ICRC. Prisoners of war detained by the Republic of Vietnam have the right to send and receive mail and packages. They are interned in six camps which are administered by the Republic of Vietnam and which, as regular international inspection has shown, conform to the requirements of the Geneva Convention.

Let me be clear that we are not claiming a perfect record on this subject. War is ugly and brutal by nature, and violations by individuals have occurred. The point is, however, that the allied command has made every effort to ensure that the Convention is applied. This includes the issuance of clear and explicit orders, and, even more important, thorough investigation of alleged violations and punishment of those found guilty. This policy is confirmed and supported by the continuous review, both official and unofficial, which results from free access to POW's by delegates and doctors of the ICRC.

The United States neither seeks nor deserves praise for its efforts to implement the Convention. This is our duty—our legal duty and our moral duty. The tragic fact, however, is that North Vietnam and the National Liberation Front refuse to acknowledge their legal and moral duty to apply similar standards of treatment to the helpless prisoners in their power—Vietnamese as well as American.

The record is indeed sad. The North Vietnamese authorities have refused to identify the prisoners they hold. Only a limited minority of those men known by the United States Government to have been captured have been allowed to communicate with the outside world. Mail even from this small minority has been infrequent and irregular. The sick and the wounded have not been repatriated nor have they been identified. Even the minimum protection that would be afforded by inspection of POW facilities by an impartial international body has been denied. The ICRC's repeated requests to be allowed to visit the prisoners at their places of detention have been repeatedly denied; nor has any other accepted intermediary been given access to the prisoners.

From the reports of the few men actually released by North Vietnam and from other sources has come disturbing evidence that prisoners are being deprived of adequate medical care and diets, and that, in many instances, they have been subjected to physical and mental torture. For example, Lt. Robert Frishman, one of the recently released American prisoners, in a public statement on September 2, 1969, shortly after his release, said American prisoners are subject to "solitary confinement, forced statements, living in a cage for three years, being put in straps, not being allowed to sleep or eat, removal of finger nails, being hung from a ceiling, having an infected arm which was almost lost, not receiving medical care, and being dragged along the ground with a broken leg. . . ." Recounting the treatment of Lieutenant Commander Stratton, Lt. Frishman said:

"The North Vietnamese tried to get Lieutenant Commander Stratton to appear before a press delegation and say that he had received humane and lenient treatment. He refused because his treatment hadn't been humane. He'd been tied up with ropes to such a degree that he still has large scars on his arms from rope burns which became infected. He was deprieved of sleep, beaten, had his finger nails removed and put in solitary, but the North Vietnamese insisted that he make the false humane treatment statements and threw him into a dark cell for 38 days to think about it."

This record is indeed chilling. It has been noted and deplored by a great many international observers. For example, Jacques Freymond of the International Committee of the Red Cross, reporting on the work of the Committee on Prisoners of War, highlighted the contrasts between North and South Vietnam as follows:

"In Vietnam it [the ICRC] has so far had limited success. In fact, in spite of repeated representations, it has not been able to obtain the agreement of the Democratic Republic of Vietnam to the installation of a Delegation in Hanoi nor even to the visiting of prisoners of war.

". . . On the other hand, the ICRC is represented in Saigon and the delegates are able to visit all prisoner of war camps. They also receive nominal rolls of these prisoners."

In the face of such international criticism there have been few breaks in the silence of Hanoi. We have, however, been told—though in the shrill phrases of propaganda, rather than in the measured tones of statesmanship or humanitarianism—that the Geneva Convention does not apply because there has not been a formal declaration of war and that the American prisoners are "war criminals" and therefore not entitled to the rights conferred upon prisoners of war by the Geneva Convention. Despite this, Hanoi says, it treats the prisoners "humanely."

Madam Chairman, my government cannot accept these assertions. The Geneva Convention provides a detailed international standard of humane treatment against which the treatment of prisoners of war can be measured. Hanoi's mere assertion of "humane" treatment, which has never been verified by impartial inspection, is no substitute. Further, North Vietnam's denial that the Convention is applicable, and its assertion that it therefore cannot be the standard to measure its conduct, has no basis in international law. Hanoi says that the Convention applies only where there has been a declaration of war. But it is clear from the language of the Convention, which I quoted earlier, that the absence of such a declaration has no relationship to the Convention's applicability and does not justify a refusal to apply it.

Hanoi has also asserted that our men held as prisoners are war criminals, apparently on the theory that any attacks against North Vietnam or Viet Cong forces or facilities are criminal acts and that all military personnel involved in such attacks are criminals. Such assertions are patently absurd. Our men are not war criminals. Moreover, the Geneva Conventions and modern international humanitarian law reject any suggestion that the protection of individual war victims, whether soldiers or civilians, is dependent upon moral or legal judgments about the cause for which their government is fighting. The law is there to protect all the victims of war on both sides. All countries have an interest in seeing that it is respected.

The United States understands that every country believes that it is right and its enemy wrong. But, Madam Chairman, the Geneva Convention was designed specifically to meet this problem. It imposes upon all combatant powers the obligation to treat military personnel made helpless by their captivity in accordance with a single objective and verifiable standard.

The 21st International Conference of the Red Cross held at Istanbul in September cut through any possible quibbles that could be made by a party to the Vietnam conflict. It adopted without dissent a resolution which obtained the support of 114 governments and national Red Cross organizations. That resolution called upon all parties "to abide by the obligations set forth in the Convention and upon all authorities involved in an armed conflict to ensure that all uniformed members of the regular armed forces of another party to the conflict and all other persons entitled to prisoner of war status are treated humanely and given the fullest measure of protection prescribed by the Convention."

It also recognized—and again I repeat the exact words of this resolution—"that, even apart from the Convention, the International community has consistently demanded humane treatment for prisoners of war, including identification and accounting for all prisoners, provision of an adequate diet and medical care, that prisoners be permitted to communicate with each other and with the exterior, that seriously sick or wounded prisoners be promptly repatriated, and that at all times prisoners be protected from physical and mental torture, abuse and reprisal."

We hope this Committee will take note this session of the resolution passed without dissent by the League of Red Cross Societies in Istanbul, and that it will in a similar fashion reaffirm the obligations of all parties to the Geneva Convention. We especially hope that North Vietnam, which has frequently expressed its abiding regard for humane principles, will heed this unequivocal and specific call reflecting the conscience of the international community.

Madam Chairman, two weeks ago—on October 30th—the Secretary General made the following statement:

"It is the view of the Secretary General that the Government of North Vietnam ought to give an international humanitarian organization such as the League of Red Cross Societies access to the Americans detained in North Vietnam."

We join in this view, and we urge all the governments represented here today to use their utmost influence so that at least this single step forward can be accomplished. We would indeed welcome the intervention of any organization or group of concerned people who may be able to reduce the anguish of the prisoners and their families. But the Secretary General has made a concrete, limited proposal; its immediate implementation would bring closer the day when the observance of the humanitarian principles of the Geneva Convention by all parties is complete.

I have spoken at length on this matter, Madam Chairman, for it is of vital importance to the United States. It is also of paramount interest to all nations of the world. The failure to treat any prisoner of war, wherever he may be, in accordance with common standards of decency, is an affront to all who claim the mantle of civilization.

RESOLUTION NO. 3 ADOPTED BY THE LEAGUE OF RED CROSS SOCIETIES, ISTANBUL, SEPTEMBER 1969

PROTECTION OF PRISONERS OF WAR

The XXIst International Conference of the Red Cross,

Recalling the Geneva Convention of 1949 on the protection of prisoners of war, and the historic role of the Red Cross as a protector of victims of war,

Considering that the Convention applies to each armed conflict between two or more parties to the Convention without regard to how the conflict may be characterized,

Recognizing that, even apart from the Convention, the International community has consistently demanded humane treatment for prisoners of war, including identification and accounting for all prisoners, provision of an adequate diet and medical care, that prisoners be permitted to communicate with each other and with the exterior, that seriously sick or wounded prisoners be promptly repatriated, and that at all times prisoners be protected from physical and mental torture, abuse and reprisals,

Requests each party to the Convention to take all appropriate measures to ensure humane treatment and prevent violations of the Convention,

Calls upon all parties to abide by the obligations set forth in the Convention and upon all authorities involved in an armed conflict to ensure that all uniformed members of the regular armed forces of another party to the conflict and all other persons entitled to prisoner of war status are treated humanely and given the fullest measure of protection prescribed by the Convention; and further calls upon all parties to provide free access to the prisoners of war and to all places of their detention by a protecting Power or by the International Committee of the Red Cross.

AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO TAKE CERTAIN ACTION DURING THE ADJOURNMENT OF THE SENATE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that during the adjournment of the Senate, until noon tomorrow, the Secretary of the Senate be authorized to receive messages from the House of Representatives, and that the Vice President, the President pro tempore, and the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

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

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRANSTON in the chair). 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

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in executive session, under the previous order, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 10 minutes p.m.) the Senate adjourned until tomorrow, Thursday, November 20, 1969, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 19, 1969:

INTERSTATE COMMERCE COMMISSION

Robert Coleman Gresham, of Maryland, to be an Interstate Commerce Commissioner for the remainder of the term expiring December 31, 1974.

FEDERAL TRADE COMMISSION

Caspar W. Weinberger, of California, to be a Federal Trade Commissioner for the term of 7 years from September 26, 1969.