would make East Feliciana finally desegregate this winter or next September, and he thought this winter was likelier.

Ward was not the only person in the courtroom today who thought he knew which way the judges will rule in the East Feliciana case, a fact that tells a good deal about the unusual proceedings here this week.

There was small suspense or even doubt about the issues or outcome in most of the 13 desegregation cases that the Fifth Circuit heard. The question was how specific and impatient the judges' language would be—and how many loopholes it might contain.

The Fifth Circuit has been telling the South to desegregate for years, with increasing force but uneven effect. It was searching this week for some further formulation that might put the issue to rest.

All the judges are Southerners, and not all are in agreement with the Supreme Court decision. Even among those who do agree, there are conflicting loyalties to Southern tradition. When one civil rights attorney argued that the segregation by sex was a racial affront, Judge Bell commented: "You're trying to get the last ounce of flesh out of these people, aren't you?"

But Bell and a majority of the judges are trying hard to spell out what is permissible and what is not and thus head off new dodges and delays.

"How's the best way to get out of the school business?" said Judges Charles Clark, a Mississippian and Nixon appointee. "That's what we're looking for."

The Justice Department said in its brief for the 13 cases that the court would have trouble setting forth any such "universal criteria" that could apply all across the South. That was typical of the department's position during the hearings; it never asked for outright delay, but neither, as one private civil rights attorney observed, was "inflicted with any sense of urgency."

On the question of "universal criteria," however, the hearings—and the history of East Feliciana—suggest that the department is right, the judges are in for disappointment, and the litigation will go on.

The lawyer for the black East Feliciana parents is Richard Sobol. Like many of the civil rights attorneys in these cases he is Eastern and young, a New Yorker now living in Washington, 32 years old. He was 28 when he first filed the suit in 1965, and as he noted in his argument, today was the sixth time it has come back to the Fifth Circuit.

The Parish has about 1,400 white and 3,000 Negro pupils. It had no desegregation until two years ago when it went to freedom-of-choice. It had about 2 per cent of its black children in formerly all-white schools last year, and no white children in its all-black schools.

Last school year, Sobol asked a Federal district judge to make the school board adopt a desegregation plan that would produce results. The judge refused, and the black parents appealed.

The Fifth Circuit came down on the black parents' side in the spring, ordering East Feliciana and 36 other Louisiana parishes to start genuine desegregation in September.

It suggested that the Department of Health, Education and Welfare propose complete desegregation plans for all 37 districts, which HEW did. Most of the school boards proposed lesser alternatives of their own. In most cases the state's Federal district judges accepted the alternatives.

Under the East Feliciana alternative, Sobol noted wearily today, freedom-of-choice is still the rule, and only about 3 per cent of the black children are in formerly all-white schools. The parish still has all-black schools.

Sobol asked the court to put the HEW plan into effect right away, and to take jurisdiction away from the district judge. Ward, for the school board, opposed both steps.

"We've only had two short years," Ward said of freedom-of-choice, arguing that it would work if given more time.

"Why 'two short years?' " asked Judge Walter P. Gewin. "They were in the union in 1954, weren't they?"

"The question is how long, how long," said Chief Judge John R. Brown.

SENATE—*Thursday, November 20, 1969*

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

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

Dear Lord and Father of mankind, as we pause in the day's occupation we beseech Thee once more to—

"Take from our souls the strain and stress,
And let our ordered lives confess
The beauty of Thy peace."

Deliver us, O Lord, from the petty irritations and harassing pressures which dim the high vision and obstruct the will to righteous action. Spare us from minimizing the important and magnifying the trivial. Give us that balanced perspective which keeps us alive to the true values which promote the fullness of Thy kingdom.

Hear us in our daily prayer, and in all those deeper prayers which never take the form of words.

Through Jesus Christ our Lord. Amen.

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT—ENROLLED BILLS SIGNED

Under authority of the order of the Senate of November 19, 1969, the Secretary of the Senate, on November 19, 1969, received a message from the House of Representatives that the Speaker had affixed his signature to the following enrolled bills:

S. 1072. An act to authorize funds to carry out the purposes of the Appalachian Regional Development Act of 1965, as amended, and title I, III, IV, and V of the Public Works and Economic Development Act of 1965, as amended;

H.R. 12307. An act making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes; and

H.R. 14001. An act to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act.

ENROLLED BILLS SIGNED DURING ADJOURNMENT

Under authority of the order of the Senate of November 19, 1969, the President pro tempore, on today, November 20, 1969, signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

S. 1072. An act 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;

H.R. 12307. An act making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1970, and for other purposes; and

H.R. 14001. An act to amend the Military Selective Service Act of 1967 to authorize modifications of the system of selecting persons for induction into the Armed Forces under this act.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on November 18, 1969, the President had approved and signed the following act:

S. 1857. An act to authorize appropriations for activities of the National Science Foundation, and for other purposes.

EXECUTIVE MESSAGES REFERRED

The President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, November 19, 1969, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

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

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK—COAST GUARD

Mr. MANSFIELD. Mr. President, in executive session I ask unanimous consent that the Senate proceed to the consideration of nominations placed on the Secretary's desk.

The PRESIDENT pro tempore. The nominations will be stated.

The bill clerk proceeded to read sundry nominations in the Coast Guard which had been placed on the Secretary's desk.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

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.

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.

Mr. MANSFIELD. Mr. President, I yield to the distinguished Senator from Utah (Mr. BENNETT) at this time.

The PRESIDENT pro tempore. The Senator from Utah is recognized.

INTEREST EQUALIZATION TAX EXTENSION ACT OF 1969—CONFERENCE REPORT

Mr. BENNETT. 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. 12829) to provide an extension of the interest equalization tax, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDENT pro tempore. 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, p. 34677, CONGRESSIONAL RECORD.)

The PRESIDENT pro tempore. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. BENNETT. Mr. President, on November 18, the House and Senate conferees met to resolve differences between the Senate and House versions of the interest equalization tax bill, H.R. 12829. This bill basically extends the interest equalization tax through March 31, 1971.

The House accepted all the Senate amendments to this bill, with a single change—a clarifying amendment to the effective date, reflecting the fact that there was an interval after September 30, 1969, during which the interest equalization tax technically had expired. The modification of the effective date clarifies that the tax does apply in this interval.

The Senate amendments dealing with the interest equalization tax itself were mainly of a technical nature and were approved unanimously by the Senate and accepted by the House without debate.

The only substantive amendment dealt with the repeal of certain ammunition registration requirements. Under the amendment, which the House conferees accepted, registration requirements for "shotgun ammunition, ammunition suitable for use only for rifles generally available in commerce, or component parts for the aforesaid types of ammunition" would be repealed. Senators will recall that the original committee amendment was modified by the Senate so that purchases of ammunition, such as .22 caliber rimfire ammunition, which might be used interchangeably between rifles and pistols, would remain subject to the registration requirements. This modification is retained by the conference agreement.

Thus, the House accepted all the amendments which were in the Senate bill. All the conferees signed the report.

I move that the conference report be agreed to.

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

The motion was agreed to.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. BENNETT. I am happy to yield.

Mr. SCOTT. Mr. President, I am very pleased that the other body has accepted the provisions proposed by the distinguished Senator from Utah, of which I have the privilege to be a cosponsor, with regard to the repeal of the ammunition amendment in a prior bill.

I suppose it is always difficult, especially in public, to admit that one has made a mistake; but, in my view, I made a mistake in supporting that particular provision of the original bill. Something has been made, I think quite rightly, of the fact that I have changed my mind. I do not regret that. I think perhaps it may be a little healthy for all of us to be free to change our minds. In this regard, it became apparent, after the act was passed, that its enforcement was rendered objectionable, that it operated purely to harass those people who could not be assumed in any way to be engaged in anything except a peaceful endeavor, the sportsmen of our country, who found that when they sought to purchase ammunition, they had to fill out some seven or nine rather searching questions.

It did not serve to reduce the activity of the criminal element. It did not serve to deny them the ability to secure shotgun ammunition, for example; and some exceptions have been made in the repeal of the amendment. But what it did do was to compel the Government agencies involved to indulge in a great amount of paperwork, which was promptly filed in forgotten cabinets; and, as a result, nothing effective was accomplished by it.

Therefore, having made a mistake, I am glad to have this opportunity to rectify it. I was glad to join as a cosponsor with the Senator from Utah.

I am still trying for a batting average which will give me more correct decisions than otherwise, but this was a wrong one, and I am glad to make this public statement and to support the conference report.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. BENNETT. I yield.

Mr. MANSFIELD. Mr. President, may I say that I am delighted that this conference report is before the Senate. I believe it will be agreed to overwhelmingly.

As for the ammunition provision, I would point out that in the gun legislation of 1968, all that was called for was name, age, and address; that is all. The Internal Revenue Service, which is charged with the responsibility for enforcing that law, added a number of other specifications by regulation bringing to approximately 10, the items of information required to be obtained in an ammunition sales transaction.

I had a great deal of correspondence from sportsmen in Montana concerning this provision. I took the matter up with the Internal Revenue Service, only to find that it was very rigid in its outlook. In my opinion, its position was directly against the intent of Congress. What was being accomplished was, in effect, a form of backdoor registration, without legislative authority.

I think that when laws are passed, regardless of our particular view on the laws, the intent of Congress and the words as they are spelled out and defined, should furnish the sole basis on which the laws should be enforced.

I was very happy to be a cosponsor, with the distinguished Senator from Utah—the chief sponsor of this measure—when this matter was introduced, when it came before his committee and when it came before the Senate for consideration a few weeks ago.

I think this should be a good lesson for the Internal Revenue Service, and for that matter, for any executive agency. It must be understood that when Congress states its intent clearly and plainly and without equivocation, no department of Government, including the Internal Revenue Service has the right or authority to go beyond that. I urge that the Senate agree to this conference report.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BENNETT. I yield.

Mr. HRUSKA. Mr. President, I wish to say that the Senator from Nebraska is very gratified at the acceptance of this amendment in conference and that it will become law.

The explanations given by the Senator from Pennsylvania and the Senator from Montana are sound and accurate. There is nothing in the statute as passed in 1968 that this Senator can find which would warrant the lengths to which enforcement authorities did go. The regulations meant harassment and required the building up of huge supplies of paper that mean nothing in the law-enforcement picture. Unfortunately that viewpoint was difficult to get across to the agency and this was the recourse had.

Somehow in editorials and elsewhere there appears the thought that those who favor improving our criminal laws and procedures in this country are inconsistent if they also support this amendment and this conference report because it would allow ammunition to be sold to anyone, crooks, hoodlums, sportsmen, hunters, and law-abiding people and so forth.

Normally the editorials are full of emotional appeals. They point out that daily we see holdups, and daily shotguns and

revolvers are being used to violate the law.

But since the use of those guns and the ammunition have occured under a system where there is now a requirement for registration of ammunition, and the people who make such an argument are simply disproving their own case. They substantiate the fact testified to by law-enforcement officers; namely, that registration of ammunition has no effect on the misuse of ammunition.

A law of this kind had been on the books for 30 years and any effort to try to enforce it was abandoned. The testimony before our subcommittee of the Committee on the Judiciary this year was to the same effect. It has no beneficial impact at all.

There are no identifying marks on the ammunition. The collection of paper is a futile exercise and it was recommended that this amendment be adopted.

I congratulate the Senator from Utah for conducting these negotiations in such a way that this step, although belated is now being taken.

Mr. MOSS. Mr. President, will the Senator yield?

Mr. BENNETT. I yield to my colleague from Utah.

Mr. MOSS. Mr. President, I wish to join Senators in supporting the fine work done in this matter of having this amendment made a part of the bill, and, therefore, accelerating by some time the exemption of ammunition from this onerous registration feature that had been placed upon it by the Treasury Department.

In my State, this is the time of hunting and many of our citizens do this as recreation. The inconvenience and nuisance of registering and giving data whenever hunting ammunition is purchased has been very cumbersome.

When we discussed this matter on the floor of the Senate before the matter went to conference, I pointed out that I had received over 5,000 signatures on petitions asking for removal of the registration of ammunition. Since that time, when the matter was discussed on the floor of the Senate, I have received more than 10,000 additional signatures. That indicates the extent that this gives concern to those who were sportsmen who use ammunition for hunting purposes.

I commend my senior colleague for his fine work in getting the amendment included in the bill in the Senate, taking it to conference, and doing the fine work he has done in conference so that it was acceptable to Representatives from the other body. In this way we have achieved an equity that has taken the burden off a number of our people. I had hoped it could be even broader, but the measure certainly has accomplished a great deal and I am pleased this result has come about.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. BENNETT. I yield.

Mr. DOLE. Mr. President, I wish to say very briefly, as a cosponsor of the amendment and as one who opposed the act in 1968 because of the lack of a provision such as this, that I commend the Senator from Utah for his excellent work.

The sportsmen in Kansas have the same attitude as sportsmen in Utah, Montana, Nebraska, and Pennsylvania. They are law-abiding citizens. The provision, as it was, constituted a nuisance and it performed no useful purpose. Therefore, I am pleased to see the fruition of your efforts.

Mr. BENNETT. Mr. President, I move that the conference report be agreed to.

The report was agreed to.

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

RESIGNATION OF HENRY CABOT LODGE AS CHIEF U.S. NEGOTIATOR AT PARIS PEACE TALKS, AND LAWRENCE E. WALSH, DEPUTY CHIEF U.S. NEGOTIATOR

Mr. SCOTT. Mr. President, I am advised that the White House has announced the resignation of Ambassador Henry Cabot Lodge as chief U.S. negotiator at the Paris peace talks, as well as his deputy, Mr. Lawrence E. Walsh. Both of those gentlemen have performed valiantly and ably. I shall have more to say on the matter at another time but for the RECORD I wanted to announce to the Senate that this has occurred.

EXECUTIVE COMMUNICATIONS, ETC.

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

REPORT ON INDIAN TRIBAL CLAIMS

A letter from the Chairman, Indian Claims Commission, transmitting a report on the final conclusion of judicial proceedings regarding Docket No. 72, Absentee Delaware Tribe of Oklahoma, et al., and Docket No. 298, the Delaware Tribe of Indians, Plaintiffs, v. the United States of America, Defendants (with an accompanying report; to the Committee on Appropriations.

REPORT ON NUMBER OF OFFICERS ON DUTY WITH HEADQUARTERS, DEPARTMENT OF THE ARMY, AND DETAILED TO THE ARMY GENERAL STAFF

A letter from the Secretary of the Army, transmitting, pursuant to law, a report of the number of officers on duty with Headquarters, Department of the Army, and detailed to the Army General Staff on 30 September 1969 (with an accompanying report); to the Committee on Armed Services.

REPORT OF DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON GRANTS APPROVED

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on grants by the Department for the period July 1, 1969, to September 30, 1969 (with an accompanying report); to the Committee on Finance.

REPORT ON U.S. CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

A letter from the Secretary of State, transmitting, pursuant to law, the 17th report on the extent and disposition of U.S. contributions to international organizations for the fiscal year 1968 (with an accompanying report); to the Committee on Foreign Relations.

LIBBY DAM, KOOTENAI RIVER, MONT.

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to modify the project for Libby Dam, Kootenai River, Mont. (with an accompanying paper); to the Committee on Public Works.

ENROLLED BILL SIGNED

The PRESIDENT pro tempore announced that on today, November 20, 1969, he signed the enrolled bill (S. 92) for the relief of Mr. and Mrs. Wong Yui, which had previously been signed by the Speaker of the House of Representatives.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2566. A bill for the relief of Jimmie R. Pope (Rept. No. 91-550).

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

S. 1232. A bill to declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands (Rept. No. 91-551).

BILLS INTRODUCED

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

By Mr. TALMADGE:

S. 3156. A bill to amend the Internal Revenue Code of 1954 to allow a credit against income tax for certain expenses of employee training programs and for certain wages and salaries of individuals employed under work incentive programs; to the Committee on Finance.

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

By Mr. MANSFIELD (for himself and Mr. WILLIAMS of Delaware):

S. 3157. A bill to establish a guide service to provide free tours of the Capitol; to the Committee on Rules and Administration.

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

By Mr. MAGNUSON:

S. 3158. A bill for the relief of Hans Gunther Viktora; to the Committee on the Judiciary.

By Mr. McGEE:

S. 3159. A bill to authorize certain conveyances of land; to the Committee on Interior and Insular Affairs.

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

By Mr. CRANSTON:

S. 3160. A bill for the relief of Clara Edith Diaz Davila; to the Committee on the Judiciary.

S. 3161. A bill for the relief of the estate of Randolph Henry Hitchcock; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 3162. A bill to waive the statute of limitations with respect to a certain claim against the United States by the State of Hawaii; to the Committee on the Judiciary.

By Mr. FANNIN (for himself, Mr. MURPHY, Mr. GOLDWATER, Mr. DOLE, Mr. BELLMON, Mr. GURNEY, Mr. ALLOTT, Mr. SCHWEIKER, Mr. BENNETT, and Mr. STEVENS):

S. 3163. A bill to provide for a White House Conference on Indian Affairs; to the Committee on Interior and Insular Affairs.

By Mr. MONTOYA:

S. 3164. A bill to amend the Fair Packaging and Labeling Act to require a packaged perishable food to bear a label specifying the date after which it is not to be sold for consumption; to the Committee on Commerce.

S. 3165. A bill to create the Bureau of Consumer Protection and providing for the appointment of a Director, and other purposes; to the Committee on Government Operations.

(The remarks of Mr. MONTOYA when he introduced the bills, appear later in the RECORD under the appropriate headings.)

S. 3156—INTRODUCTION OF THE EMPLOYMENT OPPORTUNITY TAX ACT OF 1969

Mr. TALMADGE. Mr. President, in late June, I toured Georgia to gather information on vocational and technical schools and on-the-job training activities of the businesses of my State.

At that time I announced my intention to introduce legislation which would provide a tax incentive for job training. For several years, I have been interested in legislation which would encourage industry to provide more on-the-job training. I have previously cosponsored legislation to accomplish that objective. Prior to this summer, however, I had never thoroughly explored the feasibility of this approach to job training.

After my tour of industries and vocational schools in six cities, I came back more convinced than ever that the tax incentive approach to job training deserves a chance. I visited a broad cross-section of the State's industries—a telephone company in Atlanta, a soft drink manufacturer in Columbus, a tire and rubber plant in Albany, a furniture company and a shoe manufacturing plant in Dublin, a paper manufacturing plant in Savannah, and a hospital supply manufacturer in Augusta. Also, I visited the Atlanta Area Technical School which has one of the finest vocational training programs in the Nation.

During my tour, I was extremely impressed by the fine job that industry is already doing in training the unskilled and in upgrading the skills of its employees.

At every site I visited, I found a tremendous interest in job training. The businessmen I talked to felt that they could do a better job of training workers to fill their needs than could the Federal Government.

The results I saw throughout my tour lend credence to this opinion.

In Atlanta, I saw former telephone operators handling complicated electronic equipment.

In Columbus, I witnessed the Royal Crown Cola Co.'s private attack on unemployment. In this company, a live-wire director of personnel has utilized local vocational training schools and other local educational institutions to promote a work-study program which has had positive results—both for the company and for the youth of Columbus. This program has been conducted at a minimum cost, but I believe its positive achievements rival many of the expensive Federal programs such as the Job Corps.

During my tour, I talked with executives of companies which have recently located and started production. It became apparent to me that the training of a skilled work force is just as important as the acquisition of an adequate plant and equipment to any company which is beginning operations or establishing a plant in a new location.

As American industry becomes more mechanized, and the old skills become obsolete, job training will assume an even more important role.

In my mind, there is more justification for a tax incentive to promote the development of the Nation's human resources than there is for a tax incentive to promote the expenditure of more money on plants and equipment.

When I returned from my tour of Georgia industry, I felt more strongly than ever that Congress should give further consideration to providing tax incentives for job training. However, at that time, the tax-writing committees of the Congress were thoroughly involved in the question of whether the 7-percent investment tax credit for depreciable property should be repealed. Also, the most complicated and comprehensive tax reform legislation in the history of the Republic was being written.

Since that time, considerable progress has been made. The House of Representatives has voted for the repeal of the investment credit and the Senate Finance Committee has gone on record for repeal on three separate occasions. And, it appears that we are well on the way to meaningful tax reform.

I am introducing my bill in the hopes that it can receive full and thorough consideration by the Senate Finance Committee early next year. By that time, the issue of the repeal of the investment credit and tax reform should have been finally resolved.

During the 1968 presidential campaign, Candidate Nixon emphasized tax incentives as an important approach to the problem of job training. The Republican Platform of 1968 contained the principles of Senator Prouty's bill to provide a tax credit for job training. However, it appears that President Nixon has retreated from his previous position on the desirability of such an approach.

On August 12, the President delivered an eloquent statement on the need to reform our manpower training system and he presented his bill to the Congress—the Manpower Training Act of 1969. Nowhere in the President's statement or in his legislative proposal is there any reference to the need to provide tax incentives for job training.

It is vital that we make a thorough examination of our tax incentive approach in conjunction with Congress' consideration of any manpower training reform. Since the President seems unwilling to take the initiative on this issue, I believe that Congress must act in a positive manner.

Although several bills have been introduced to provide a tax incentive for job training, neither the Senate Finance Committee nor the House Ways and Means Committee has ever held hearings on this subject.

Mr. President, in our current inflationary economy, unemployment has been held to manageable levels. In 1968 the unemployment rate was 3.6 percent, the lowest in years. However, there is evidence that restrictive monetary policies and other anti-inflationary measures will result in greatly increased rates in unemployment. Unemployment has risen from 3.3 percent of the civilian labor force in the first quarter of this year to 3.7 percent in the third quarter. It jumped to 4 percent in September and remained high at 3.9 percent in October.

The disturbing aspect of this increase in total unemployment is the fact that it falls unevenly on our working population. As we all know, the unskilled worker is the first to be affected by a substantial increase in unemployment. The undereducated and disadvantaged worker—of which there are a large number in the Negro and other minority groups— will be most severely affected by a measurable increase in unemployment.

Among the first to be fired during any slowdown of economic activity is the most recent entrant into the work force—the younger worker. Increased joblessness in this explosive segment of our population could have a very disruptive effect on already troubled social conditions.

America is confronted today with a striking paradox. On the one hand, there are about 3 million Americans who are unable to obtain jobs despite the fact that we are in our eighth consecutive year of sustained economic growth.

On the other hand, there are many unfilled jobs. A glance at the help wanted section of the newspaper quickly confirms this. Many employers are crying for adequate help. Recently, one of the oldest textile manufacturers in my State was forced to close its doors because it was unable to get adequate labor.

In recent years, the term "hard core unemployed" has assumed great importance in our national dialog. It is used to refer to a group composed mainly of racial minority groups, older people, women and teenagers, who seem unable to hold gainful employment even in areas with an extremely tight labor market.

Already there are numerous Federal programs designed to reach this segment of our population. Some Government programs have enjoyed a degree of success, while others have been miserable failures. In all too many cases, the Government has been responsible for providing poor training for nonexistent jobs.

The record of the Job Corps program is clearly a record of failure. Although the Office of Economic Opportunity was spending about $8,000 per trainee, 40 percent of the Job Corps enrollees left before the end of 90 days. Of the enrollees who completed the training course, 30 percent did not obtain constructive employment.

The Government has been far more successful when it enlisted the talents of American businessmen in finding jobs for the hard-core unemployed. The Jobs program is a program established by President Johnson in which he gave the National Alliance of Businessmen the task of encouraging private companies to put 100,000 men and women on the job by June of 1969 and 500,000 by June of 1971.

This program has worked even better than expected and the 1971 goal of 500,000 permanently employed trainees has increased to 614,000. For the first year of its existence, $106 million was appropriated for the Jobs program. During this time 177,868 people were enrolled in job training programs. Of this number, 102,000 people remained employed. The results thus far have been that it cost an average of just over $1,000 to train one hard-core unemployed person. When we compare this with the $8,000 figure of the Job Corps program, we can see that private industry has the capability of providing job training at a much lower cost than does the Government.

The involvement of private industry in the job training process has the advantage of providing efficient practical training for jobs while already exist. Because industry itself does the training, there is a much greater assurance that the skills learned by those retrained will be economically useful and that the trainees will find permanent employment.

During my tour of businesses in Georgia, one hard-nosed executive told me:

> I had rather pay the trainee's salary than have the government do it. If the government pays a worker's salary, he feels as though he is on welfare. If I pay his salary, he feels that he is earning his pay and he is loyal to me—not the government.

Another advantage of on-the-job training is flexibility. Unlike institutional classes, which require minimum numbers, on-the-job training can be adapted to a single worker or to a corps of workers. Thus, the tax incentive of my bill will be of special benefit to the small employer.

I do not advocate my tax incentive approach as a substitute for all Government manpower training programs. I believe that the Department of Labor should continue to make grants to businesses to underwrite the cost of training the ca.d-core unemployed. However, I feel that the time has come for us to utilize the tax-incentive approach in conjunction with other Government programs. As this approach is tried and proven successful, we should be able to phase out some of our less productive Government training programs.

In drawing up my bill, the Employment Opportunity Tax Act of 1969, I have kept certain basic considerations in mind. First, any tax incentive program must be easy to administer. In the Treasury Department, there is a built-in resistance to the ultilization of the revenue collection process as an instrument of social policy. I have endeavored to meet this resistance by making my bill as simple and as easy to administer as possible. In my view, there will not be much more difficulty involved in administering my program of tax incentives for job training than in administering the 7-percent investment tax credit.

Second, any tax credit must be modest in scope and noninflationary. I have been told that my bill would reduce the Federal revenues by approximately $200 million annually, based on the current levels of economic activity.

This is a small price to pay for the long-term employment of individuals in the lower income groups and the employee training which the bill would provide. Moreover, the revenue loss of my bill is a mere pittance when compared with the annual cost of about $2½ billion which was attributable to the 7-percent investment credit.

I have taken great pains to make my proposal noninflationary for I feel that the problem of inflation is the gravest one facing our economy. Perhaps at a later date my proposal can be amended to provide a larger tax credit and thus a greater incentive for training.

The bill I am introducing today is more than a job training bill. It has a two-fold purpose. One is to encourage the training of individuals under various employee training programs which are already established.

The second is to encourage the hiring of individuals through the work incentive program of the Social Security Act.

My bill provides for an income tax credit equal to 10 percent of certain costs incurred in designated employee training programs and 10 percent of wages and salaries paid to individuals hired through the work incentive program.

I believe that the second objective of my bill is equally as important as the first. It is beyond question that our present system of welfare has failed. It has failed because it has encouraged people not to work, thus creating an unfortunate situation where several generations stay on the welfare rolls.

The President is to be commended for his proposal for welfare reform. Certainly, we must take action to correct the deplorable system which we now have.

Already, we have a work incentive program which was written by the Senate Finance Committee as a part of the aid for dependent children program. This program is now being implemented in several States, including my own State of Georgia.

In order to make this program work, we must give employers every encouragement to hire welfare recipients. It is understandable that individuals who have been on the welfare rolls for years would not be fully productive during their first year of employment. Therefore, I feel that my proposal to grant a tax credit to employers who would hire the welfare recipient will be a powerful incentive for increased employment of the hard-core unemployed.

Six out of seven jobs in the United States exist in private industry.

If we are to get any real progress in training the hard-core unemployed or in upgrading the skills of those presently employed, we must do more to promote the cooperation of private industry.

The best available knowledge and ability to train people for jobs exist in the private sector. My bill to provide a tax incentive will insure that this knowledge and ability is utilized to the maximum.

Mr. President, I ask unanimous consent to have a short summary of the bill printed in the RECORD.

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

The bill (S. 3156) to amend the Internal Revenue Code of 1954 to allow a credit against income tax for certain expenses of employee training programs and for certain wages and salaries of individuals employed under work incentive programs, introduced by Mr. TALMADGE, was received, read twice by its title, and referred to the Committee on Finance.

The material presented by Mr. TALMADGE is as follows:

SHORT SUMMARY OF THE EMPLOYMENT OPPORTUNITY TAX ACT OF 1969

This bill has a two-fold purpose. One is to encourage the training of individuals under various employee training programs, which are already established, and the second is to encourage the hiring of individuals through the Work Incentive Program of the Social Security Act. I am calling my bill the "Employment Opportunity Tax Act of 1969." It provides for an income tax credit equal to 10 per cent of wages and salaries paid to individuals hired through the Work Incentive Program.

Employee training programs.—The tax credit under my bill would be given for payments of wages to employees who are registered in State or Federal apprenticeship training programs, employees who are enrolled in on-the-job training programs (which have been approved by the Secretary of Labor) under the Manpower Development and Training Act of 1962, or employees who participate in certain specified programs which involve alternating periods of study at a school, college, or trade school and periods of employment. My bill also provides a tax credit equal to 10 per cent of tuition and course fees (including home study course fees) paid to a school, college, or trade school for instruction of an employee in obtaining job skills directly related to employment by the taxpayer.

The tax credit under this section of the bill, relating to employee training programs, could only be taken for a period of time which aggregates 24 months. This limit of 24 months would apply whether the individual is employed or is receiving instruction prior to employment. Any tax credit allowed with respect to an individual would have to be paid back to the Government, that is, recaptured, if the taxpayer let the employee go at any time before the end of 12 calendar months after the completion of the training by the employee. However, the tax credit would not be recaptured in those cases where the individual became disabled or if the employee voluntarily left the employment of the taxpayer. If the individual was only in a training program and was not an employee at the time of his training, all prior tax credits would be recaptured if the taxpayer did not offer employment to the individual upon the completion of the training. Again, to be consistent, my bill provides that prior tax credits would not be recaptured if the individual became disabled or if the individual voluntarily rejected the offer of employment after his training.

My bill also provides that no tax credit would be allowed for any employee training expenses which were reimbursed to the taxpayer. Further, no tax credit could be taken

for employee training expenses which were paid for a relative of the taxpayer, such as a son, daughter, nephew or niece.

Work incentive program.—The second part of my bill provides for a tax credit equal to 10 per cent of wages and salaries paid to individuals who are placed in their employment through the Work Incentive Program of the Social Security Act. The credit would apply to wages paid to these employees during their first 12 months of employment. The first 12 months of employment do not have to be consecutive calendar months; however, the first 12 months must be within a two-year period from the initial date of employment. This part of my bill also contains a provision which provides that all prior tax credits with respect to the wages of an individual would be recaptured if the taxpayer terminated the employment of the individual during the first 12 months of his employment or before the expiration of 12 calendar months after the first 12 months of employment. This recapture provision would not apply if the employee became disabled or if the employee voluntarily left work.

Wages and salaries of employees which are reimbursed to the taxpayer could not be taken into account for purposes of computing the tax credit. Further, wages and salaries paid to a relative of the taxpayer, such as a son or nephew, would not be eligible for the credit

Taxation of employees.—My bill also provides that tuition and correspondence fees paid for an employee under one of the programs authorized in the bill would not be taxable to the employee. Similarly, employees hired through the Work Incentive Program could also receive free training as well as subsidized day-care for their children. These benefits would also be tax-free. However, any wages or salaries received by the employee would be taxable to him.

Other provisions.—I have included a provision for carrying back and carrying forward unused tax credits. If a tax credit is not completely used in a taxable year for which it is allowed, then the unused credit may be carried back to each of the three preceding taxable years and may be carried forth to each of the 7 following taxable years. However, since the effective date of my bill would be December 31, 1969, an unused credit could not be carried back to a taxable year which begins on or before that date. I have also placed a limit on the maximum tax credit which can be taken in any one year. The tax credit could not exceed $25,000 plus 50 per cent of the taxpayer's tax liability in excess of $25,000.

My bill also contains several other technical provisions which relate to how the tax credit would be treated by affiliated corporations, small business corporations, estates, trusts, and other special types of association and entities. These rules basically deal with how the tax credit should be divided up among related taxpayers. These rules are the same as those rules that are presently in effect for the 7 per cent investment tax credit.

Cost of the bill.—I have been told that the bill would reduce the Federal revenues by approximately $200 million annually based on the current levels of economic activity. This is a small price to pay for the long-term employment of individuals in the lower income groups and the employee training which the bill would provide.

S. 3157—INTRODUCTION OF CAPITOL GUIDES ACT

Mr. MANSFIELD. Mr. President, on behalf of myself and the distinguished senior Senator from Delaware (Mr. WILLIAMS), I introduce a bill to establish a Capitol guide service that would offer the public guided tours of the Capitol building without charge.

The guides will be under the jurisdiction of the Capitol Police Board and will be given the same status in all respects as the present "trained" Capitol Police force. For example, salaries will be equivalent to trained police salaries, selection will be made—one-half from the Senate, one-half from the House—by the respective Sergeants at Arms as they now are for the police force, and the guides are brought under the legislative retirement, health, and insurance programs.

It will be recalled that on March 7, 1967, the Senate adopted an amendment to the legislative reorganization measure that established a free Capitol guide service. With minor changes, that proposal approved by a Senate vote of 74 to 8, is identical to the provisions of this bill.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3157) to establish a guide service to provide free tours of the Capitol, introduced by Mr. MANSFIELD (for himself and Mr. WILLIAMS of Delaware), was received, read twice by its title, and referred to the Committee on Rules and Administration.

S. 3159—INTRODUCTION OF A BILL TO AUTHORIZE CERTAIN CONVEYANCES OF LAND

Mr. McGEE. Mr. President, I introduce for appropriate reference a bill which would authorize the Secretary of the Interior to effect a transfer and exchange of certain lands owned by the city of Worland, Wyo., which were acquired from the United States under the Recreation and Public Purposes Act.

The original conveyance of this land contained the usual reversionary clause to the effect that if such lands were used for a purpose other than the designated recreational purposes title would revert to the United States. The city of Worland has been using this land for a municipal golf course.

The city of Worland now has an opportunity to trade this land for some adjacent property which is better suited for the development and maintenance of a golf course. The new land, therefore, would be of more actual value to the city, even though it is slightly smaller in area.

My bill would simply authorize this exchange of lands, notwithstanding the reversionary clause contained in the title to the land presently owned by the city of Worland. It is important to also point out that under this bill the lands received by the city of Worland under this exchange would also be encumbered by the reversionary clause so that should the city attempt to dispose of this property or use it for a purpose other than recreation it also would revert to the United States.

The mayor and the city council of Worland have thoroughly investigated this matter and, in their opinion, this proposed exchange of lands would greatly improve the recreational potential of this project to the city.

I, therefore, urge prompt and favorable consideration of this bill.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3159) to authorize certain conveyances of land, introduced by Mr. McGEE, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

S. 3164—INTRODUCTION OF A BILL TO AMEND THE FAIR PACKAGING AND LABELING ACT TO REQUIRE THE DATING OF PACKAGED FOODS

Mr. MONTOYA. Mr. President, I introduce today a measure that would require the dating of perishable foods on a grocer's shelves so that our Nation's consumers may be apprised of the final date a food can safely be consumed.

Mr. President, every housewife knows what it means to go to a supermarket to purchase perishable foods and not know whether the food is still safe to eat or not. Most perishable foods have a coded date stamped on the package. However, few consumers know about the coded date and, those that do, have a difficult or impossible time in trying to break the code. Consequently, the consumer usually buys perishable items on faith. They trust that they will still be safe for consumption but they do not know for sure.

This buying in the blind—or buying a pig in the poke, as the saying goes—has no place in today's society. Recent Congresses have enacted legislation to protect our consumers from unscrupulous practices in the marketplace but there are still many areas that remain untouched. This is such an area.

The Department of Agriculture, as well as private institutions, advise us that shelf lives for perishable products can be established. By stamping these dates on the container, the consumer can be apprised of the final date on which he or she can safely consume that particular product. There is no reason in the world why the consumer should not have this information. The consumer should not be left to the erraticism of the marketplace. The consumer must be provided with the information necessary to permit him or her to make a sound purchase. In the instance of perishable foods, the Fair Packaging and Labeling Act does not provide the necessary protection. For this reason I introduce today this amendment to the Fair Packaging and Labeling Act to require a packaged perishable food to bear a label specifying the date after which it is not to be sold for consumption. A similar bill is being introduced in the House by Congressman LEONARD FARBSTEIN of New York.

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

Mr. President, I also ask unanimous consent that various materials relating to the shelf life of perishable products be inserted at this point in the RECORD following the text of my bill.

The PRESIDING OFFICER. The bill will be received and appropriately re-

ferred; and, without objection, the bill and other materials will be printed in the RECORD.

The bill (S. 3164) to amend the Fair Packaging and Labeling Act to require a packaged perishable food to bear a label specifying the date after which it is not to be sold for consumption, introduced by Mr. MONTOYA, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3164

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (1) of subsection (a) of section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) is amended by inserting "(A)" immediately after "label" and by inserting before the semicolon the following: ", and (B) if the commodity is a perishable food, stating that it is not to be sold for consumption after a specified date".

(b) Section 5 of such Act (15 U.S.C. 1454) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of section 4(a)(1)(B) of this Act, the Secretary of Health, Education, and Welfare, in consultation with the Secretary of Agriculture, shall by regulation prescribe the manner in which the last day for the sale of a perishable food shall be determined."

(c) Section 10 of such Act (15 U.S.C. 1459) is amended—

(1) by striking out "meat or meat product, poultry or poultry product, or" in subparagraph (1) of paragraph (a);

(2) by adding after subparagraph (5) of paragraph (a) the following new sentence: "Such term includes meat or meat products or poultry or poultry products only to the extent necessary to implement the requirements of section 4(a)(1)(B)."; and

(3) by adding at the end the following new paragraph:

"(g) The term 'perishable food' means meat, poultry, fish, dairy products, eggs, bread, coffee, and any other food that the Secretary of Health, Education, and Welfare designates as perishable."

SEC. 2. The amendments made by the first section of this Act shall take effect on the ninetieth day following the date of its enactment.

The material, presented by Mr. MONTOYA, is as follows:

(From ASHRAE Guide and Data Book Applications for 1968, published by the American Society of Heating Refrigerating and Air Conditioning Engineers, Inc.)

CHAPTER 37—COMMODITY STORAGE REQUIREMENTS

This chapter presents information on the essential average storage requirements of most of the important perishable foods that enter the market on a commercial scale. Also included is a short discussion on the storage of furs and fabrics. The statements made are derived from scientific experimentation and from the best commercial practice at the present time. The data given in Table 1 are based on the storage of high quality commodities shortly after harvest. When products are transported from a distance, or are deteriorated, appropriate allowances should be made.

The temperatures recommended are the optimum temperatures for long storage and are actual commodity temperatures rather than air temperatures. For short storage, higher temperatures are often satisfactory. Conversely, products subject to chilling injury can sometimes be held at a lower temperature for a short time without injury. Exceptions are bananas, cranberries, cucumbers, eggplant, melons, okra, pumpkins and squash, white and sweet potatoes, and tomatoes. Recommended temperatures for these products should be strictly adhered to.

The values given for water content and freezing points are the result of actual laboratory determinations, but it should be realized that, at best, they can be only approximate because of the great variability in plant and animal tissues and the products thereof. The optimum storage temperature for many foods has been found to be just above their freezing point. Knowledge of freezing points is useful to the cold stroage industry in determining how the various commodities should be handled in storage. The highest temperature at which freezing may occur is generally given. In previous editions the average freezing point was given, which may be somewhat lower. It is felt that the highest freezing point is a better guide for commodities that are damaged by freezing.

Values of the water content of foods are useful to the refrigerating engineer as a basis for calculating specific heats and the latent heat of freezing. Specific heat is usually calculated by Siebel's formula:

$$S = 0.008a + 0.20$$

where S signifies the specific heat of a substance containing a, the percent of water; 0.20 is the value representing the specific heat of the solid constituents of the substance.

Necessary additional information for some of the items in Table 1 is given in the text.

The values for the freezing points, water content, rate of evolution of heat (heat of respiration) above and below freezing and for latent heat as given in Table 4 of Chapter 23 in the ASHRAE Handbook of Fundamentals do not always agree exactly with the data given in Tables 1, 2, and 4 of this chapter. The composition of foods varies to some extent, depending upon water content, where grown and other factors. It is also possible that in tables compiled by different editors, slightly different formulae have been used in making calculations to determine both specific and latent heat. The values given in either of these tables can safely be used for refrigeration load calculations. When in doubt, it is suggested that the higher values be used. For more precise work, the specific heat and other values should be determined for the specific sample in question.

(The general responsibility for this chapter is assigned to TC 7.7, Cold Storage Warehouse and Locker Plants.)

It is important to remember that fresh fruits and vegetables in storage are alive and carying on, within themselves, processes characteristic of living things. In particular, the heat of respiration must always be considered a part of the refrigeration load in storage handling. The approximate rate of heat evolution for various commodities is given in Table 2.

Sealed polyethlene box liners are extensively used commercially for pears and sweet cherries. The slight accumulation of carbon dioxide and depletion of oxygen extend the storage life of pears at 31 F by one or two months and of sweet cherries by several days.

Non-sealed film liners are used extensively to maintain freshness and prevent excessive moisture loss of Golden Delicious apples, rose bushes and strawberry plants. There are indications that similar liners would be beneficial to other crops (such as parsnips) susceptible to excessive weight loss during storage or marketing. Reduction of frost accumulation on refrigerating coils is another advantage of polyethylene liners.

BEER

Beer in bottles or cans is either pasteurized or filtered so as to destroy or remove the living yeast cells and therefore does not require as low a storage temperature as keg beer. Bottled beer *may be stored at ordinary room temperature* (70 to 75 F), but for convenience is often stored with keg beer at a lower temperature of 35 to 40 F. It is essential to protect the bottled product from strong light, especially direct sunlight. The storage life will vary from 3 to 6 months, depending largely on the method of processing and packaging. Keg beer, usually stored at 35 to 40 F has a storage life of 3 to 6 weeks (Chapter 34).

BREAD

See Chapter 32.

CANDY

See Chapter 33.

DAIRY PRODUCTS

See Chapter 28.

DRIED FRUITS

See Chapter 33.

EGGS

See Chapter 35.

FISH

See Chapter 27.

FROZEN FRUITS AND VEGETABLES

See Chapter 29.

TABLE 1.—STORAGE REQUIREMENTS AND PROPERTIES OF PERISHABLE PRODUCTS

Commodity	Storage temperature, Fahrenheit	Relative humidity, percent	Approximate storage life	Water content, percent	Highest freezing point, Fahrenheit	Specific heat above freezing[1] B.t.u./lb./F.	Specific heat below freezing[1] B.t.u./lb./F.	Latent heat (calculated)[2] B.t.u./lb
Apples (ch. 29)	30–32	90	See ch. 29	84.1	29.3	0.87	0.45	121
Apricots	31–32	90	1–2 weeks	85.4	30.1	.88	.46	122
Artichokes (Globe)	31–32	90–95	do	83.7	29.9	.87	.45	120
Jerusalem	31–32	90–95	2–5 months	79.5	[3]27.5	.83	.44	114
Asparagus	32	90–95	2–3 weeks	93.0	30.9	.94	.48	134
Avocados	45–55	85–90	4 weeks	65.4	31.5	.72	.40	94
Bananas (ch. 29)		85–95		74.8	30.6	.80	.42	108
Beans (green or snap)	45–50	90–95	8–10 days	88.9	30.7	.91	.47	128
Lima	32–40	90	10–15 days	66.5	31.0	.73	.40	94
Beer, barreled[4]	35–40		3–10 weeks	90.2	[3]28.0	.92		129

Footnotes at end of table.

TABLE 1.—STORAGE REQUIREMENTS AND PROPERTIES OF PERISHABLE PRODUCTS—Continued

Commodity	Storage temperature, Fahrenheit	Relative humidity, percent	Approximate storage life	Water content, percent	Highest freezing point, Fahrenheit	Specific heat above freezing [1] B.t.u./lb./F.	Specific heat below Freezing [1] B.t.u./lb./F.	Latent heat (calculated) [2] B.t.u./lb.
Beets:								
Bunch	32	90–95	10–14 days		31.3			
Topped	32	95	3–5 months	87.6	30.1	0.90	0.46	126
Blackberries	31–32	90–95	3 days	84.8	30.5	.88	.46	122
Blueberries	31–32	90–95	3–6 weeks	82.3	29.7	.86	.45	118
Bread (ch. 32)	0		Several weeks	32–37		.70	.34	46–53
Broccoli, sprouting	32	90–95	7–10 days	89.9	30.9	.92	.47	130
Brussells sprouts	32	90–95	3–4 weeks	84.9	30.5	.88	.46	122
Cabbage, late	32	90–95	3–4 months	92.4	30.4	.94	.47	132
Candy (ch. 33)	0–34	40–65						
Carrots:								
Prepackaged	32	80–90	3–4 weeks	88.2	29.5	.90	.46	126
Topped	32	90–95	4–5 months	88.2	29.5	.90	.46	126
Cauliflower	32	90–95	2–4 weeks	91.7	30.6	.93	.47	132
Celeriac	32	90–95	3–4 months	88.3	30.3	.91	.46	126
Celery	32	90–95	2–4 months	93.7	31.1	.95	.48	135
Cherries	31–32	90	10–14 days	83.0	28.8	.87	.45	120
Coconuts	32–25	80–85	1–2 months	46.9	30.4	.58	.34	67
Coffee (green)	35–37	80–85	2–4 months	10–15		.30	.24	14–21
Corn, sweet	32	90–95	4–8 days	73.9	30.9	.79	.42	106
Cranberries [4]	36–40	90–95	1–4 months	87.4	30.4	.90	.46	124
Cucumbers [4]	45–50	90–95	10–14 days	96.1	31.1	.97	.49	137
Currants	31–32	90–95	do	84.7	30.2	.88	.45	120
Dairy products:								
Cheese (ch. 28)	30–45	65–70	([4])	37–38		.50	.31	54
Butter (ch. 28)	32–40	80–85	2 months	15.5–16.5		.33		23
Butter	0 to −10	80–85	1 year	15.5–16.5			.25	23
Cream (sweetened)	−15		Several months	72.5		.78	.42	104
Ice cream (ch. 28)	−15		do	62.0		.70	.39	89
Milk, fluid whole:								
Pasteurized grade A	33		7 days	87.0	[3] 31.0	.90	.46	125
Condensed, sweetened	40		Several months	28.0		.42		40
Evaporated	Room temperature		1 year, plus	74.0		.72		106
Milk, dried:								
Whole milk	45–55	Low	Few months	2–3		.22		4
Nonfat	45–55	Low	Several months	2–3		.22		4
Dates (ch. 83)	([4])	([4])	([4])	20.0	3.7	.36	.26	29
Dewberries	31–32	90–95	3 days		29.7			
Dried fruits (ch. 33)	32	50–60	9–12 months	14.0–26.0		.31–.41	.26	20–32
Eggplant	45–50	90	7 days	92.7	30.6	.94	.48	137
Eggs (ch. 35):								
Shell	29–31 [5]	80–85	6–9 months	66.0	[3] 28.0	.73	.40	96
Shell, farm cooler	50–55	70–75		66.0	[3] 28.0	.73	.40	96
Frozen, whole	0 or below		1 year, plus	74.0			.42	106
Frozen, yolk	do		do	55.0			.36	79
Frozen, white	do		do	88.0			.46	126
Whole egg solids	35–40	Low	6–12 months	2–4		.22	.21	4
Yolk solids	35–40	Low	do	3–5		.23	.21	6
Flake albumen solids	Room temperature	Low	1 year, plus	12–16		.31	.24	20
Dried spray albumen solids	do	Low	do	5.8		.26	.22	11
Endive (escarole)	32	90–95	2–3 weeks	93.3	31.9	.94	.48	132
Figs (ch. 33):								
Dried	32–40	50–60	9–12 months	24.0		.39	.27	34
Fresh	31–32	85–90	7–10 days	78.0	27.6	.82	.43	112
Fish (ch. 27):								
Fresh	33–35	90–95	5–15 days	62–85	[3] 28.0	.70–.86		89–122
Frozen	−10–0	90–95	8–10 months	62–85			.38–.45	89–122
Smoked	40–50	50–60	6–8 months			.70	.39	92
Brine salted	40–50	90–95	10–12 months			.76	.41	100
Mild cured	28–35	75–90	4–8 months			.76	.41	100
Shellfish:								
Fresh	33	90–95	3–7 days	80–87	28.0	.83–.90		113–125
Frozen	0 to −20	90–95	3–8 months				.44–.46	113–125
Frozen-pack fruits (ch. 29)	−10–0		6–12 months					
Frozen-pack vegetables (ch. 29)	−10–0		do					
Furs and fabrics [4]	34–40	45–55	Several years					
Garlic, dry	32	65–70	6–8 months	74.2	30.5	.79	.42	106
Gooseberries	31–32	90–95	3–4 weeks	88.9	30.0	.90	.46	126
Grapefruit (ch. 29)	50	85–90	4–8 weeks	88.8	30.0	.91	.46	126
Grapes (ch. 29):								
American type	31–32	85–90	3–8 weeks	81.9	29.7	.86	.44	116
European type	30–31	90–95	3–6 months	81.6	28.1	.86	.44	116
Honey	([4])	([4])	1 year, plus	18.0		.35	.26	26
Hops (ch 34)	29–32	50–60	Several months					
Horseradish	32	90–95	10–12 months	73.4	28.7	.78	.42	104
Kale	32	90–95	1–2 weeks	86.6	31.1	.89	.46	124
Kohlrabi	32	90–95	2–4 weeks	90.1	30.2	.92	.47	128
Lard (without antioxidant)	45	90–95	4–8 months	0				
Lard (without antioxidant)	0	90–95	12–14 months	0				
Leeks, green	32	90–95	1–3 months	88.2	30.7	.90	.46	126
Lemons (ch. 29)	32 or 50–58 [6]	85–90	1–4 months	89.3	29.4	.92	.46	127
Lettuce	32	95	2–3 weeks	94.8	31.7	.96	.48	136
Limes	48–50	85–90	6–8 weeks	86.0	29.1	.89	.46	122
Logan blackberries	31–32	85–90	5–7 days	82.9	29.7	.86	.45	118
Maple sirup	([4])	([4])	([4])	35.5		.48	.31	51
Meat (ch. 25):								
Bacon:								
Frozen	−10–0	90–95	4–6 months					
Cured (farm style)	−60–65	85	do	13–29		.30–.43	.24–.29	18–41
Cured (packer style)	34–40	85	2–6 weeks					
Beef:								
Fresh	32–34	88–92	1–6 weeks	62–77	[3] 28–29	.70–.84	.38–.43	89–110
Frozen	−10–0	90–95	9–12 months					
Fat backs	34–36	85–90	0–3 months	6–12		.25–.30	.22–.24	9–17
Hams and shoulders:								
Fresh	32–34	85–90	7–12 days	47–54	[3] 28–29	.58–.63	.34–.36	67–77
Frozen	−10–0	90–95	6–8 months					
Cured	60–65	50–60	0–3 years	40–45		.52–.56	.32–.33	57–64
Lamb:								
Fresh	32–34	85–90	5–12 days	60–70	[3] 28–29	.68–.76	.38–.51	86–100
Frozen	−10–0	90–95	8–10 months					
Livers: Frozen	−10–0	90–95	3–4 months	70.0			.41	10

Footnotes at end of table.

TABLE 1.—STORAGE REQUIREMENTS AND PROPERTIES OF PERISHABLE PRODUCTS—Continued

Commodity	Storage temperature, Fahrenheit	Relative humidity, percent	Approximate storage life	Water content, percent	Highest freezing point, Fahrenheit	Specific heat above freezing [1] B.t.u./lb./F.	Specific heat below freezing [1] B.t.u./lb./F.	Latent heat (calculated) B.t.u./lb.[2]
Pork:								
Fresh	32–34	85–90	3–7 days	32–44	[3] 28–29	0.46–0.55		46–63
Frozen	—10–0	90–95	4–6 months				0.30–0.33	
Smoked sausage	40–45	85–90	6 months	60.0		.68	.38	86
Sausage casings	40–45	85–90						
Veal	32–34	90–95	5–10 days	64–70	[3] 28–29	.71–.76	.39–.41	92–100
Mangoes	55	85–90	2–3 weeks	81.4	30.3	.85	.44	711
Melons, cantaloupe	32–40	85–90	5–15 days	92.0	29.9	.93	[4] .8	132
Persian	45–50	85–90	2 weeks	92.7	30.5	.94	.48	132
Honeydew and honey ball	45–50	85–90	3–4 weeks	92.6	30.3	.94	.48	132
Casaba	45–50	85–90	4–6 weeks	92.7	30.1	.94	.48	132
Watermelons	40–50	80–85	2–3 weeks	92.1	31.3	.97	.48	132
Mushrooms [4]	32	90	3–5 days	91.1	30.4	.93	.47	130
Mushroom spawn:								
Manure spawn	34	75–80	8 months					
Grain spawn	32–40	75–80	2 weeks					
Nursery stock (table 4)	32–35	85–90	3–6 months					
Nuts (ch. 33)	32–50 [4]	65–75	8–12 months	3–6	([4])	.22–.25	.21–.22	4–8
Oil (vegetable salad)	35		1 year	0				
Okra	45–50	90–95	7–10 days	89.8	28.7	.92	.46	128
Oleomargarine	35	60–70	1 year	15.5		.32	.25	22
Olives, fresh	45–50	85–90	4–6 weeks	75.2	29.4	.80	.42	108
Onions and onion sets	32	65–70	6–8 months	87.5	30.6	.90	.46	124
Oranges (ch. 29)	32–34	85–90	8–12 weeks	87.2	30.6	.90	.46	124
Orange juice, chilled	30–35		3–6 weeks	89.0		.91	.47	128
Papayas	45	85–90	2–3 weeks	90.8	30.4	.82	.47	130
Parsley	32	90–95	1–2 months	85.1	30.0	.88	.45	122
Parsnips	32	90–95	2–6 months	78.6	30.4	.84	.44	112
Peaches and nectarines	31–32	90	2–4 weeks	86.9	30.3	.90	.46	124
Pears (ch. 29)	29–31	90–95	([4])	82.7	29.2	.86	.45	118
Pears, green	32	90–95	–12 weeks	74.3	30.9	.79	.42	106
Peppers, sweet [4]	45–50	90–95	2–3 weeks	92.4	30.7	.94	.47	132
Peppers, chili (dry) [4]	32–40	65–75	6–9 months	12.0		.30	.24	17
Persimmons	30	90	3–4 months	78.2	28.1	.84	.43	112
Pineapples:								
Mature green	50–55	85–90	3–4 weeks		30.2			
Ripe	45	85–90	2–4 weeks	85.3	30.0	.88	.45	122
Plums, including fresh prunes	31–32	90–95	3–4 weeks [4]	85.7	30.5	.88	.45	123
Pomegranates	34–35	90	2–4 months		26.6			
Popcorn, unpopped	32–40	85	([4])	13.5		.31	.24	19
Potatoes:								
Early crop	50–55	90	([4])	81.2	30.9	.85	.44	116
Late crop	38–50 [4]	90	([4])	77.8	30.9	.82	.43	111
Poultry (ch. 26):								
Fresh	32	85–90	1 week	74.0	[3] 27.0	.79		106
Frozen, eviscerated	—20–0	90–95	9–10 months				.42	
Pumpkins [4]	50–55	70–75	2–6 months	90.5	30.5	.92	.47	130
Quinces	31–32	90	2–3 months	85.3	28.4	.88	.45	122
Radishes:								
Spring, prepackaged	32	90–95	3–4 weeks	93.6	30.7	.95	.48	134
Winter	32	90–95	2–4 months	93.6		.95	.48	134
Rabbits:								
Fresh	32–34	90–95	1–5 days	68.0		.74	.40	98
Frozen	—10–0	90–95	0–6 months					
Raspberries:								
Black	31–32	90–95	2–3 days	80.6	30.0	.84	.45	122
Red	31–32	90–95	do	84.1	30.9	.87	.44	121
Frozen (red or black)	—10–0		1 year					
Rhubarb	32	90–95	2–3 weeks	94.9	30.3	.96	.48	134
Rutabagas	32	90–95	2–4 months	89.1	30.1	.91	.47	127
Salsify	32	90–95	do	79.1	30.0	.83	.44	113
Spinach	32	90–95	10–14 days	92.7	31.5	.94	.48	132
Squash: [4]								
Acorn	45–50	70–75	5–8 weeks		30.5			
Summer	32–40	85–95	4–5 days	95.0	31.1	.96		135
Winter	50–55	70–75	4–6 months	88.6	30.3	.91		127
Strawberries:								
Fresh	31–32	90–95	5–7 days	89.9	30.6	.92		129
Frozen (ch. 29)	—10–0		1 year	72.0			.42	103
Sweet potatoes	55–60	85–90	4–6 months	68.5	29.7	.75	.40	97
Tangerines	31–38	90–95	3–4 weeks	87.3	30.1	.90	.46	125
Tomatoes:								
Mature green	57–60 [4]	85–90 [4]	[4] 2–3 weeks	94.7	31.0	.95	.48	134
Firm ripe	45–50 [4]	85–90 [4]	[4] 2–7 days	94.7	31.1	.95	.48	134
Turnips roots	32	90–95	4–5 months	90.9	30.1	.93	.47	130
Vegetable seed	32–50	50–65	([4])	7.0–15.0		.29	.23	16
Yeast, compressed baker's	31–32			70.9		.77	.41	102

[1] Calculated by Siebel's formula. For values above freezing point $S=0.008a+0.20$. For values below freezing point $S=0.003a+0.20$. Recent work by H. E. Staph, B. E. Short and others at the University of Texas has shown that Siebel's formula is not particularly accurate in the frozen region, because foods are not simple mixtures of solids and liquids and are not completely frozen even at —20 F.

[2] Values for latent heat (latent heat of fusion) in B.t.u. per pound, calculated by multiplying the percentage of water content by the latent heat of fusion of water, 143.4 B.t.u.

[3] Average freezing point.

[4] See text in this chapter or under appropriate commodity chapter.

[5] Eggs with weak albumen freeze just below 30 F.

[6] Lemons stored in production areas for conditioning are held at 55 to 58 F.; in terminal markets they are customarily stored at 50 to 55 F. but sometimes 32 F. is used.

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COMMODITY STORAGE REQUIREMENTS

TABLE 2.—APPROXIMATE RATES OF EVOLUTION OF HEAT BY CERTAIN FRESH FRUITS AND VEGETABLES WHEN STORED AT THE TEMPERATURES INDICATED[1]

Commodity	B.t.u. per ton per 24 hours		
	32° F.	40° F.	60° F.
Apples	300 to 1,500	600 to 2,700	2,300 to 7,900.
Asparagus	5,900 to 13,200	11,700 to 23,100	22,000 to 51,500.
Avocados			13,200 to 30,700.
Bananas [2]			
Beans, green or snap		9,200 to 11,400	32,100 to 44,100.
Beans, lima	2,300 to 3,200	4,300 to 6,100	22,000 to 27,400.
Beets, topped	2,700	4,100	7,200.
Blueberries [3]	1,300 to 2,200		
Broccoli, sprouting	7,500	11,000 to 17,600	33,800 to 50,000.
Brussels sprouts	3,300 to 8,300	6,600 to 11,000	13,200 to 27,500.
Cabbage	1,200	1,700	4,100.
Carrots, topped	2,100	3,500	8,100.
Cauliflower	3,600 to 4,200	4,200 to 4,800	9,400 to 10,800.
Celery	1,600	2,400	8,200.
Cherries	1,300 to 1,800	2,800 to 2,900	11,000 to 13,200.
Corn, sweet	7,200 to 11,300	10,600 to 13,200	38-400.
Cranberries	600 to 700	900 to 1,000	
Cucumbers			
Grapefruit	400 to 1,000	700 to 1,300	2,200 to 4,000.
Grapes, American	600	1,200	3,500.
Grapes, European	300 to 400		2,200 to 2,600.
Lemons	500 to 900	600 to 1,900	2,300 to 5,000.
Lettuce, head	2,300	2,700	7,900.
Lettuce, leaf	4,500	6,400	14,400.
Melons, cantaloupes	1,300	2,000	8,500.
Melons, honeydews		900 to 1,100	2,400 to 3,300.
Mushrooms [4]	6,200		
Okra		12,100	31,600.
Onions	700 to 1,100	800	2,400.
Onions, green	2,300 to 4,900	3,800 to 15,000	14,500 to 21,400.
Oranges	400 to 1,000	1,300 to 1,600	3,700 to 5,200.
Peaches	900 to 1,400	1,400 to 2,000	7,300 to 9,300.
Pears	700 to 900		8,800 to 13,200.
Peas, green	8,200 to 8,400	13,200 to 16,000	39,300 to 44,500.
Peppers, sweet	2,700	4,700	8,500.
Plums	400 to 700	900 to 1,500	2,400 to 2,800.
Potatoes, immature		2,600	2,900 to 6,800.
Potatoes, mature		1,300 to 1,800	1,500 to 2,600.
Raspberries	3,900 to 5,500	6,800 to 8,500	18,100 to 22,300.
Spinach	4,200 to 4,900	7,900 to 11,200	36,900 to 38,000.
Strawberries	2,700 to 3,800	3,600 to 6,800	15,600 to 20,300.
Sweet potatoes	1,200 to 2,400	1,700 to 3,400	4,300 to 6,300.
Tomatoes, mature green	600	1,100	6,200.
Tomatoes, ripe	1,000	1,300	5,600.
Turnips	1,900	2,200	5,300.

[1] Data largely from table 1 of USDA Handbook No. 66, 1954. Acknowledgement is also due to the following for other commodities: Avocados, J. B. Biale; brussels sprouts, J. M. Lyons and L. Rappaport; cucumbers, I. L. Eaks and L. L. Morris; honeydew melons, H. K. Pratt and L. L. Morris; plums, L. L. Claypool and F. W. Allen; potatoes, L. L. Morris; all from the University of California. Asparagus, W. J. Lipton, USDA; cauliflower, lettuce, okra, and onion, H. B. Johnson, USDA; sweet corn, S. Tewfik and L. E. Scott, University of Maryland.

[2] Bananas at 68 F, 8,400 to 9,200.
[3] Blueberries at 50 F, 5,100 to 7,700; at 70 F, 11,400 to 15,000.
[4] Mushrooms at 50 F, 22,000; at 70 F, 58,000.

FRUIT

See Table 1 and Chapter 29.

FRUIT JUICE CONCENTRATES

See Chapter 30.

FURS AND FABRICS

Cold storage has been used for many years as an effective means of protecting furs, floor coverings, garments, and other materials containing wool against insect damage. The commonly used cold storage temperatures do not kill the insects but inactivate them and thus prevent insect damage while the susceptible items are in storage. However, if insects are present, the article is susceptible to damage as soon as it is removed from cold storage.

It is advisable to free the articles of any possible infestation before they are placed in cold storage. Those items that can be cleaned should be so treated. Others can be either fumigated or mothproofed as described in the USDA *Home and Garden Bulletin* 24.

Recommended cold storage temperature for furs and garments is 34 to 40 F. A temperature of 40 F is most widely used commercially. This low temperature not only inactivates fabric insects but has the added advantage of preserving the vitality and luster of furs and the tensile strength of fabrics. Continuous storage below the 34 to 40 F range is a wasteful expense as far as protection from insect damage is concerned. Food should not be stored with fur garments.

As shown in Table 3, moth larvae can survive low temperatures for a fairly long time. Storage at 40 F therefore, will prevent insect feeding, but will not necessarily kill the infestation. Other reasonable, safe and dependable methods of protecting fabrics from clothes moths are discussed in USDA *Home and Garden Bulletin* 24 and in USDA *AMS Report* 57.

Some storage firms maintain constant temperatures in their fur vaults of between 14 and 32 F and claim excellent results. However, no research evidence has been presented to indicate that temperature in this range are required for storing dressed furs or fabrics. Cured raw furs (but not processed) should be stored at −10 to 10 F with 45 to 60 percent relative humidity and will keep up to 2 years.

HONEY

Both *extracted (liquid) and comb honey* can be held satisfactorily in common dry storage for about a year. The slow darkening and flavor deterioration at ordinary room temperatures becomes objectionable after this time. Although cold storage is not necessary, temperatures below 50 F will maintain original quality for several years and retard or prevent fermentation. The range between 50 F and 65 F should be avoided if possible, as it promotes granulation; this increases the probability of fermentation of raw (unheated) honey. As storage temperature increases in the 80 to 100 F range, deterioration is accelerated; temperatures constantly above about 85 F are unsuitable, and above 90 F quite damaging.

Honey for European export is best kept in cold storage, since the half-life for honey diastase at 77 F is about 17 months.

Raw honey of greater than 20 percent moisture is always in danger of fermentation; the likelihood is much less at or below 18.6 percent moisture. Below 17 percent moisture, raw honey will not ordinarily ferment. Granulation increases the possibility of fermentation of raw honey by increasing the moisture content of the liquid portion. Properly pasteurized honey will not ferment at any moisture content. Granulated honey can be reliquefied by warming to 120 to 140 F.

Comb honey should not be stored above 60 percent rh to avoid moisture absorption through the wax, leading to fermentation.

TABLE 3.—TEMPERATURE AND TIME REQUIREMENTS FOR KILLING MOTHS IN STORED CLOTHING[1]

Storage temperature, F.	All eggs dead after, days	All larvae dead after, days	All adults dead after, days
0 to 5	1	2	1
5 to 10	2	[2]21	1
10 to 15	4		1
15 to 20			1
20 to 25	21	67	4
25 to 30	21	[3]125	7
30 to 35		[4]283	

[1] Table taken from AMS-57, USDA.
[2] 50 to 25 percent of larvae may be killed in 2 days.
[3] A few larvae survived this period.
[4] Larvae survived this period.

Finely granulated honey (honey spread, Dyce process honey, *honey cream*) must not be stored above about 75 F. Higher temperatures will in time cause partial liquefaction and destroy the texture. Any subsequent regranulation by lower temperatures will produce an undesirable coarse texture. For holding more than 4 months, cold storage is required.

LARD

See Chapter 25.

MAPLE SIRUP

Maple sirup, packed hot (at, or within a few degrees of its boiling point) in clean containers, promptly closed airtight and the containers laid on their sides or inverted to self-sterilize the closure, and then cooled, will keep indefinitely at room temperatures without darkening or loss of flavor. Cold storage is not necessary. However, once opened, the sirup in a bottle, can or drum may become contaminated by organisms in the air. Mold or yeast spores which may be present in improperly pasteurized sirup, though unable to germinate in full-density sirup, may grow in the thin sirup on the surface caused by water of condensation. Small packages not completely sterile, containing spores, can be kept free of vegetative growth by periodically inverting the containers to redisperse any thin sirup on the surface caused by condensation of water. Maple sirup should never be packaged at temperatures below 180 F. After pasteurizing, the sirup should be cooled as quickly as possible to prevent stack burn which darkens the sirup and causes a lowering of its grade.

MEAT

See Chapter 25.

NURSERY STOCK AND CUT FLOWERS

The temperature and approximate storage life given in Table 4 for cut flowers allow for a reasonable shelf life after removal from storage; therefore, the storage period may at times be extended beyond that recommended here.

Low temperature (31–33 F) and dry packaging prevent, or at least greatly retard, flower disintegration and extend the storage life. These conditions, while not widely used commercially, are recommended. Proper dry packing requires a moisture-vapor-proof container in which flowers can be sealed. No free water is added because the package prevents almost all water loss.

Flowers which are held in water should not be crowded in the containers and should be arranged on shelves or racks to allow good air circulation. Forced air circulation should be provided but the flowers should not be in a direct draft.

The optimum temperature for storage of many cut flowers is 31–33 F. Many kinds of nursery stock can also be stored at temperatures ranging from 31 to 35 F. It is advisable to open packages and *harden* flowers before marketing if the blooms have been stored for long periods. Flowers conditioned at about 50 F following storage will regain full turgidity most rapidly. Stem ends should be cut or crushed and then be placed in water or a food solution at 80 to 100 F for 6 to 8 hr.

Many kinds of cut flowers and greens are injured if stored in the same room with certain fruits, principally apples and pears, which give off gases such as ethylene during ripening. These gases cause premature aging of blooms, and may defoliate greens. Greens should not be stored in the same room with cut flowers as the greens, acting in the same way as fruit, can hasten bloom deterioration.

TABLE 4.—STORAGE CONDITIONS FOR CUT FLOWERS AND NURSERY STOCK[1]

Commodity	Storage temperature, F.	Relative humidity, percent	Approximate storage life	Method of holding	Highest freezing point, F.
Cut flowers:					
Calla lily	40	90–95	1 week	Dry pack	
Camelia	45	90–95	3 to 6 days	do	30.6
Carnation	32–36	90–95	1 month	do	30.8
Chrysanthemum	32–35	90–95	2 to 5 weeks	do	30.5
Daffodil	31–33	90–95	1 to 3 weeks	do	
Gardenia	32–33	90–95	2 to 3 weeks	do	31.0
Gladiolus	35–40	90–95	1 week	do	31.4
Iris, tight buds	31–32	90–95	2 weeks	do	30.6
Lily, Easter	32–35	90–95	2 to 3 weeks	do	31.1
Lily-of-the valley	31–32	90–95	do	do	
Orchid	45–50	90–95	2 weeks	Water	31.4
Peony, tight buds	32–35	90–95	4 to 6 weeks	Dry pack	30.1
Rose, tight buds	32	90–95	1 to 2 weeks	do	31.2
Sweet peas	31–32	90–95	2 weeks	do	30.4
Tulips	31–32	90–95	4 to 8 weeks	do	
Greens:					
Fern, dagger and wood	32–40	90–95	4 to 5 months	do	28.9
Holly	32	90–95	1 to 4 weeks	do	27.0
Huckleberry	32	90–95	do	do	26.7
Laurel	32	90–95	do	do	27.6
Magnolia	35–40	90–95	do	do	27.0
Rhododendron	32	90–95	do	do	27.6
Salal	32	90–95	do	do	26.8
Bulbs:					
Amaryllis	38–45	70–75	5 months	Dry	30.8
Dahlia	40–45	70–75	do	do	28.7
Gladiolus	38–50	70–75	8 months	do	28.2
Iris, Dutch, Spanish	80–85	70–75	4 months	do	
Lily:					
Candidum	31–33	70–75	1 to 6 months	Poly liner and peat.	
Croft	31–33	70–75	do	do	
Longiflorum	31–33	70–75	1 to 10 months	do	28.9
Speciosum	31–33	70–75	1 to 6 months	do	
Peony	33–35	70–75	5 months	Dry	
Tuberose	40–45	70–75	4 months	do	
Tulip	31–32	70–75	5 to 6 months	do	27.6
Nursery stock:					
Trees and shrubs	32–35	80–85	4 to 5 months.	[2]	
Rose bushes	32–35	85–95	do	Bare rooted with poly liner.	
Strawberry plants	30–32	80–85	4 to 10 months.	do	29.9
Rooted cuttings	33–40	85–95		Poly wrap	
Herbaceous perennials.	27–28 or [3]33–35	80–85		[2]	

[1] Data from USDA Handbook No. 66 and bulletin by Post and Fischer.

[2] For details for various trees, shrubs, and perennials, see bulletin by Mahlstede and Fletcher.

Greens, bulbs and certain nursery stock are usually packaged or crated when stored. Some bulbs and nursery stock are packed in damp moss or similar material, and low temperatures are required to keep them dormant. Polyethylene wraps or box liners are very effective for maintaining quality of strawberry plants, bare-root rose bushes, and certain cuttings and other nursery stock in storage. Strawberry plants can be stored up to 10 months in polyethylene-lined crates at 30 to 32 F.

NUTS

See Chapter 33.

POPCORN

Popcorn should be stored at 32 to 40 F. and at a relative humidity of about 85 percent. This relative humidity yields the optimum popping condition and the desired moisture content of about 13.5 percent.

POULTRY

Frozen poultry should be stored at 0 to −20 F. with the temperature maintained as constant as possible. Ready-to-cook chickens packed in institutional packs with good quality liners should remain in satisfactory condition for 9 to 10 months, and similar birds individually wrapped in film should hold up in storage for 12 to 18 months. Improper handling during any of the processing operations could materially reduce these safe storage times.

When frozen poultry is held under severely fluctuating temperatures, evaporation of moisture from the skin may be so great that it causes light-colored pockmarks to appear. Such a condition is called freezer burn, the outstanding visual defect of frozen poultry. Although freezer burn may not affect the flavor of the meat, it reduces the sales value of the processed poultry by several cents per pound and may toughen slightly the skin and meat directly underneath. Freezer burn can be lessened by packaging the birds properly and by maintaining proper storage conditions. For detailed information consult Chapter 26.

VEGETABLES

See Chapter 29.

VEGETABLE SEED

Seeds require a relatively low temperature and humidity. Storage at 32 F. is most desirable but 50 F. is satisfactory if a 50 percent rh can be obtained. High temperature and high humidity favor loss of viability. Vegetable seeds should remain viable for 1 to 10 years, depending upon the variety. However, they are usually not stored for over one year. If it is impossible to keep humidity low enough, seeds should be stored in moisture-proof containers.

DENSITY OF COMMODITIES COMMONLY STORED

Table 5 is a compilation of data giving the type of containers used for storage, their dimensions, gross weights, net weights and density per cu. ft. Additional information on gross weights of packed containers and on dimensions and densities of pallet loads of produce is given in USDA *Marketing Research Report* No. 467.

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S. 3165—INTRODUCTION OF CONSUMER PROTECTION ACT OF 1969

Mr. MONTOYA. Mr. President, I am today introducing the Consumer Protection Act of 1969 to establish an independent agency within the Federal Government to be known as the Bureau of Consumer Protection.

It has become a well-worn and tired expression that the consumer is the forgotten man in our highly bureaucratic economic system which is so replete with the representation of special interest groups. Nevertheless, there is great truth in this statement. Every organized group in our society has established strong lobbies to represent their interests in the Federal Government. But the consumer, who is not a member of a well-organized and tightly knit group, has no one to voice his needs and desires. He has no sounding board within the Government, no agency to which he can address his complaints, and no official representative to bring his grievances before the appropriate governmental agencies.

The President's Special Assistant for Consumer Affairs, Mrs. Virginia Knauer, has done an admirable job with the resources and authority which have been made available to her. This office, however, was created by Executive order of the President, and its functions and jurisdiction, therefore, are based on the whims of whichever administration happens to be in command. Furthermore, a consumer office like the present one which is located in the White House is too closely tied with the policies of the administration in power. It is my feeling that we need an independent body which can stand some distance from the President and objectively evaluate the existing consumer policies and activities within the executive branch, offering constructive criticism where necessary. The creation of such a statutory agency is long overdue, and I believe the establishment of a Bureau of Consumer Protection, such as I propose, would fill this tremendous gap.

The primary function of the Bureau would be to represent within the Federal Government the viewpoint of the consumer. This broad authority would permit the Bureau to receive, evaluate, and negotiate voluntary adjustments of complaints and represent the consumer before any regulatory agency, district or appellate court, or department or independent agency of the Federal Government. The Bureau would be responsible for the coordination of all consumer activities in the Government, while, at the same time, aid in the elimination of overlapping consumer functions and conflicting policies relating to consumer protection.

The Bureau would also establish consumer complaint centers in major population areas; collect, coordinate, and disseminate information about the safety and quality of products and services; encourage and support consumer research; develop consumer education programs; assist State and local governments to set up their own consumer programs; and work with business representatives to provide higher quality products and better services.

The independence and objectivity of the Bureau of Consumer Protection would be insured first, by creating this body as an independent Federal agency, and second, by allowing for the appointment of the Director and Deputy Director of the Bureau for terms of 15 years with removal from office by Congress only for neglect of duty, malfeasance, inefficiency, or conviction of a felony. Such a provision would prevent the Bureau and its Director from becoming an arm of the President; the Director and Deputy Director would not be serving at the whim of the President, and new officers would not be appointed every time we have a change of administration.

Mr. President, there are numerous bills presently pending in both Houses of Congress which would create bodies in the Federal Government to represent our Nation's consumers. I believe, however, that my bill offers the most effective machinery to serve consumer interests today, and I urge my colleagues in the Senate to join with me in seeking favorable action on this measure in the immediate future.

Mr. President, this past Sunday, November 16, there appeared an excellent article in the Albuquerque Journal, Albuquerque, N. Mex., entitled "Consumers Bilked of Millions; Service Incompetence, Greed Hits Everyone." This article reports on only one of the many pitfalls that await the unsuspecting consumer. My legislation would insure that this and all other such practices which are preying on the unwary consumer are brought to an abrupt end. Mr. President, I ask unanimous consent that this article 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 Albuquerque (N. Mex.) Journal, Nov. 16, 1969]

CONSUMERS BILKED OF MILLIONS: SERVICE INCOMPETENCE, GREED HIT EVERYONE

(By Joan Hanauer)

Partly through its own ignorance, the American public is being bilked of hundreds of millions of dollars annually by service and repair incompetents and racketeers.

Trouble is, most of us don't know any more about the mechanics of the machines, appliances and gadgets on which we depend than we know about the circuitry of a moon rocket. Too often, neither does the repairman we call in. And even when he does, there are always crooks ready to prey on the unwary.

As a result, there is hardly a person who hasn't been "taken" at one time or another by an unethical or incompetent television repairman, garage mechanic, or appliance serviceman or dealer.

Richard Maxwell, president of the National Better Business Bureau Inc., stressed to UPI that "the vast majority of the service industry is composed of honest, reliable businessmen." But the "unethical operators," he said, plus a severe scarcity of trained repairmen, add up to making service needs "probably the No. 1 consumer problem in the nation today."

The problem is underscored in the television field, particularly in regard to color TV sets, the most complicated and most often out-of-order household device, according to Consumer Reports, a publication of Consumers Union.

An Iowa National Electronics Assn. official has estimated that 75 per cent of TV repairmen in Iowa "are bordering on the incompetent," and J. B. Myers, executive vice president of the Memphis, Tenn., Better Business Bureau, said: "Anyone can put up a sign and be a TV repairman. There are not 25 men in Memphis qualified to repair color sets."

No one knows how much money the American consumer loses each year to such ignorance, or because of his own ignorance that makes him an easy victim of overcharging and cheating. Simple arithmetic puts the

total into the billion-dollar realm. In Pennsylvania alone the figure has been estimated at $500 million.

It is ignorance again that makes accurate estimates impossible. People don't know when they have been "taken." If they do, they are loath to admit it, as UPI discovered when victims asked that their names be withheld in relating their experiences. Consider:

An elderly Pittsburgh woman awoke one cold morning to find her furnace out of of order. A repairman, his name culled from the telephone directory, advised replacing the furnace. Price: $563. For a second opinion she called a gas company inspector who repaired the furnace—free—by cleaning a pilot light line.

In Modesto, Calif., a television dealer replaced seven tubes in a malfunctioning set and charged $37.87. Only one of the original tubes actually was defective. Question: How many times did he perform unnecessary repairs before he was caught?

In Forest Hills, N.Y., a television repairman called in to examine a color set charged $8.50 for a house call, then announced the set must be taken to the shop for a $40 "inspection." The owner paid the $8.50 but refused the "inspection." The owner then telephoned the manufacturer which sent a man who replaced a small part for $1.85, but charged $18.50 for the house call. Question: How many other owners in similar circumstances had paid the "inspection" charge?

There can be no dispute that in this land of plenty of automobiles, television sets and other devices, there is a tremendous scarcity of adequate repair services—and a scandalous propensity for dishonesty. Why?

According to Consumer Reports, the problems begin with poor quality control by the manufacturer, extend to warranties often written to protect the manufacturer rather than the consumer, and end in incompetence and fraud.

A spokesman for Consumer Reports, in illustrating the lack of quality control, said Consumers Union buys at random and examines 30 to 40 new cars annually. In one car alone it found 33 defects, including improperly aimed headlights, a speedometer that clocked 64 m.p.h. when the car was traveling at 70 mph, grossly inaccurate fuel gauge, engine oil seeping from the main bearing seals, and assorted improperly or incompletely installed parts.

The magazine charged this was not a "lemon" but typical of many brand new American and foreign cars.

The consumer, accordingly, stands a good chance of being stuck with a factory-new item that doesn't work properly.

Next, the consumer turns to his warranty. As was brought out in congressional hearings and elsewhere, warranties often protect the manufacturer instead of the consumer. Warranties or guarantees spell out what the manufacturer or dealer will be responsible for, and what he exempts from warranty. These are called "express" guarantees. They protect him from the "implied" guarantee that a brand new item he sells and all its parts will be in good working order and will operate properly in normal usage. In some cases, also, the warranty is good for parts only, not labor.

Not untypical is the story of a Bay Shore, N.Y., housewife whose refrigerator went out of whack 30 days before the manufacturer's "three-year guarantee" expired. She telephoned the dealer, who sent a repairman. He "fixed" the refrigerator without charge for an allegedly new part, but "labor" came to $57. The owner was given a new "warranty" for one year on the repair work. Two months later the refrigerator again malfunctioned. Back came the repairman. He said the cause of malfunction this time was covered under the guarantee—but the guarantee had expired a month earlier. What about his own one-year warranty? Oh, that still held but it didn't cover the part of the refrigerator that now needed fixing. The woman paid another repair charge, this time $26.

Automobile warranties have been such a cause of complaint that the Federal Trade Commission (FTC) issued a staff report on them, based on the 1967 industry practices, when cars were guaranteed for 24 months or 24,000 miles. The report's conclusions included charges of "slack quality control" by manufacturers and substandard performance of warranty repairs.

UPI asked the Big Three American auto makers about the charge that car warranties benefited the manufacturer rather than the consumer. General Motors and Chrysler refused to comment. A Ford spokesman said: "Automotive warranty is much more generous than consumers find on most other products they buy."

Beyond warranties, new and old car repair complaints range from inadequate service to outright swindles.

A Santa Clara, Calif., car repair operation, for instance, would show car owners "metal filings" in the transmission pan. Actually, the "filings" were harmless grease-sweep, a kind of sawdust used to clean floors, that had been planted by the "repairer." The operators made over $1 million before they were closed down by the district attorney.

Some Phoenix, Ariz., service stations were caught equipping their men with hypodermic syringes filled with titanium tetrachloride, a colorless liquid often used by magicians which turns into dense white smoke when exposed to air. A few drops under the hood and the resulting smoke often produced a remarkable sales record in generators, voltage regulators, batteries, distributors and sometimes whole new transmissions.

Many complaints involve outfits offering to overhaul auto transmissions for a set price, then presenting the owners with extensive repairs and expensive bills.

Among the transmission transgressors, New York State Atty. Gen. Louis Lefkowitz in 1967 cited one nationally known franchise firm for "repairing" non-existent damage and replacing parts when no replacements were needed. He said one customer was charged $160 for a 22-cent repair. The same firm also was cited in Austin, Tex., where mechanics told motorists their cars were "in horrible shape" and collected $300 after changing only a few bolts. A court injunction was issued after an unmarked police car was sent through the "repair" process.

Of all household devices, the color television draws the most repairs—and repair complaints. Black and white set owners also register dissatisfaction. Not all of it can be laid to incompetence or the complex nature of the set.

In New York City, CBS-TV and Consumers Union conducted a test in 1966, deliberately placing a single blown tube in each of 20 sets in otherwise perfect working order. The sets were placed in 20 homes and 20 repairmen were summoned.

Only three repairmen limited themselves to the required repairs, charging an average of $8. The others charged varying prices, up to $37. In some cases unnecessary work was performed. In others no unneeded work was done—only charged for. CBS editorialized for licensing of repairmen.

In California, where the State Bureau of Electronic Repair Dealer Registration licenses service repair dealers, although not individual repairmen, similar investigative techniques have been used.

Jack Hayes, assistant bureau chief, estimates that since his agency was created in 1964, it has saved California set owners between $15 and $20 million a year in unnecessary repairs.

Hayes' group goes into action after receiving complaints, as about one San Jose dealer. The bureau placed three sets in the man's shop, each with a minor malfunction. The dealer sent bills totaling $38, $32 and $37. The invoices falsely claimed the dealer had performed all sorts of complicated work. He was sentenced to 90 days in jail for petty theft, violating the state invoice disclosure law and failing to return replaced parts to the customer, a California requirement.

There is practically nothing in or about the house that is immune from breakdowns and subsequent repair racketeers.

In Missouri, Jefferson City Assistant Atty. Gen. Christopher (Kit) Bond cited home improvement and pest control swindles as among the most prevalent, with victims most often older persons. He cited as example pest controllers who use soap or a terrible smelling mixture of kerosene and condensed milk.

"The soap foams around the house and looks like a pesticide," Bond said, "but I asked a building inspector what it would do and he said, 'It'll give you the cleanest termites in town.' "

Another problem in the home improvement field comes from what in most states is the perfectly legal principle of "holder in due course." A contractor signs up a home-owner for repairs, then sells the contract to a third party. If the contractor's work is unsatisfactory, or even if he goes bankrupt without ever completing the job and fulfilling the contract, in most states the homeowner must continue to pay installments to the company that holds his note.

Virginia H. Knauer, special assistant to the President for consumer affairs, recently told the U.S. Chamber of Commerce:

"The principles of honesty, of quality and satisfactory service are the principles upon which American industry began its growth to greatness: These are the principles to which it must return if it is to remain great."

The American consumer, raising an eyebrow at business, seems to be asking, "What's past is all very well, but what have you done for me lately?"

President Nixon in a message to Congress Oct. 30 stated that the old Latin slogan "caveat emptor"—let the buyer beware—has been replaced as America moves into the 1970s by "consumerism" and the "concept of 'buyer's rights.' "

Certainly the voice of the consumer is being heard by legislators. Consumer protection in one form or another is before many state legislatures, and federal legislation also is in the offing. Some of these laws are aimed, directly or indirectly, at the repair and services industry.

Mr. MONTOYA. Mr. President, I also ask unanimous consent to have the text of my bill printed at this point in the RECORD, following the article.

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

The bill (S. 3165) to create the Bureau of Consumer Protection and providing for the appointment of a Director, and other purposes, introduced by Mr. MONTOYA, was received, read twice by its title, referred to the Committee on Government Operations, and ordered to be printed in the RECORD, as follows:

S. 3165

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 "Consumer Protection Act of 1969".

BUREAU OF CONSUMER PROTECTION

There is hereby established an independent agency in the Federal Government to be known as the Bureau of Consumer Protec-

tion, hereinafter referred to as the "Bureau." The Bureau shall be headed by a Director who shall be appointed by the President by and with the advice and consent of the Senate. There shall also be in the Bureau a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate. The Deputy Director shall perform such duties as the Director may designate, and during the absence or incapacity of the Director, he shall act as Director.

(b) The compensation of the Director of the Bureau shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Director of the Bureau of the Budget.

(c) The compensation of the Deputy Director of the Bureau shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Bureau of the Budget.

(d) There shall be in the Bureau a General Counsel (referred to herein as the "Consumer Counsel") who shall be appointed by the President by and with the advice and consent of the Senate. The Consumer Counsel shall perform such duties as the Director may direct. The Consumer Counsel shall also act as Director during the absence or incapacity of the Director and the Deputy Director and may be designated by the Director to act as Deputy Director during the absence or incapacity of the Deputy Director.

Except as hereinafter provided in this section, the Director and the Deputy Director shall hold office for fifteen years. The Director shall not be eligible for reappointment. The Director or the Deputy Director may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Director or Deputy Director has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Director or Deputy Director removed in the manner provided in this section shall be ineligible for reappointment to that office.

(e) The Director, under such rules and regulations as the President may prescribe, shall appoint attorneys and other employees and shall make whatever expenditures may be necessary to administer the Bureau and to carry out its mission within the appropriations made therefor.

FUNCTIONS

In order to protect the interests of consumers in the United States the Bureau is authorized to perform the following functions:

(1) to coordinate the activities of all Federal departments concerned with matters affecting the interests of consumers and, where necessary, to submit such reports and make such proposals to the President to eliminate overlap, conflict or other problems tending to interfere with the Government's overall program on behalf of or in the interest of consumers;

(2) to represent the viewpoint of consumers of goods and services within the United States in the formulation and implementation of policies of the Government of the United States and of the several States which affect the economic and other interests of consumers:

(3) to establish and staff consumer centers in major population centers to facilitate the presentation of grievances by consumers, to advise consumers of methods available to them to resolve said grievances and to identify and recommend legislative or executive solutions to problems affecting substantial numbers of consumers; except that nothing contained herein shall be construed as a requirement that such a consumer center be established in any case where the State or local government has established a similar instrumentality to perform the functions enumerated in this section, but in any case where the Director determines, notwithstanding the establishment of such a local or State instrumentality to perform functions enumerated in this section, to establish a consumer center, the duties and functions of said consumer center shall be limited in order to avoid conflict and duplication with those being performed by the State or local instrumentality;

(4) to receive, evaluate, and negotiate voluntary adjustments of complaints of consumers concerning consumer products and services and trade practices detrimental to the economic and other interests of consumers, and to receive, evaluate, and negotiate the voluntary adjustment of complaints of consumers with Government agencies of the United States and of the States;

(5) to collect, coordinate, and disseminate in appropriate form information compiled by other Federal agencies or departments relating to the safety, performance, and quality of consumer goods and services;

(6) to encourage, support, and coordinate research leading to improved products, services, and consumer information;

(7) to initiate programs and encourage the expansion of existing consumer education programs at all school levels and through adult continuing education programs and to encourage, assist, and coordinate neighborhood consumer counseling services, except that the execution and administration of such programs shall be conducted through the facilities of State and local governments where, in the discretion of the Director, the State or local programs are determined to adequately meet the needs of the consumer for such programs;

(8) to provide technical assistance to State and local government agencies engaged in consumer programs;

(9) to assist State and local governments in the enactment of laws designed to provide greater protection to all consumers where such assistance is requested by the State or local government; and

(10) to encourage and assist representatives of commerce and industry in their efforts to undertake programs designed to provide higher quality products and better service for consumers generally.

CONSUMER PROTECTION

SEC. 4. (a) Whenever there is pending before any regulatory agency of the United States (as defined by subsection (f) of this section) any matter or proceeding which does not involve the adjudication of the alleged violation, by any individual or corporation named as a defendant or respondent therein, of any statute of the United States or any rule promulgated thereunder, and the Director finds that the determination of such matter or proceeding may affect substantially the interests of consumers within the United States, the Director shall be enitled as a matter of right to intervene in such matter or proceeding as a party to represent the interest of consumers by filing with such agency a duly certified copy of the finding so made by the Director. Upon any such intervention, the Director, through the Consumer Counsel or any other employee of the Bureau designated by the Director for that purpose, shall present to such regulatory agency, in conformity with the rules of practice and procedure thereof, such evidence, briefs, and argument as it shall determine to be necessary for the effective protection of the interests of such consumers.

(b) Whenever—

(1) there is pending before any regulatory agency of the United States any matter or proceeding relating to the trade or commerce of the United States which does involve the adjudication of the alleged violation, by any individual or corporation named as a defendant or respondent therein, of any statute of the United States, or any rule promulgated thereunder, or

(2) there is pending before any district court of the United States any matter or proceeding involving the trade of commerce of the United States to which the United States or any regulatory agency of the United States is a party,

the Director upon his own motion may, and upon written request made by the officer or employee of the United States or such regulatory agency who is charged with the duty of presenting the case for the Government in that matter or proceeding shall, certify to such officer or employee all evidence and information in the possession of the Bureau relevant to that matter or proceeding.

(c) Whenever there is pending before any appellate court of the United States any matter or proceeding involving the review of—

(1) an order or determination made by any regulatory agency of the United States relating to the trade or commerce of the United States, or

(2) any judgment, decree, or order entered by a district court of the United States in any civil action involving the trade or commerce of the United States.

and the Director finds that the action taken by the appellate court upon such review may affect substantially the interests of consumers within the United States, the Director, subject to the rules of practice and procedure of such appellate court, may make application to the court for leave to file in such matter or proceeding a brief as amicus curiae, or to present to the court oral argument therein, or both, except that no such application may be filed by the Director without the consent of the Attorney General in any matter or proceeding (A) to which the United States or any regulatory agency of the United States is a party, or (B) in which the Attorney General has been granted leave to intervene on behalf of the United States or any regulatory agency of the United States. Upon the filing by the Director of such application, supported by a duly certified copy of the finding so made by the Director and such other showing as the court may require to demonstrate that the action taken upon such review may substantially affect the interests of consumers within the United States, the appellate court in its discretion may grant such application.

(d) Whenever there is pending before any department or independent agency of the United States any matter or proceeding relating to the trade or commerce of the United States which does not involve the adjudication of the alleged violation, by an individual or corporation named as a defendant or respondent therein, of any statute of the United States, or any rule promulgated thereunder, and the Director finds that the determination of such matter or proceeding may affect substantially the interests of consumers within the United States, the Director shall be entitled as a matter of right to intervene in such matter or proceeding as a party to represent the interest of consumers by filing with such agency a duly certified copy of the finding so made by the Director. Upon any such intervention, the Director shall present to such agency in conformity with the rules of practice and procedures thereof, all evidence and information in the possession of the Bureau relevant to that matter or proceeding.

(e) The Consumer Counsel, or any other attorney of the Bureau specially designated by the Director for that purpose, shall be entitled to enter an appearance on behalf of the Director before any court (except the United States Supreme Court) or regulatory agency of the United States, without other compliance with any requirement for admission to practice before such court or agency, for the purpose of making any application or

taking any action which is authorized by subsection (a), (b), (c), or (d) of this section.

(f) For the purposes of this Act the term "regulatory agency" includes any agency, board, commission, or other institution within the Federal Government which is charged with administrative or regulatory duties with respect to trade or commerce of the United States.

STUDIES AND CONSUMER COMPLAINTS

SEC. 14. (a) It shall be the duty of the Bureau and its consumer centers to conduct studies, and to receive and evaluate complaints from consumers of the United States without regard to membership in the Council, concerning—

(1) consumer products and commercial and trade practices employed in the production, distribution, and furnishing of goods and services to or for the use of consumers which may be detrimental to their economic or other interests; and

(2) governmental action or inaction on the part of Government agencies of the United States and of the States detrimental to the economic or other interests of consumers.

(b) Upon receipt of any complaint disclosing the distribution of a product, the rendering of a service, or the use of any commercial or trade practice detrimental to the economic or other interests of consumers within the United States in any consumer products industry or by any producer, distributor, or supplier of consumer goods or services, or governmental action or inaction detrimental to the economic or other interests of consumers, which in the opinion of the Bureau does not violate any law of the United States or any State, the Bureau or a consumer center may undertake to provide for the adjustment of that complaint with the consent of the parties to the controversy through voluntary negotiation or arbitration. If in the opinion of the Bureau such practice is in violation of any law of the United States or any State, the Bureau shall refer the complaint to the Government agency whose regulatory or other authority provides the most effective available means to obtaining appropriate relief or to proceed against such violation of law.

(c) If the Bureau finds that no equitable voluntary adjustment of the complaint can be obtained, that no public law has been violated or if violated the Government agency having jurisdiction to enforce the law violated fails to act or is dilatory in action, that in its opinion legal remedial action is available by individual or class action for relief, and the matter involved in the complaint has sufficient economic effect upon consumers generally, the Bureau, subject to applicable statutes and rules of practices and procedure, may (1) furnish legal and other assistance necessary to the filing and prosecution of an appropriate remedial action in a State or Federal court of competent jurisdiction, or (2) institute and prosecute a class action to obtain appropriate civil relief for the benefit of a designated class of consumers.

SEC. 5 (a) Under such regulations as the President may prescribe, the Director may request and shall receive from any Federal department or agency such information as he may from time to time require.

(b) The Director, or any employee of the Office acting for and on behalf of the Director, shall receive from consumers and evaluate complaints concerning trade or commercial practices or other matters which may adversely affect consumers and shall take whatever action may be appropriate to resolve the complaint or other matter, including, but not limited to, referral to an appropriate Federal, State, or local agency. If no agency exists to which the particular matter can be referred or the agency to which a matter is referred fails or refuses to take action in connection with said matter, or any part thereof, the Director may provide conciliation or mediation services or, if the parties agree, final and binding arbitration.

(c) The Director shall have for any of the purposes described in section 3, the authority to gather and compile information from governmental and nongovernmental sources and, where appropriate, shall analyze and make such information available in appropriate form to the public or other governmental agencies.

(d) For the purpose of conducting surveys and investigations under this Act, the Director shall have all powers which are conferred upon the Federal Trade Commission by section 9 of the Federal Trade Commisison Act with respect to the conduct of investigations made by that Commission under that Act, except that the Director may not grant to any person any immunity from prosecution, penalty, or forfeiture in accordance with the provisions of that section without first obtaining the written consent of the Attorney General and serving upon such person a duly certified copy of any consent therefor granted by the Attorney General. The provisions of section 10 of the Federal Trade Commission Act shall apply to the act or omission of any person, partnership, or corporation with regard to any subpena, order, requirement, or information of the Director to the same extent, and with the same effect, as if such act or omission had occurred with regard to a like subpena, order, or requirement, or with reference to like information, of the Federal Trade Commission.

SEC. 7. The Director shall transmit to the Congress in January of each year a report which shall include a comprehensive statement of the Bureau's activities, including a summary of the major problems, confronting the Bureau, methods utilized in dealing with such problems, recommendations for additional legislation necessary or deisrable to protect consumer interests, recommendations for organizational changes within the executive branch to provide more efficient service to the consumer, and such other information as the Director may deem pertinent to the mission of the Bureau, or as Congress may require.

APPROPRIATIONS

SEC. 8. There are hereby authorized to be appropriated to the Bureau such sums as may be required to carry out the provisions of this Act.

ADDITIONAL COSPONSORS OF BILLS

S. 2994

Mr. BAYH. Mr. President, I ask unanimous consent that, at the next printing, my name be added as a cosponsor of S. 2994, to amend section 455 of title 28, United States Code.

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

S. 3102

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Alaska (Mr. STEVENS) be added as a cosponsor of S. 3102, to amend section 4 of the Fish and Wildlife Act of 1956, as amended to extend the term during which the Secretary of the Interior can make fisheries loans under the act.

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

S. 3147

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from New York (Mr. GOODELL) and the Senator from Texas (Mr. YARBOROUGH) be added as cosponsors of S. 3147, to amend the act relating to indemnity payments to dairy farmers.

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

S. 3153

Mr. DOLE. Mr. President, on behalf of the Senator from Hawaii (Mr. FONG), I ask unanimous consent that, at the next printing, the name of the Senator from Colorado (Mr. ALLOTT) be added as a cosponsor of S. 3153, 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.

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

SENATE RESOLUTION 289—SUBMISSION OF A RESOLUTION TO REFER SENATE BILL 3161 TO THE U.S. COURT OF CLAIMS FOR A REPORT THEREON

Mr. CRANSTON submitted the following resolution (S. Res. 289); which was referred to the Committee on the Judiciary:

S. RES. 289

Resolved, That the bill (S. 3161) entitled "A bill for the relief of the estate of Randolph Henry Hitchcock", now pending in the Senate, together with all the accompanying papers, is hereby referred to the chief commissioner of the United States Court of Claims; and the chief commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due from the United States to the claimant.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, November 20, 1969, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 92. An act for the relief of Mr. and Mrs. Wong Yui;

S. 499. An act for the relief of Ludger J. Cossette;

S. 632. An act for the relief of Raymond C. Melvin;

S. 757. An act for the relief of Yvonne Davis;

S. 1072. An act 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;

S. 2000. An act to establish the Lyndon B. Johnson National Historic Site; and

S.J. Res. 26. Joint resolution to provide for the development of the Eisenhower National Historic Site at Gettysburg, Pa., and for other purposes.

ABA JOURNAL ARTICLE CONDEMNS EXECUTIVE ORDER 11246—THE EXECUTIVE ORDER APPLICABLE TO GOVERNMENT CONTRACTORS

Mr. ERVIN. Mr. President, in this month's issue of the American Bar Association Journal, Mr. James E. Remmert, of Dallas, Tex., has written an article in which he condemns Executive Order 11246 as an usurpation of congressional authority.

As the Senate no doubt recalls, the Subcommittee on Separation of Powers held hearings last month on the Department of Labor's revised Philadelphia plan, a controversial minority group hiring program which was promulgated under that Executive order.

During those hearings, I criticized the Philadelphia plan as an open violation of title VII of the 1964 Civil Rights Act and as a breach of the doctrine of separation of powers. I also contended, and I still contend, that the Philadelphia plan is in clear conflict with the language of Executive Order 11246 itself. My distinguished colleague from Arkansas, Senator McCLELLAN, and the Honorable Elmer B. Staats, Comptroller General of the United States, joined me in my opposition.

Mr. President, the conflict over the Philadelphia plan is far from resolved. Last week, the Comptroller General informed the executive departments and interested Members of Congress that he will disallow payments on the first contract issued under the plan. To my knowledge, his statement has not caused the Department of Labor to relent in its pursuit of the plan's full implementation.

Like the Comptroller General, I view the Philadelphia plan as a real threat to the maintenance of legislative control over executive branch spending. The Department of Labor's decision to disregard the Comptroller General's ruling is without precedent since the enactment of the Budget and Accounting Act of 1921. I urge the Senate to reaffirm in the strongest terms its support of the Comptroller General's authority.

As Mr. Remmert so clearly stated in his article, the executive branch simply undertook to "enact" legislation in promulgating Executive Order 11246. It moved far beyond what the Congress intended when it enacted title VII of the 1964 Civil Rights Act. Mr. President, I ask unanimous consent that the ABA Journal article, "Executive Order 11246: Executive Encroachment" be printed at this point in the RECORD.

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

EXECUTIVE ORDER 11246: EXECUTIVE ENCROACHMENT

(By James E. Remmert)

Section VII of the Civil Rights Act of 1964, forbidding discriminatory employment practices, was the product of legislative compromise. Executive Order 11246, issued by President Johnson in 1965 and applicable to Government contractors, was the product of unilateral Executive judgment and consequently not only forbids discriminatory employment practices but requires employers to take affirmative action to ensure against them. Will the Executive always be serving a good cause when he uses the contract power to skirt the legislative process?

The Civil Rights Act of 1964 was made the law of the land amidst great controversy, extended debate and considerable compromise. With far less controversy or compromise and with no Congressional debate, President Johnson on September 24, 1965, signed Executive Order 11246, the latest in a series that has played at least as significant a role in implementing the objective of equal employment opportunity as has Title VII of the 1964 Civil Rights Act.[1] Section 202(1) of this executive order, as amended, requires that every employer who is awarded a Government contract or subcontract that is not exempted by the Secretary of Labor must contractually undertake the obligation not to "discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin."

Since Title VII of the 1964 Civil Rights Act had to endure the rigors of passing both houses of Congress, it is the product of compromise attendant upon the legislative process. Executive Order 11,246, by comparison, was the responsibility of only the President. Consequently, it imposes much broader substantive obligations, and the procedure adopted for its enforcement conveys to the enforcing agency significantly more authority than was given to the Equal Employment Opportunity Commission by the 1964 Civil Rights Act.

Evidence of the broader substantive obligation imposed by Executive Order 11,246 is the fact that Title VII imposes only the obligation *not* to do that which is prohibited, i.e., discriminate on the basis of race, color, religion, sex or national origin. By comparison, Executive Order 11,246 not only requires that Government contractors and subcontractors not discriminate but also that they "take *affirmative action* to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin [Section 201(1); emphasis supplied]". Regulations issued by Secretary of Labor Willard Wirtz under authority of Executive Order 11,246 further require that Government contractors and subcontractors develop a "written affirmative action compliance program"[2] documenting the steps they have taken and setting goals and timetables for additional steps to fulfill the "affirmative action" obligation. The submission of these written programs has also been imposed as a prerequisite to the award of some Government contracts. However, on November 16, 1968, Comptroller General Elmer B. Staats ruled that "until provision is made for informing bidders of definite minimum requirements to be met by the bidder's program and any other standards or criteria by which the acceptability of such program would be judged",[3] contract awards must be made to the lowest eligible bidder without reference to the affirmative action program.

PRESIDENT SIMPLY TOOK POWER THAT CONGRESS WOULDN'T GIVE

That the Executive was willing to assume by executive order significantly greater enforcement authority than Congress was willing to convey to it can be seen by comparing the adjudicatory processes under Title VII and Executive Order 11,246. If an employer disagrees with the Equal Employment Opportunity Commission over the legal requirements imposed by Title VII, or if the employer is unable to comply with the remedies proposed by the commission to rectify a discriminatory practice, he may have traditional recourse through the judicial process before any sanction is imposed. To the contrary, however, the regulations issued by Secretary of Labor Wirtz for the administration of Executive Order 11,246 provide that upon request for a hearing to adjudicate a contractor's or subcontractor's compliance with the executive order, the Secretary of Labor's designee may suspend all contracts or subcontracts held by the employer pending the outcome of the hearing.[4] In addition, as a part of the adjudicatory process, the agency responsible for investigating or supervising the investigation of a contractor's compliance and prosecuting those contractors alleged to be in noncompliance is also responsible for imposing the sanctions of cancellation and suspension from participation in Government contracts.[5] In other words, the chief investigator, prosecutor and final judge with respect to cancellation and suspension of Government contracts is the Department of Labor.

WITH THE CONTRACT POWER, WHO NEEDS CONGRESS?

These substantive and procedural contrasts between Title VII of the 1964 Civil Rights Act and Executive Order 11246 illustrate the considerable power that the Executive can acquire by pursuing a social objective through the use of the contract power in addition to or in place of legislation. Such broad and sweeping powers are premised on the concept that the Federal Government has the "unrestricted power . . . to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases."[6] This power is founded on the premise that in the absence of a Congressional prohibition or directive the Executive branch is free to enter into contracts on whatever conditions and provisions are deemed to promote the best interests of the Government.[7]

Without question, Executive Order 11246 has done much to advance the cause of equal employment opportunity, because the Federal Government's bargaining position enables the Executive to require such terms as are found in this order as a condition to a United States Government contract. Once such a broad and sweeping obligation is accepted, the accepting contractor or subcontractor is in an untenable position to oppose steps that are required by the administering agency with respect to the conditions covered by the contract.

To illustrate the impact of this use of the Executive's contract power, one need only consider a list of the top 100 corporations and institutions holding Defense Department contracts.[8] These corporations are understandably some of the largest in the United States and collectively employ well over ten million persons. Even though the list does not include contractors with any department other than Defense or the many subcontractors involved in Defense Department prime contracts, it aptly illustrates the significant indirect control which the Executive can exert over the private sector of the economy by use of the contract power.

There is very little case law deciding the extent to which the President may by executive order impose ancillary conditions to Government contracts. Some have questioned the validity of Executive Order 11,246 on the ground that the Executive does not have the authority to impose conditions that are unrelated to the purposes for which Congress appropriated funds[9] and on the basis that the affirmative action obligation conflicts with provisions in the 1964 Civil Rights Act. These provide that preferential treatment on the basis of race, color, religion, sex or national origin is not required to correct an imbalance.[10] However, at least one federal district court[11] and two United States courts of appeals[12] have said that Executive Order 11,246 has the full force and effect of statutory law. If these courts are correct and the order is a valid exercise of the Executive's contract power, then some examination of the potential extension of this power is in order.

Footnotes at end of article.

Although the writer is unaware of any publication listing all firms holding competitively bid or negotiated United States Government contracts or subcontracts, it is the writer's belief that the vast majority of the major commercial enterprises in this country and a great many not-for-profit institutions and smaller commercial enterprises hold one or more Government contracts or subcontracts. Consider, for example, the diverse scope of the organizations holding Government research grants, the utilities and communications services used by federal installations, the dependence of such industries as automotive, aircraft, shipbuilding and munitions on Government contracts, the heavy reliance of the construction industry on such programs as urban renewal and highway construction sponsored by federal funding, and the entrenchment of United States Government financing and deposits as a factor in the financial institutions throughout the country.

WHERE DOES THIS PRECEDENT LEAD?

Consideration should also be given to some of the possible future applications of the concept behind Executive Order 11,246. The contract power could be used to circumvent the intrastate-interstate dichotomy that has to some extent precluded complete preeminence of the Federal Government in such fields as air and water pollution control, regulation of common carriers and labor relations. One extension already suggested by the AFL–CIO is the debarment of Government contractors found to have committed flagrant unfair labor practices.

Another avenue for extension of the Executive's contract power is in areas within federal jurisdiction but which Congress has left unregulated or has regulated only to a lesser extent than that deemed desirable by the Executive. An example of this use of the contract power is found in Executive Order 11,246. In enacting Title VII of the 1964 Civil Rights Act, the Congressional consensus was that the prohibition against discrimination on the basis of race, color, religion, sex and national origin was sufficient to accomplish the objective of eliminating employment discrimination on such bases.

The Executive, however, felt that the then-existing executive order prohibiting discrimination by Government contractors did not go far enough in dealing with the objective of equal employment opportunity, and thus the affirmative action obligation was added to place a greater responsibility on Government contractors.

By using the contract power, the Executive could accomplish many objectives deemed desirable without using the legislative process so long as the particular contract clause does not conflict directly with a federal statute. Thus, this technique affords the Executive a limited bypass of the legislative process and gives it the power to give its objective, "the force and effect given to a statute enacted by Congress" [13] without the concurrence of Congress.

Several questions should be answered before this procedure proliferates. The first is whether the concentration of this power in the hands of the Executive is desirable in view of the fact that it allows the President to carry an objective into effect without resort to the legislative process established by the Constitution. In this connection, it is significant to note that Congress considered sanctioning the Executive's use of the contract power to achieve equal employment opportunity but rejected the idea. The original House bill (H.R. 7152) that eventually became the 1964 Civil Rights Act, after numerous amendments, contained a Section 711(b), which read as follows:

"The President is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States."

During the consideration of H.R. 7152 by the House, Congressman Emanuel Celler (D., N.Y.) sponsored an amendment to eliminate this section of the bill. The amendment was accepted by the House, and in the course of the discussion Congressman John Dowdy (D., Tex.) voiced the view that, "Many of us have felt section 711 to be a highly dangerous section of the bill and accordingly much of our debate has been predicated upon the fact that this language should be removed." [14]

With reference to Executive Order 11,246, it has been argued that although this use of the contract power is extraordinary the need for equal employment opportunity justifies this departure from traditional concepts. Those who would rush to the conclusion that the cause of equal employment opportunity does justify a departure from the legislative process would do well to remember that the sword of Executive power cuts in two directions. Thus, the first question that should be considered in connection with Executive Order 11,246 is not whether equal employment opportunity should be pursued but whether this means is consistent with the basic framework and power balance with which our form of government has successfully endured innumerable crises over the last two centuries.

HISTORY THAT SHOULD BE REPEATED

At another time in our nation's history, the Supreme Court had occasion to consider whether a crisis of similar magnitude justified an expansion of Executive power. In holding that President Truman's executive order seizing the steel mills during the Korean conflict was unconstitutional despite the pending emergency, Justice Douglas in a concurring opinion gave the sage advice that:

". . . The language of the Constitution is not ambiguous or qualified. It places not *some* legislative power in the Congress; Article 1, Section 1 says 'All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.'

* * * * *

". . . Today a kindly President uses the seizure power to effect a wage increase and to keep the steel furnaces in production. Yet tomorrow another President might use the same power to prevent a wage increase, to curb trade-unionists, to regiment labor as oppressively as industry thinks it has been regimented by this seizure." [15]

In a separate concurring opinion in the same case, Justice Jackson expressed a similar view concerning the overreaching use of Executive power that is highly relevant and appropriate to the concept behind Executive Order 11,246:

". . . The opinions of judges, no less than executives and publicists, often suffer the infirmity of confusing the issue of a power's validity with the cause it is invoked to promote, of confounding the permanent executive office with its temporary occupant. The tendency is strong to emphasize transient results upon policies—such as wages or stabilization—and lose sight of enduring consequences upon the balanced power structure of our Republic." [16]

CONGRESS DOES NOT BELONG ON THE SIDELINES

Congress should give thoughtful consideration to and develop a considered national policy on the use of the contract power exemplified by Executive Order 11.246 rather than stand on the sidelines and allow its proliferation without Congressional guidance. Congress should decide the kind of contracts and the kind of ancillary obligations that it will allow the Executive to impose in disbursing the funds that Congress appropriates. A mechanism should be established that will insure a legislative watchdog over the Executive's use of the contract power and will allow the Executive sufficient flexibility to administer efficiently the disbursement of Congressional appropriations.

With specific reference to Executive Order 11,246, Congress should eliminate the double standard that now exists between employers generally, who are required not to discriminate by Title VII of the 1964 Civil Rights Act, and employers who, as Government contractors, are subject to a different standard and a different enforcement procedure in measuring their compliance with the obligation. The identical obligation imposed by Title VII of the 1964 Civil Rights Act should apply, procedurally, substantively and with equal vigor to Government contractors without reference to the extraordinary obligation to take "affirmative action". There is no justification for the multiplicity of government agencies enforcing Title VII of the 1964 Civil Rights Act and Executive Order 11,246. At present, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance and every agency that awards Government contracts are all involved in enforcement activities. This duplication has produced inconsistent enforcement standards, confusion and a wasteful use of Government manpower and resources.

Congress should immediately take appropriate steps properly to realign Congressional and Executive authority, and in doing so it might well consider some further words from Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Company* v. *Sawyer*. In referring to the overextended use of the executive order, Justice Jackson said:

". . . Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

* * * * *

". . . With all its defects, delays and inconveniences, men have discovered no technique for long preserving free goverment except that the Executive be under the law, and that the law be made by parliamentary deliberations." [17]

FOOTNOTES

[1] 42 U.S.C. § 2000e.
[2] 41 C.F.R. § 60–1.40.
[3] Comptroller General's Letter B–163026.
[4] 41 C.F.R. § 60–1.26(b) (2) (iii).
[5] 41 C.F.R. § 60–1.24 and 41 C.F.R. § 60–1.27.
[6] *Perkins v. Lukens Steel*, 310 U.S. 113, at 127 (1940).
[7] *Kern-Limerick* v. *Scurlock*, 347 U.S. 110 (1954).
[8] TIME, June 28, 1968, at 72.
[9] See Pasley, *The Nondiscrimination Clause in Government Contracts*, 43 VA. L. REV. 837 (1957).
[10] 42 U.S.C. § 200e-2(j).
[11] *United States* v. *Local 189, United Papermakers & Paperworkers*, 282 F. Supp. 39, 43 (E.D. La. 1968).
[12] *Farkas* v. *Texas Instrument*, 375 F. 2d 629, 632 (5th Cir. 1967), and *Farmer* v. *Philadelphia Electric Company*, 329 F. 2d 3, 8 (3d Cir. 1964).
[13] *Farkas* v. *Texas Instrument*, 375 F. 2d at 632.
[14] 110 CONG. REC. 2575 (February 8, 1964).
[15] *Youngstown Sheet & Tube Company* v. *Sawyer*, 343 U.S. 579, at 630, 633–634 (1952).
[16] 343 U.S. at 634.
[17] 343 U.S. at 653, 655.

PREVENTIVE DETENTION AND POLITICAL REPRESSION

Mr. ERVIN. Mr. President, I have had many occasions to express my strong conviction that the preventive detention proposed by S. 2600 and other bills is both unconstitutional and impractical.

I have stated that preventive detention legislation smacks of a police state rather than a democracy under law because it deprives a man of his liberty on accusation alone or mere assumption that he has committed a crime or is likely to do so. It convicts individuals of "probable guilt" and "dangerousness" and sentences them to 30 or 60 days in prison without trial and conviction of any crime. It is reminiscent of similar devices in other countries which have proved too useful as tools of political repression.

Among the many letters I have received on preventive detention proposals are two which provide an especially incisive commentary on the potential political dangers of preventive detention. One was written by a former German national who escaped the Hitler regime and remembers its "protective detention" under which the early morning knocks by the Gestapo began. The other letter was written by a patriot who says:

My brothers and I didn't spend a total of 11 years in the Navy during World War II to fight this sort of thing only to have our country lift pages from the Gestapo manual and implement them right on our very doorstep.

Mr. President, I ask unanimous consent to have these two important letters printed at this point in the RECORD.

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

AUGUST 24, 1969.

Hon. SAM J. ERVIN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: My wife and I want to thank and encourage you in your efforts against certain provisions of the administrations anticrime bill.

The "preventive detention" provision is something borrowed from Hitler's Gestapo agents during the time they ran rampant and jailed just about anyone purely on the basis of suspicion. Are we going to emulate the Gestapo?

The fact that this is being proposed by the present administration is something that's just simply beyond our comprehension. Is this an example of "law 'n order" that the administration is putting into effect now that the last presidential election is over and won?

This "preventive detention" provision is an obvious threat to our civil liberties, and threatens to undermine the Constitutional guarantees of every citizen of our nation, including those citizens who are proposing this legislation!

When we found out that the administration was seriously bent upon this proposed course of action, we immediately dropped everything we were doing in order to effectively oppose any form of "preventive detention" in our country.

My brothers and I didn't spend a total of eleven years in the Navy during World War II to fight this sort of thing only to have our country lift pages from the Gestapo Manual and implement them right on our very door step.

We'll fight here, if necessary, to oppose this evil now cloaked in the guise of "law 'n order". We never even suspected that such a thing could possibly come to pass in our so called "cradle of democracy". And this sort of thing is being proposed by people who obviously should know better.

Senator Ervin, please continue with your opposition to every provision that smacks of totalitarian practices. In the meantime we will do what we can to shine a light into all of the dark corners of the present administration.

With many thanks, we remain,
Sincerely yours,

JOSEPH A. PRACHAR.

ROCHESTER, N.Y.,
July 14, 1969.

Hon. SAM J. ERVIN, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: I am proud of you on your stand regarding the "Preventive Detention" bill which the Attorney General of the United States has submitted to Congress.

I came here from Germany, escaping the Hitler regime. It all started with a law which enabled Courts to order people into "Schutzhaft", called "Protective Detention". It was under this statute that the six o'clock in the morning knocks by the Gestapo began.

It would be a very sorry day, in my opinion, if any legislation of this type would pass in the United States. I should think that speedy trials would be a better answer, but whatever the answer might be, the legislation now before the House would be the beginning of a very bad trend.

Sincerely,

HELMUT HERTZ.

ANNUAL REPORT OF SUBCOMMITTEE ON SEPARATION OF POWERS (S. REPT. NO. 91-549)

Mr. ERVIN. Mr. President, as in legislative session, on behalf of the Committee on the Judiciary, I ask unanimous consent to file the annual report of the Subcommittee on Separation of Powers pursuant to Senate Resolution 245, 90th Congress, second session, together with individual views.

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

AUTHORIZATION OF APPROPRIATIONS FOR EXPENSES OF THE NATIONAL COUNCIL ON INDIAN OPPORTUNITY

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on Senate Joint Resolution 121.

The PRESIDING OFFICER (Mr. SPONG in the chair) laid before the Senate the amendment of the House of Representatives to the joint resolution (S.J. Res. 121) to authorize appropriations for expenses of the National Council on Indian Opportunity, which was to strike out all after the resolving clause, and insert:

That there is hereby authorized to be appropriated not to exceed $300,000 annually for the expenses of the National Council on Indian Opportunity, established by Executive Order Numbered 11399 of March 6, 1968.

SEC. 2. The National Council on Indian Opportunity shall terminate five years from the date of this Act unless it is extended by an Act of Congress.

Mr. MANSFIELD. Mr. President, the Senate passed Senate Joint Resolution 121 on September 3. The House has amended the joint resolution and returned it to us. The effect of the House amendment is to limit the life of the Council to a 5-year term, unless extended by act of Congress. I am advised by the Vice President that this amendment is satisfactory to him, and it is acceptable to the leadership and the minority.

Therefore, Mr. President, I move that the Senate concur in the amendment of the House to Senate Joint Resolution 121.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

ORDER FOR ADJOURNMENT TO 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stands in adjournment until 11 a.m. tomorrow.

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

THE LEGISLATIVE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that as in legislative session, the Senate turn to the consideration of the calendar, beginning with Calendar No. 528, and that the rest of the calendar be considered in sequence.

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

AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT

The bill (H.R. 3666) to amend section 336(c) of the Immigration and Nationality Act was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 534), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to repeal that part of section 336(c) of the Immigration and Nationality Act which provides that U.S. citizenship cannot be acquired through naturalization during a period of 60 days preceding a general election.

STATEMENT

Under the Immigration and Nationality Act, aliens lawfully admitted as immigrants for permanent residence who petition for naturalization must satisfy specific requirements as to residence and physical presence in the United States good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States. These requirements and the pracedures for naturalization are set forth in sections 310 through 348 of the act.

The provisions of section 316(a) and (e) are quoted as particularly relevant.

"SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for

at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

* * * * *

"(e) In determining whether the petitioner has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section the court shall not be limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period."

The spouse of a U.S. citizen may be eligible for naturalization after 3 years' residence. The Congess has also provided for expeditious naturalization for those who serve in the Armed Forces during periods of combat activity.

Prior to the holding of a final hearing upon a petition for naturalization a personal investigation of the petitioner is conducted. Every final hearing upon a petition for naturalization is held in open court before a judge, and the petitioner and witnesses are examined under oath.

Before being admitted to citizenship, the petitioner must take an oath in open court (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law.

The provisions of section 336(c) historically have barred the taking of the final oath and acquisition of citizenship within the 60-day period prior to general elections. While the statute permitted the scheduling of final naturalization hearings during this period, the petitioner was prohibited from taking the oath until 10 days had elapsed following the election.

This prohibition was added to the naturalization laws many years ago at a time when election frauds were being committed by persons who were alleged to seek out aliens for the purpose of procuring their votes. Allegedly the aliens were rushed through the naturalization process on election day in order to vote as directed by political bosses. The 5-year residence requirement and other safeguards since written into the Immigration Act plus the stricter election laws enacted by States and local jurisdictions now effectively prevent such abuses. It is the conclusion of the committee that the bar no longer serves any useful purpose and should be removed from the law.

As amended, section 336(c) will provide, as does present law, that no final hearing shall be held on any petition for naturalization nor shall any person be naturalized nor any certificate of naturalization be issued by any court within a period of 30 days after the filing of the petition for naturalization. The discretionary authority of the Attorney General to waive such 30-day period in individual cases if he finds the waiver will be in the public interest is continued, but the amended language omits the requirement that the Attorney General must make an affirmative finding that the waiver will promote the security of the United States. Experience in the administration of this provision as presently written has shown that an affirmative finding that the waiver would promote the security of the United States can be made in behalf of relatively few petitioners for naturalization. The committee is aware of situations where it would be in the public interest to grant the waiver, but the Attorney General is precluded by the affirmative security requirement. Since a waiver would not under any circumstances be granted unless the petitioner's qualifications to be naturalized had been fully established, it is believed that the Attorney General should be permitted to exercise this discretionary authority whenever such case would be in the public interest in meritorious cases, even though the action would not involve promotion of the security of the United States. It is assumed, of course, that any waiver granted would not be contrary to the national security.

AUTHORIZATION OF APPROPRIATION FOR STANDARD REFERENCE DATA ACT

The bill (H.R. 4284) to authorize appropriations to carry out the Standard Reference Data Act was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–536), explaining the purposes of the measure.

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

PURPOSE

H.R. 4248 would authorize the appropriation to the Department of Commerce of such sums as may be necessary to carry out the Standard Reference Data Act during fiscal years 1970 and 1971, but not to exceed a total of $6 million.

BACKGROUND AND NEED

The Standard Reference Data Act, Public Law 90–396, enacted July 11, 1968, declared the policy of the Congress to make critically evaluated reference data readily available to scientists, engineers, and the general public. It directed the Secretary of Commerce to carry out this policy by providing for the collection, compilation, critical evaluation, publication, and dissemination of standard reference data.

Reference data are the results of quantitative measurements of the physical and chemical properties of substances. These numbers represent the properties of materials such as their melting points, strength, density, electrical resistance, etc. which are needed by engineers and scientists in their daily work. The scientist conducting environmental pollution research in a university laboratory and the engineer designing a new product or process in industry are equally dependent upon the ready availability of reliable reference data concerning the materials with which they work.

These data are determined through experimental measurements performed in thousands of research laboratories throughout the world. The results of this research normally are reported in various scientific and technical publications. However, because of the enormous increase in the volume of such literature in recent years, it is often exceedingly difficult for the individual scientist or engineer to locate a particular value that he needs among the millions of published reports. In addition, unless he is an expert in the particular field involved, he may not be able to determine whether the reported value is reliable even if he finds one. As a consequence, scientists and engineers have become increasingly dependent upon compilations of frequently used reference data in the form of tables and handbooks.

In recognition of the importance of reliable standardized scientific and technical reference data to the progress of the Nation's science and technology, the 90th Congress approved Public Law 90–396 to facilitate the operation of the National Standard Reference Data System by the Department of Commerce. Under this system, a small program management office in the National Bureau of Standards provides leadership, coordination, and financial support for numerous data centers located throughout the country in laboratories where special competence exists for the evaluation of various types of data. These centers undertake a continuing survey of the technical literature in their field, select important values, and subject them to a critical evaluation by experts to determine how reliable they are. These critically evaluated data are then arranged in convenient orderly collections for publication as standard reference data which can be used with confidence by all members of the scientific and technical community.

The ready availability of reliable reference data contributes to important savings of technical manpower that might otherwise be devoted to extensive literature searches, or to research which merely duplicates earlier efforts. It further reduces the chance of costly errors in designs based on unreliable data, and generally expedites the progress of research and development efforts that are of vital importance to Government, industry, and the general public.

The authorized level of operation of the standard reference data program during fiscal year 1969 was $1.86 million. H.R. 4284 would authorize a total of $6 million to operate the program during fiscal years 1970 and 1971. This would permit continued support of ongoing efforts and orderly expansion of the program to more adequately meet national needs as was contemplated at the time of enactment of the Standard Reference Data Act. The level of effort on several existing data collection projects will be increased to produce critical reviews and data compilations at a faster rate. In addition, services of qualified scientists in academic institutions and other national laboratories will be obtained under contract or other suitable arrangement to initiate certain new projects aimed at filling important gaps in existing data collections.

In particular, a new data center is planned to focus on data pertaining to chemical reactions in solutions since such data are vital in the development of water pollution control procedures. Evaluated data also are needed on pressure-volume-temperature relationships in gases. These properties are important in studies of the atmosphere as well as in the development of combustion and refrigeration systems and of various new materials. During fiscal years 1970 and 1971, efforts will be initiated toward the development of computerized standard reference data files, including experiments in remote access to data files, as a part of continuing efforts to make the information services of the National Standard Reference Data System more responsive and efficient in meeting national needs.

PROVISIONS

The bill contains a single provision which would authorize the appropriation to the Department of Commerce of "such sums as may be necessary for fiscal years 1970 and 1971, but not to exceed a total of $6 million, to carry out the purposes of the Standard Reference Data Act (Public Law 90–396; 82 Stat. 339)."

COST

The bill would authorize the appropriation of such sums as may be necessary to operate the standard reference data program for 2 years beginning with fiscal year 1970, but not to exceed a total of $6 million.

The budget request of the current administration includes approximately $2.4 million for the program in fiscal year 1970.

AUTHORIZATION FOR THE DEPARTMENT OF COMMERCE TO MAKE SPECIAL STUDIES, TO PROVIDE SERVICES, AND TO ENGAGE IN JOINT PROJECTS, AND FOR OTHER PURPOSES

The bill (S. 1170) to authorize the Department of Commerce to make special studies, to provide services, and to engage in joint projects, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1170

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 2 of the Act of September 9, 1950 (64 Stat. 823; 15 U.S.C. 1152); and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.

In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Bureau of the Budget.

SEC. 2. All payments for work or services performed or to be performed under this Act shall be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary: *Provided,* That said receipts may be credited to a working capital fund otherwise established by law, and used under the law governing said funds, if the fund is available for use by the agency of the Department of Commerce which is responsible for performing the work or services for which payment is received. Acts appropriating funds to the Department of Commerce may include provisions limiting annual expenditure from said account or accounts.

SEC. 3. The following laws, or parts of laws, are hereby repealed:

(a) That proviso in the Act of March 1, 1919 (ch. 86, sec. 1, at 40 Stat. 1256), which reads as follows: "*Provided further,* That all moneys hereafter received by the Bureau of Foreign and Domestic Commerce in payment of photographic and other mechanical reproduction of special statistical compilations from its records shall be covered into the Treasury as a miscellaneous receipt."

(b) The Act of May 27, 1935 (ch. 148, 49 Stat. 292; 15 U.S.C. 189a, 192, 192a).

(c) The proviso in the Act of May 15, 1936 (ch. 405, sec. 1, at 49 Stat. 1335 (15 U.S.C. 189)), which reads as follows: "*Provided,* That the Secretary of Commerce may make such charges as he deems reasonable for lists of foreign buyers, special statistical services, special commodity news bulletins, and World Trade Directory Reports, and the amounts collected therefrom shall be deposited in the Treasury as miscellaneous receipts."

(d) The Act of December 19, 1942 (ch. 780, 56 Stat. 1067; 15 U.S.C. 1520).

(e) The proviso in section 3 of the Act of September 9, 1950 (64 Stat. 823; 15 U.S.C. 1153), which reads as follows: "*Provided,* That all moneys hereafter received by the Secretary in payment for publications under this Act shall be deposited in a special account in the Treasury, such account to be available, subject to authorization in any appropriation Act, for reimbursing any appropriation then current and chargeable for the cost of furnishing copies or reproductions as herein authorized, and for making refunds to organizations and individuals when entitled thereto: *And provided further,* That an appropriation reimbursed by this special account shall, notwithstanding any other provision of law, be available for the purposes of the original appropriation."

(f) The proviso in title III of the Act of October 22, 1951 (ch. 533, title III, section 301 at 65 Stat. 586, 15 U.S.C. 1153a), which reads as follows: "*Provided,* That moneys hereafter received by the Secretary pursuant to section 3 of said Act of September 9, 1950, for publications provided thereunder, shall be available for reimbursing any appropriation as provided by said section."

SEC. 4. Except as to those laws expressly repealed herein, nothing in this Act shall alter, amend, modify, or repeal any existing law prescribing fees or charges or authorizing the prescribing of fees or charges for services performed or for any publication furnished by the Department of Commerce, or any of its several bureaus or offices.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-537), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

S. 1170 would provide more uniform authority for the Secretary of Commerce to undertake upon request special studies on matters within the province of the Department of Commerce, to prepare from records of the Department special tabulations and reports, and to furnish transcripts or copies of Department records upon payment of the cost of such work; and in the case of nonprofit and research organizations, or Government agencies, to engage in joint projects or perform services on matters of mutual interests with an equitable sharing of costs. S. 1170 would also repeal several statutes which are no longer used, or which are inconsistent with its provisions.

BACKGROUND AND NEED

The Department of Commerce collects a wide range of economic and scientific data. Within limits of available funds, it makes available to the general public the most essential and widely useful data through news media, or printed reports and charts. A great deal more information than is generally published is available in the Department of Commerce files for special tabulations, studies, and research. It is the policy of the Department to make information which is not confidential or tabulations thereof available to the public upon request and upon payment of the full cost of the special service involved. Where there is a public interest in the results, supplementary data is collected and published at cost, or where authorized, on a sharing of cost.

The Department of Commerce now has authority under a number of different statutes to perform services for other Government agencies and the public on a cost basis. These statutes are conflicting or overlapping and vary as to the extent to which payment may be required for the services and the use of the funds received in payment for such services. S. 1170 would repeal a number of these statutes and substitute for them general uniform authority.

Establishment of uniform authority and practice with respect to the charging for special studies and services will facilitate administration of the Department of Commerce and make it possible to widen its range of services and information available to the public at no additional expense to the taxpayer. Similarly the authority to conduct joint projects on a cost-sharing basis with nonprofit or research organizations, and public bodies, would enable the Department to expand basic knowledge in important fields with less appropriations than would otherwise be required.

Examples of types of services which will be facilitated by S. 1170 follow:

1. U.S. Travel Service

Joint advertising ventures.—The U.S. Travel Service is planning a travel to U.S. promotion at the Osaka Fair scheduled for next year. They are trying to obtain contributions from various segments of the travel industry to invest part of the $200,000 which the promotion will approximately cost. In addition, USTS has engaged in joint promotions with various elements of the travel industry, such as VISIT USA advertising with SAS Airlines in Scandinavian countries.

2. Patent Office

Joint project.—At the present, the Patent Office is exchanging with Sweden and Germany information on patent searches which is limited to identifying patent numbers. A similar arrangement is being negotiated with Japan. But Patent Office cannot supply copies of patent search materials which were developed in the patent examination process because of the cost involved and no provision in the appropriation for this purpose. If costs would be recovered from foreign countries, this material could be supplied.

3. Environmental Science Services Administration

Services to States.—From time to time, States request ESSA to supply aerial photographs of their shore, coast, and terrain features. This may involve 3,000 to 4,000 photographs per request at a substantial cost to ESSA. If reimbursement to the appropriation were authorized, ESSA could supply all State requests for such photographs.

4. National Bureau of Standards

Special services.—Because of lack of authority which the proposed legislation would grant, the National Bureau of Standards has not been able to perform specialized services for which it would be paid by private foreign organizations.

BILL PASSED OVER

The bill (S. 2869) to revise the criminal law procedure of the District of Columbia, and for other purposes was announced as next in order.

Mr. MANSFIELD. Over.

The PRESIDING OFFICER. The bill will be passed over.

SUBCOMMITTEE ON INTERNAL SECURITY

The resolution (S. Res. 272) authorizing additional expenditures by the Committee on the Judiciary, Subcommittee on Internal Security was considered and agreed to, as follows:

S. RES. 272

Resolved, That the Committee on the Judiciary is hereby authorized to expend from the contingent fund of the Senate $2,100, in addition to the amount, and for

the same purposes and during the same period specified in Senate Resolution 33, Ninetieth Congress, agreed to February 17, 1967.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–540), explaining the purposes of the measure.

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

Senate Resolution 272 would authorize the Committee on the Judiciary to expend from the contingent fund of the Senate $2,100 in addition to the amount and for the same purposes and during the same period specified in Senate Resolution 33, 90th Congress, agreed to February 17, 1967. The authorization is required to enable the Subcommittee on Internal Security to pay certain obligations it incurred late in the 90th Congress.

COMMITTEE REPORT ON THE TAX REFORM ACT OF 1969

The resolution (S. Res. 281) authorizing the printing of additional copies of the Senate report on H.R. 13270, the Tax Reform Act of 1969 was considered and agreed to, as follows:

S. RES. 281

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–541), explaining the purposes of the measure.

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

Senate Resolution 281 would authorize the printing for the use of the Committee on Finance of 1,500 additional copies of its report on H.R. 13270, the Tax Reform Act of 1969.

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

1,500 additional copies, at $800 per thousand	$1,200

EXPENDITURES BY THE COMMITTEE ON COMMERCE

The resolution (S. Res. 284) authorizing additional expenditures by the Committee on Commerce was considered and agreed to, as follows:

S. RES. 284

Resolved, That the Committee on Commerce is hereby authorized to expend, from the contingent fund of the Senate, $75,000, in addition to the amount, and for the same purposes and during the same period, specified in Senate Resolution 79, Ninety-first Congress, agreed to February 17, 1969.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–542), explaining the purposes of the measure.

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

Senate Resolution 79, as agreed to by the Senate on February 17, 1969, authorized the expenditure of not to exceed $550,000 by the Committee on Commerce, or any duly authorized subcommittee thereof, from February 1, 1969, through January 31, 1970, to examine, investigate, and make a complete study of any and all matters pertaining to—

(1) Interstate commerce generally, including consumer protection;
(2) Foreign commerce generally;
(3) Transportation generally;
(4) Maritime matters;
(5) Interoceanic canals;
(6) Domestic surface transportation, including pipelines and highway safety;
(7) Communications, including a complete review of national and international telecommunications and the use of communications satellites;
(8) Federal power matters;
(9) Civil aeronautics;
(10) Fisheries and wildlife;
(11) Marine sciences; and
(12) Weather services and modification, including the use of weather satellites.

SEPARATION OF POWERS AND THE INDEPENDENT AGENCIES: CASES AND SELECTED READINGS

The concurrent resolution (S. Con. Res. 44) to authorize printing of manuscripts entitled "Separation of Powers and Independent Agencies: Cases and Selected Readings," as a Senate document was considered and agreed to, as follows:

S. CON. RES. 44

Resolved by the Senate (the House of Representatives concurring), That the manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings", prepared for the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary by the Legislative Reference Service of the Library of Congress, be printed as a Senate document.

SEC. 2. There shall be printed for the use of the Senate Committee on the Judiciary one thousand additional copies of the document authorized by Section 1 of this concurrent resolution.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–543), explaining the purposes of the measure.

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

Senate Concurrent Resolution 44 would provide (1) that the manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings", prepared for the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary by the Legislative Reference Service of the Library of Congress, be printed as a Senate document; and (2) that there be printed for the use of the Senate Committee on the Judiciary 1,000 additional copies of such document.

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

To print as a document (1,500 copies)	$27,605.42
1,000 additional copies	2,270.25
Total estimated cost, Senate Concurrent Resolution 44	29,875.67

HANDBOOK FOR SMALL BUSINESS

The concurrent resolution (S. Con. Res. 46) authorizing the printing of a report entitled "Handbook for Small Business" as a Senate document was considered and agreed to, as follows:

S. CON. RES. 46

Resolved by the Senate (the House of Representatives concurring), That a publication of the Senate Select Committee on Small Business entitled "Handbook for Small Business, 3rd Edition, 1969," explaining programs of Federal departments, agencies, offices, and commissions of benefit to Small business and operating pursuant to various statutes enacted by the Congress, be printed with illustrations as a Senate document; and that there be printed twenty-eight thousand two hundred additional copies of such document, of which twenty-three thousand two hundred copies shall be for the use of the Senate Select Committee on Small Business and five thousand copies shall be for the use of the House Select Committee on Small Business.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–544), explaining the purposes of the measure.

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

Senate Concurrent Resolution 46 would provide (1) that a publication of the Senate Select Committee on Small Business entitled "Handbook for Small Business, 3rd Edition, 1969," explaining programs of Federal departments, agencies, offices, and commissions of benefit to small business and operating pursuant to various statutes enacted by Congress, be printed with illustrations, as a Senate document; and (2) that there be printed 28,200 additional copies of such document of which 23,200 would be for the use of the Senate Select Committee on Small Business, and 5,000 would be for the use of the House Select Committee on Small Business.

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

To print as a document (1,500 copies)	$10,624.55
28,200 additional copies, at $258.27 per thousand	8,044.61
Total estimated cost, S. Con. Res. 46	18,699.16

PROVIDING EQUIPMENT FOR USE IN OFFICES OF MEMBERS, OFFICERS, AND COMMITTEES OF THE HOUSE OF REPRESENTATIVES

The bill (H.R. 13949) to provide certain equipment for use in the offices of Members, officers, and committees of the House of Representatives, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–545), explaining the purposes of the measure.

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

H.R. 13949 would revise the existing office-equipment program for Members, officers, and committees of the House of Representatives by (1) consolidating all equipment under one monetary allowance, (2) improving physical control over the equipment, (3) permitting more flexibility of choice to Members,

and (4) granting the Committee on House Administration authority to adjust the program to conform to changing needs.

A detailed explanation of the background and purposes of H.R. 13949 is contained in the report by the Committee on House Administration thereon (H. Rept. 91–582), the pertinent excerpt from which is as follows:

[Excerpt from House Report 91–582 to accompany H.R. 13949]

"BACKGROUND

"The office equipment program in its present general form began in 1951 and has undergone adjustments designed to meet the ever-increasing needs and workload of a congressional office. The adjustments, however, have not kept pace with a Member's workload, changing times, and improvements in the equipment field.

"In 1951 the equipment allowance was established at $1,500 per Member. This initial allowance was soon recognized as inadequate and in 1953 the allowance was increased to $2,500 per Member. In addition at that time a limitation on type and amount of equipment was established at not more than two each of the following five general types: addressing machines, automatic typewriters, electric typewriters, dictating and transcribing machines, and duplicating machines.

"In 1956 Congress authorized a depreciation schedule which enabled a Member to regain part of the original cost of the equipment. The depreciation was set at 10 percent per annum of the book value. Further, at this time the Clerk of the House was authorized to furnish two electric typewriters without charge against a Member's equipment allowance.

"In 1961, Public Law 87–107 amended the law to provide that Members having constituencies under 500,000 may have up to three electric typewriters without charge against the electrical and mechanical equipment allowance. The allowance for Members having constituencies above 500,000 was increased to $3,000, and the number of electric typewriters to be furnished without charge against the Member's equipment allowance was increased to four.

"In 1965 the general types of equipment was amended to include automatic letter openers and automatic letter sealers.

"Later in 1965 the number of electric typewriters to be furnished without charge was increased by one, thus allowing up to four machines for Members representing constituencies under 500,000 in population, and five machines for those representing districts over 500,000. This law provided that one of these electric typewriters may be an automatic typewriter.

"The last adjustment was in 1967 when the number of electric typewriters to be furnished without charge against a Member's equipment allowance was increased from four to five for districts under 500,000 population, and from five to six for districts over 500,000 population.

"This committee has continuously received complaints relating to the equipment program which emphasize the need for a full revamping of the entire program. The revisions provided in H.R. 13949 are designed to bring about the improvements needed to place our office equipment program on a modern and efficient basis which will operate satisfactorily for all Members in providing the tools needed to take care of congressional requirements and obligations.

"PURPOSE

"The purpose of H.R. 13949 is to revise the office equipment program for Members and committees in order to consolidate all equipment under one monetary allowance, to improve physical control over the equipment, and to permit more flexibility to Members in obtaining the equipment necessary to meet their varying operating needs as follows:

"1. It permits adjustment of the monetary allowance to Members by the Committee on House Administration, without further legislation, as the need of Members or the cost of equipment changes.

"2. It provides for improvement in the accountability of equipment furnished under the program by requiring regular inventories and a procedure for handling lost, stolen, or damaged items.

"3. It facilitates the disposal of equipment in a Member's office which is mechanically unsatisfactory or obsolete due to changes in design.

"4. It affords new Members more flexibility in setting up their offices by allowing them to dispose of unwanted equipment and acquire equipment that will meet their operating needs.

"5. It will allow Members a wider selection of types of equipment which are now limited by law.

"Under the existing program a Member who represents a district under 500,000 in population has an allowance of $2,500 (a figure set in 1953) plus five electric typewriters furnished without charge against the allowance. A Member who represents a district over 500,000 in population has an allowance of $3,000 plus six electric typewriters furnished without charge against the allowance. One of the electric typewriters may be automatic.

"Under the provisions of H.R. 13949 all Members are treated equally on the premise that districts will be of a more uniform size under the redistricting plan now underway. Instead of one portion of the cost of equipment being charged to a Member's equipment allowance and another portion to the Clerk's equipment procurement fund, all equipment costs would be consolidated into a single allowance for the Member, except that one automatic typewriter would continue to be furnished without charge against a Member's equipment allowance. All equipment now charged to a Member, including electric typewriters, would be entered against the allowance. The present 10-percent depreciation schedule would be continued.

"The bill allow the Committee on House Administration flexibility in its administration of the electrical and mechanical office equipment program similar to that which it has in its administration of the House personnel program and other committee functions, and similar to the authority that the House Building Commission has had over furnishings for Members' offices. The committee feels that the authority to adjust the office equipment program to conform to the changing needs of the Members, without the necessity of specific legislation for each relatively minor change will result in a fully effective and satisfactory program for Members with sufficient safeguards to maintain economy and full utilization of modern office equipment.

"H.R. 13949 provides that regulations of the Committee on House Administration shall limit the total value of office equipment which may be in use at one time in the office of a Member. In the regulations drafted under this bill the Committee on House Administration has approved a maximum of $5,500 in depreciated value for office equipment in each Member's office. This allowance was determined on the basis of the present allowance ($2,500 or $3,000) plus the current cost of the five or six electric typewriters authorized under the separate section of the present law. These typewriters range in cost from $432 to $635 each. It does not represent an increase in the present overall equipment allowance but consolidates the allowance in one monetary figure. Thus, a Member may use the entire allowance for equipment best suited to his needs."

FEDERAL CONTESTED ELECTION ACT

The bill (H.R. 14195) to revise the law governing contests of elections of Members of the House of Representatives, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–546), explaining the purposes of the measure.

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

H.R. 14195 would completely revise that existing law and provide a more efficient and expeditious means by which the House of Representatives could resolve any election contests before it. The established procedure for Senate election contests would not be altered or changed in any respect by H.R. 14195.

A detailed explanation of the background and purposes of H.R. 14195 is contained in the report by the Committee on House Administration thereon (H. Rept. 91–569), the pertinent portion of which is as follows:

BACKGROUND

The House of Representatives is vested with authority to judge challenges to elections of its Members by Article I, section 5, of the United States Constitution, which provides that "each House shall be the judge of the elections, returns, and qualifications of its own Members." Under prevailing statutes, rules, and precedents, the House may adjudicate the question of the right to a seat in any of the following cases:

(1) A contest instituted in accordance with the contested election law which is sought to be repealed and superseded by H.R. 14195.

(2) A protest or memorial filed in the House by an elector of the district involved.

(3) A protest or memorial filed by any other person.

(4) A motion made by a Member of the House.

This bill does not alter above methods 2, 3, or 4.

With respect to the substantive grounds of election contests, the House has held that it is not confined to the conclusions of election returns made by official canvassers notwithstanding such returns are in strict conformity to State law, but may examine the votes and correct the returns. I Hinds' 637, 774. Although most laws governing the elections of Representatives in Congress are State laws, the courts of a State have no direct power to judge the elections, returns and qualifications of Members. II Hinds' 959. However, where the highest court of a State has interpreted the State law, the House has concluded that it should generally be governed by this interpretation (I Hinds' 645, 731; II Hinds' 1041, 1048), but does not consider itself bound by such interpretation. VI Hinds' 58. The Committee on Elections, established by the First Congress in 1789, was made a standing committee in 1794. Recognizing the need for prescribed procedures for the House's adjudication of election contests, the Fifth Congress in 1798 passed an act to prescribe the mode of taking evidence in cases of contested elections for Members of the House of Representatives of the United States and to compel the attendance of witnesses,[1] which, by its own terms, expired at the end of the Sixth Congress, first session. It was not until 1851 that the House next enacted a law governing procedures for election contests. Substantially the same as the 1798 act, the act of 1851, as amended, is the existing law.[2] An attempt to

[1] Act of Jan. 23, 1798, Fifth Congress, 2d sess., vol. 1, Stat. at L. p. 537; debate is reported in the Annals of Congress, vol. 9, pp. 3704–3707.

[2] R.S. 105–129 (2 U.S.C. 201–225); act of Mar. 2, 1875; c. 119, sec. 2, 18 Stat. 338 (2

make major improvements in contested election procedures failed in the 67th Congress when the bill passed the House in 1921, but died in the Senate.[3]

Under rule XI, 9(k), of the Rules of the House of Representatives (made effective January 2, 1947, as a part of the Legislative Reorganization Act of 1946, 60 Stat. 812), the Committee on House Administration has jurisdiction over contested election cases. This committee includes as one of its subcomittees the former Committee on Elections. Hearings in contested election cases are held by the Subcommittee on Elections which reports its determinations to the full committee, which, in turn, reports to the House where final action on the case is taken.

The subcommittee held hearings in July 1968 on a predecessor bill (H.R. 18104), virtually identical with this bill. Testimony was taken from the Clerk of the House, his legal advisor and two Members who had been involved in contested election cases. As a result of the hearings, certain perfecting amendments were made and a new bill (H.R. 18797) incorporating such changes was introduced and later reported favorably by the full committee without amendment. However, the bill did not reach the floor for action during the 90th Congress. The pending bill (H.R. 14195) contains two substantive changes in the bill reported in the 90th Congress, to wit (1) to permit contestee to move for a more definite statement of the grounds of the contest if the notice of contest is so vague or ambiguous that contestee cannot frame his answer (sec. 4(c)) and (2) to exclude Saturdays, as well as Sundays and legal holidays from the time periods specified in the bill (sec. 15(a)). The purpose of these changes is to bring the procedure into closer conformity with the Federal Rules of Civil Procedure upon which the contested election procedures prescribed in H.R. 14195 are based.

PURPOSE

Election contests affect both the integrity of the elected process and of the legislative process. Election challenges may interfere with the discharge of public duties by elected representatives and disrupt the normal operation of the Congress. It is essential, therefore, that such contests be determined by the House under modern procedures which provide efficient, expeditious processing of the cases and a full opportunity for both parties to be heard. Historical experience with the existing law has demonstrated its inadequacies, among which are the following:

(1) The question of who has standing to initiate a contest has been made unclear by the House's conflicting interpretation of the law over the past century.

(2) There being no requirement for filing contest papers with the Clerk until testimony has been taken, the House is usually not officially cognizant of the case until several months after its inception.

(3) Given the speed of modern communication and transportation, the 90 days allowed for taking testimony by deposition is too long.

(4) There is no clear authority for contestant to take testimony if contestee fails to answer the notice of contest.

(5) There is no procedure for challenging the legal sufficiency of the notice of contest by a motion in the nature of a demurrer.

(6) Existing law does not provide contestee with any means of compelling contestant to furnish a more definite statement of the grounds of the contest in the event the notice of contest is vague or ambiguous.

(7) The Clerk is required to decide which portions of testimony are to be printed if the parties fail to agree.

(8) Witnesses who testify on deposition must sign the transcript of deposition. There is no provision for waiver of signature.

(9) The 75-cent-per-day witness fee is insufficient by contemporary standards.

(10) The penalty for failure of a witness to appear and testify at a deposition is outdated ($20 forfeiture plus suit costs to be recovered by party, at whose instance witness was called, in an action for debt in Federal court; also liable to indictment for misdemeanor and punishment by fine and imprisonment of unspecified amount and duration.)

H.R. 14195 would completely overhaul and modernize election contest procedures in the House. No substantive grounds for upsetting an election are set forth in the bill which is strictly limited to setting up a procedural framework for the prosecution, defense and disposition of an election challenge patterned upon the Federal Rules of Civil Procedure used for more than 20 years in the Federal courts. Conflict of precedents over the required standing of a contestant to bring a contest would be resolved by the bill's provision that only a candidate claiming a right to the seat may use the statutory procedures to challenge an election. A candidate is defined as one whose name was on the official ballot or who was a bona fide "write-in" candidate. Beginning with the notice of contest, all pleadings must be filed with the Clerk, thus making the House cognizant of the contest from its inception. Other provisions are designed to permit a more expeditious, orderly and efficient means of adjudicating the controversy. The interests of both parties and the public are better served than under existing law.

TOPICAL DIGEST

Only official general and special elections to the House of Representatives are covered. Primary elections cannot be challenged under this act (sec. 2(a)).

Contestant must be a candidate whose name was on the official ballot for election to the House or who was a bona fide "write-in" candidate and who claims a right to the seat (sec. 2(b), 3(a)).

"Write-in vote" is defined broadly enough to embrace all methods by which State laws permit the casting of votes for candidates whose names are not printed on the ballot (sec. 2(i)).

The contest is initiated by notice of contest filed with the Clerk and served upon the returned Member within 30 days after the official declaration of the election results. The notice must be under oath and state with particularity the grounds of the contest (sec. 3 (a), (b)).

Mode of service of notice of contest and subsequent papers generally follow those in Federal Rules of Civil Procedures (secs. 3(c), 5(a), (c)).

Answer shall be served upon contestant within 30 days after service of notice of contest and shall be filed with the Clerk (secs. 4(a), 5(b)).

Challenge to the legal sufficiency of the notice or service thereof may be made by contestee prior to answer by a motion in the nature of a demurrer (sec. 4 (b), (c)).

Contestee may move for a more detailed statement of the grounds of contest if the notice of contest is so vague or ambiguous that contestee cannot be reasonably required to frame his answer; if the committee orders contestant to furnish a more definite statement and he fails to do so, the case may be dismissed.

Contestant cannot take seat from returned Member by default. Recognizing the public interest in the contest, it is provided that the burden of proof remains with contestant despite failure of contestee to defend (sec. 6).

Modern procedures for taking testimony of witnesses by deposition are prescribed; the total time available to both parties to take testimony is 70 days, reduced from 90 days under existing law (secs. 7, 8, 12). Attendance of witnesses and production of documents may be compelled by subpenas issued by judges or clerks of Federal, State and local courts of record (sec. 9).

Witness fees and travel allowances are same as those paid to witnesses before House committees (sec. 10(b)).

Penalty for witness who willfully fails to appear or testify under subpena is identical to penalty for contumacious witnesses before Congress. (Fine of $100 to $1,000 or imprisonment for 1 to 12 months, or both; sec. 11).

Each party prints his brief and appendix at his own expense, subject to reimbursement of reasonable expenses from contingent fund of House upon allowance by Committee on House Administration (secs. 13, 17). Clerk is relieved of responsibility under existing law of determining portions of testimony to be printed in event parties cannot agree. Each party prints portions he deems necessary.

Formulas for computing time are specified; the committee has power to enlarge time or excuse failure to act when such failure is due to excusable neglect (sec. 15).

Death of contestant terminates contest (sec. 16).

Reasonable expenses of parties incurred in election contest case may be reimbursed from contingent fund of House upon approval of committee (sec. 17).

Existing law is completely repealed (sec. 18).

ROSETTA JONES

The resolution (S. Res. 286) to pay a gratuity to Rosetta Jones was considered and agreed to, as follows:

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.

BLANNIE E. McATEE

The resolution (S. Res. 287) to pay a gratuity to Blannie E. McAtee was considered and agreed to, as follows:

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.

VALERIA E. RAINES

The resolution (S. Res. 288) to pay a gratuity to Valeria E. Raines was considered and agreed to, as follows:

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

U.S.C. 203); act of Mar. 3, 1879, c. 182, sec. 1, 20 Stat. 400 (2 U.S.C. 226).

[3] H.R. 7761, 67th Congress, first sess., passed by House Oct. 17, 1921; see 61 Congressional Record 5997–5998, 6387–6403 for House debate; reported by Senate Committee on Elections and Privileges but no floor action taken. 61 Congressional Record 6439.

Valeria E. Raines, widow of William F. Raines, Senior, 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.

Mr. MANSFIELD. Mr. President, that concludes the call of the calendar at this time.

YEA, GRIZZLIES! A PERFECT SEASON

Mr. MANSFIELD. Mr. President, I am happy to inform the Senate that the University of Montana on Saturday last won its 10th game in a row and has finished the season with a 10–0 record. This is the first time in the history of the university that it has been able to achieve a perfect, undefeated, and untied season. The only other times they came close was in 1914 when the Grizzlies, as the university football team is called, won six and tied one and in 1909 when they had an identical mark.

Montana has also won its first Big Sky Conference championship and the first league title of any kind in the history of the school. The record of the Grizzlies is as follows:

Montana:		
24	North Dakota University	10
31	University of South Dakota	20
52	Northern Arizona	6
20	Weber	17
34	University of Idaho	9
46	Idaho State	36
49	Portland University	14
7	Montana State	6
14	California Polytechnic	0
58	South Dakota State	0

Mr. President, despite the joyfulness of the 10th victory and the enthusiasm of the team, there was a time for silence and thanks. Linebacker Marty Frustaci led the entire squad and others in the locker room in a postgame prayer in thanks for "outside help" received throughout the season.

Montana ranks second in the national ranking among the smaller colleges, being nosed out by North Dakota State by 21 points in the Associated Press polls and 29 points in the UPI polls.

I have just been informed that the University of Montana has been selected to participate in the Camellia Bowl at Sacramento, and will play North Dakota State on that occasion.

To Jack Swarthout, head coach, and his capable assistants and on behalf of the entire Montana congressional delegation, I extend my congratulations and to the Grizzlies, I commend them for a fine season and a job well done. Go get 'em, Grizzlies.

Mr. President, I ask unanimous consent to have printed in the RECORD various news articles pertaining to the Grizzlies.

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

[From the Great Falls (Mont.) Tribune, Nov. 16, 1969]

YEA, GRIZZLIES! A PERFECT SEASON

(By Mayo Ashley)

MISSOULA.—The University of Montana presented some strong arguments here Saturday to back their contention that they're the nation's No. 1 small college team.

The Grizzlies completely humiliated a good South Dakota State club 58–0 for one of the biggest victories in Montana history. The win gives the Silvertips the first unbeaten record in the history of the school. The 1969 record of 10–0 also could give the Grizzlies the top spot in the national small college poll and is likely to produce a trip to the Camellia Bowl.

The South Dakota State Jackrabbits came into the game as a slight underdog. They lost by a slim 20–13 score last weekend to the nation's No. 1 team, North Dakota State, and were figured to be a strong test for coach Jack Swarthout's Grizzlies.

Such was not the case.

Montana started a bit slowly but assumed command of the game early in the first period and from there on South Dakota State fell steadily behind.

After receiving the opening kickoff Montana needed three plays to get a first down. Then Les Kent was held for no gain before the floodgates opened. With a second and 10 on the Montana 34, quarterback Ray Brum rolled out to his right and galloped 24 yards before being hit, as the SDS defender made contact he flipped a short lateral to Arnie Blancas. The fleet junior broke two tackles and rolled the remaining 42 yards to the double stripe. With 12:34 still left in the period Dan Worrell kicked the extra point and Montana had all the points it needed.

The two teams traded the ball back and forth on an interception by the Grizzlies and a fumble recovery by SDS and then, late in the second period, came the turning point of the game. On a third and 7, the Jackrabbits' Tim Elliot broke loose up the middle and went 92 yards for an apparent touchdown, but a clipping penalty (ironically enough an unnecessary one) and then an unsportsmanlike-conduct infraction gave the SDS team the ball on their own 43.

Montana held, forced the visitors to punt and then, on the second play from scrimmage, Brum hit Doug Bain with a pass play that covered 78 yards to the pay window. Worrell's kick made it 14–0 and South Dakota State was a beaten team.

The rest of the day they made a valiant attempt to stay with the fired-up Grizzlies, but penalties, some bad breaks and some great defensive plays by Montana kept them from ever threatening. The Grizzlies, who have had several days full of bad breaks this year, got most of the other kind Saturday. This, plus an outstanding performance on offense and defense, was all they needed for the stunning victory.

Montana got a 17–0 lead with 12:09 left in the second period on a 39-yard field goal by Worrell; added 7 on an 11-yard run by Casey Reilly and an extra point by Worrell at 10:12; picked up 7 more on a 12-yard burst up the middle by Jeff Hoffman and another kick by Worrell and then topped off the first half with a 50-yard field goal at 2:30 by Worrell. Worrell also attempted a 55-yard field goal on Montana's final series of the half, but this was short.

With a 34–0 halftime lead and the momentum going their way the only question in the minds of the large partisan crowd was the final margin of victory.

In that first half of play, the Grizzlies had the ball 10 different times and scored on six of them. This points up their domination of the contest. Things evened out a bit in the second half, but not much. In the first 30 minutes of play the Grizzlies counted 313 yards total offense to 141 for the visitors.

In the third period, after Montana had punted once and SDS twice, the Grizzlies got on the board again with a beautiful 8-yard run to the corner of the end zone by Reilly with the automatic toe of Worrell adding the extra point. The very next time they had the ball the Grizzlies punched over yet another touchdown on a 7-yard burst by Hoffman after sophomore quarterback Steve Caputo had carried 32 yards. Worrell's kick made it 48–0 with 5:40 left in the third period. Worrell kicked his third field goal of the day on the next Montana series from the 47 and the Tips had a 51–0 lead entering the final period.

Here Swarthout opened the gates of mercy.

The Missoula club emptied the bench in the final quarter as everyone got a chance at some action and this led to the most even 15 minutes of the game. The only Montana score in the fourth period came with 6:18 remaining when Les Kent slammed over left tackle and 5 yards to the double stripe. Worrell's kick provided the final margin.

Offensively, Hoffman led the Grizzly club with 105 yards in 12 carries, while Kent added 72 on 10 and Ochoa, normally a punter, picked up 65 on 9. Blancas too turned in a brilliant performance, one of his best of the year before being injured late in the second period. Brum was his usual self, leading the Grizzly attack with poise and polish. In the offensive line, Tuufuli Uperesa was particularly noteworthy, although the entire club was blowing Jackrabbit defenders out of the hole all day. Bain, in addition to his touchdown pass, turned in some nice blocking.

For the visitors, the top rusher was Elliott with 78 yards on 7 carries. The Jackrabbits, normally a running team, went to the air against the Grizzlies and had the ball in the zone 40 times during the afternoon. They completed 15. On the defensive unit, which got plenty of work, Jim Langer, Jim Heinitz, Rick Heard and Chuck Kavanagh did most of the work. Lack of help for these four plus a tough Montana offense and defense brought the Silvertips their first perfect season. A fitting return from last year's 2–7 record.

GRIZZLIES: 58 TO 0 GETS NO. 10

(By Bill Schwanke)

The Montana Grizzlies pulled their offense out of a two-week case of the blahs Saturday, score less than three minutes into the first quarter, and roared to their 10th win of the season without a loss by blasting South Dakota State 58–0 before 8,500 wild fans at Dornblaser Stadium.

The Grizzlies made mincemeat out of a highly touted South Dakota State defense, rampaging for 611 total yards with substitutes playing more than half the game.

Montana made a strong pitch for a number-one ranking and a Camellia Bowl bid with its impressive showing against the Jackrabbits, who one week ago nearly upset top-ranked North Dakota State before bowing 20–13.

It was the first time in history a Montana team gained a perfect undefeated, untied season record. The last time Montana was undefeated was in 1914 under Coach A. G. Heilman, when the Grizzlies won 6 and tied once.

The Grizzlies of 1909 under Coach Roy White had an identical 6–0–1 mark.

It was three weeks ago that Montana nipped aroused Montana State 7–6 for its first Big Sky Conference championship and the first league title of any kind for the Montana school.

Montana was coming back from a disastrous 2–7 season in 1968, and went through a tough schedule, beating North Dakota, South Dakota, Northern Arizona, Weber State, Idaho, Idaho State. Portland State, Montana State, Cal Poly-San Luis Obispo and finally the Jackrabbits for the tremendous record.

The Grizzlies received the opening kickoff, and four plays and one first down later, quarterback Ray Brum found a big hole on the Texas-Y, triple option to the right and broke from the Montana 34 to the Jackrabbit 42.

While being dragged down, Brum lateralled the ball to trailing halfback Arnie Blancas, who broke two tackles and dashed the re-

maining 42 yards for the first score with 12:34 left in the first quarter.

Dan Worrell, junior kicker from Great Falls who had the best day of his two-year career, booted the first of seven extra points for him Saturday and Montana led 7–0.

Worrell set a school record by hitting three field goals; set a mark for the longest field goal in UM history with a 50-yarder (he also had one for 47 which broke the old record of 41 he set in 1968); and he tallied 16 total points, giving him the school mark for single season and career scoring. He has one more year left.

His three field goals gave him a record nine for the season.

The Jackrabbits got their first bad break when fullback Tim Elliot broke loose and went 92 yards for a touchdown only to have the play called back for SDSU clipping. An unsportsmanlike conduct penalty on the same play put the ball clear back to the Jackrabbit 43.

Dave Kragthorpe's offense never really threatened again.

The Grizzlies went to the air for their second score. After a SDSU punt, Casey Reilly picked up two to the UM 25. On the next play, Brum hit Doug Bain in full stride with a 75-yard bomb.

It was Bain's fifth TD reception of the year, tying a school mark set in 1967 by Ron Baines.

Leading 14–0 early in the second quarter, the Grizzlies struck with Worrell hitting a 26-yard field goal with 12:13 left in the half, and Montana led 17–0.

On the second play after the field goal, Jackrabbit Elliot fumbled, and safety John Waxham recovered for Montana at the SDSU 20. There plays later, Reilly swept left end for 11 yards and the first of two touchdowns for the Anaconda sophomore. That was with 10:12 left in the first half.

On its first play after the next kickoff, South Dakota State watched Grizzly defensive halfback Pat Schruth pick off a John Moller to Frank Nelson pass at the Jackrabbit 45.

Montana couldn't move, and the teams traded punts.

Montana started another scoring drive at its own 34. Six plays, all on the ground, was all it took for the Grizzlies to move to the Jackrabbit 12, with sophomore fullback Jeff Hoffman's 32-yard gallop the big play.

It was Hoffmann, who led all rushers with 105 yards on 12 carries, who bulled up the middle to score from there with 4:16 in the second period.

Montana wasn't finished. Elliot fumbled again for South Dakota State on its first play following the Grizzly kickoff, and linebacker Tim Gallagher was on the ball for the Grizzlies at the Jackrabbit 23.

After three unsuccessful tries, Worrell hit his 50-yarder, and Montana led 34–0 at the half.

Following three punts to open the third quarter, Montana mounted another drive, this one from its own 39. A 54-yard pass from Brum to Bain put the ball on the Jackrabbit 8, and Reilly skirted left end for six points with 8:15 left in the third stanza.

Less than two minutes later, Montana got a Jackrabbit punt at the SDSU 41. Reserve quarterback Steve Caputo kept up the middle and broke for 32 yards to the Rabbit 9. Another sophomore, halfback Jim Schillinger, picked up two yards before Hoffmann went in from the 7 with 5:40 left in the third.

Worrell got his 47-yard field goal on Montana's next drive. The Grizzlies were in command 51–0 at the end of the third quarter.

Montana had one more TD in its bag of tricks. Midway through the final quarter, the Grizzles, with Bob Fisher quarterbacking, started from their own 12.

Punter John Ochoa, playing halfback, bolted 31 yards to the Montana 43. Les Kent went for 11 yards. Fisher hit McMahon with an 11-yard pass, and Schillinger picked up a first down at the Jackrabbit 35 with a one-yard plunge.

Then Kent broke the middle for a 35-yard touchdown gallop, breaking four tackles on his way to the end zone. Worrell's final PAT try made it 58–0, and that tied the UM single game scoring mark.

Montana used much of the remaining time with a 11-play, 43-yard non-scoring drive ended by Jim Kempainen's interception of a Fisher to McMahon pass at the Jackrabbit 35.

Montana got its final interception of four when defensive end Jim Nordstrom picked off a Moller pass at the Montana 42 while standing no more than five yards from the passer.

Other individual statistics showed Kent getting 72 yards on 10 carries and Ochoa 65 on 9 tries.

Brum hit 3 of 9 passes for 130 yards while Fisher connected on 4 of 10 for 21 yards. Bain caught 2 passes for 130 yards and McMahon 2 for 7 yards.

The leading Jackrabbit rusher was Elliot with 78 yards on 7 carries.

Moller hit 15 of 36 passes for 134 yards. Top receiver was Nelson with 5 grabs for 61 yards.

FANS PROCLAIM BRUINS NO. 1

(By Dennis Curran)

Hundreds of screaming, horn-honking Montana Grizzly fans followed their football team downtown Saturday in a wild victory parade to proclaim to the world that "We're Number One."

The team, still suited up from the 58–0 victory over South Dakota State, crowded onto a flatbed truck for a police-escorted trip from Dornblaser Field to downtown Missoula and back.

Rain and a cold wind penetrated their jerseys but not their spirits as the players joined the fans in the "We're Number One" and "Bring on North Dakota State" chants.

The fans had started yelling about being number one shortly after the opening kickoff, and they got louder with each successive Grizzly score.

If there were any doubts at the start of the game, there were none at the end as wild-eyed fans crowded onto the field before the game even ended.

They began by crowding over the sidelines, and there was a full-scale rush toward the 11 Grizzlies on the field as Montana executed its final play of the regular season with two seconds left.

The fans hit harder than South Dakota State as they mobbed the players, kissed and hugged them and carried them on their shoulders. "I almost suffocated out there," one Grizzly said.

The victory bell rang incessantly for the 10th time this season, and the crowd oozed toward the north end of the field for what was announced as a victory march.

With two siren-blaring police cars in the lead the two flat-bed trucks—one overflowing with fans, the other overflowing with footballers—started the march with hundreds of fans in pursuit.

But the pace was fast, and all but a hardy few had dropped out by the time the parade reached the Higgins Avenue Bridge. By the time it turned onto East Broadway the parade consisted of the two police cars, the two trucks and more than 50 cars.

The University of Montana Marching Band was supposed to be included in the procession but didn't quite make it. It didn't really matter, however, because the fans generated enough noise on their own.

MAYHEIM REIGNS IN LOCKER ROOM

(By Bill Schwanke)

Mayhem was an understatement Saturday in the Grizzly locker room following the Silvertips' 58–0 shellacking of South Dakota State which gave Montana its first undefeated, untied record in history at 10–0.

Jack Swarthout and his assistants were happy enough not to let the cold showers they got bother them. Grizzly players ran wild through the corridors of the Field House, hunting down possible victims.

Swarthout, soaking wet and wringing out hopefully his drip-dry shirt, was more at a loss for words than usual.

"When it really counted, they really came through," Swarthout shouted. "The whole team came through."

Swarthout was referring to the fact that his whole squad saw action, with liberal substitution starting midway through the second period, when the Grizzlies already held a commanding lead.

Despite all the joy in the locker room, there was time for silence. Linebacker Marty Frustaci led the entire squad and others in the locker room in a post-game prayer in thanks for "outside help" received throughout the season.

Equipment manager Rupert Holland carried out a promise he made earler by giving game balls to his selections as the players who most deserved them.

The players he singled out were safety Karl Stein, who set a new Big Sky Conference mark for season interceptions with his 11th Saturday, place kicker Dan Worrell, who set several field goal and scoring marks with his 16-point effort by seven PAT kicks and three field goals; quarterback Ray Brum, who engineered Montana's potent offense all season and played nearly two quarters Saturday; and defensive end Jim Nordstrom, who knocked down one South Dakota State pass and intercepted another as part of Montana's ever-present pass rush.

Swarthout couldn't give a definite answer on the Grizzlies' chances of receiving a bid to the Camellia Bowl to play North Dakota State.

"I'll say one thing—we should get the bid," he added.

Montana's national ranking was also a thing of interest to Grizzly fans. Just a narrow gap of 21 points separated the Grizzlies from North Dakota State last week on the Associated Press poll, while the Bisons led Montana by a scant 29 on the United Press International list.

"I don't know if we'll get number one or not," Swarthout said. "But we played like a top-ranked team today."

Mr. SCOTT. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I am happy to yield.

Mr. SCOTT. I congratulate the Senator from Montana on the great showing by the University of Montana football team.

Let me add that Penn State has a good team, too, and we are counting on a postseason victory at the end of the year as well.

Mr. MANSFIELD. Well, it might not be too far in the distant future when the University of Montana and Penn State will play for some sort of championship.

Mr. SCOTT. At that time, I will undertake a small off-the-record wager. We will offer some cream cheese if we lose. I suggest that the Senator come up with a Montana product of an equivalent nature.

Mr. MANSFIELD. I would like to hang a hide to the wall, perhaps. [Laughter.]

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, appoints the Senator from New Mexico (Mr. ANDERSON) and the Senator from

Maine (Mrs. SMITH) to the 12th session of the United Nations Committee on Peaceful Uses of Outer Space to be held in New York City.

PRESIDENT NIXON MISSED PROBABLE OPPORTUNITY FOR PEACE

Mr. YOUNG of Ohio. Mr. President, in his address to the Nation on Monday, November 3, President Nixon made public a letter that he had sent on July 15, 1969 to the late President Ho Chi Minh.

In his letter President Nixon stated among other things—

> There is nothing to be gained by waiting. Delay can only increase the dangers and multiply the suffering. The time has come to move forward at the conference table toward an early resolution of this tragic war.

His final sentence reads:

> Let history record that at this critical juncture, both sides turned their face toward peace rather than toward conflict and war.

While the President read his complete letter in his speech, he failed to read the reply that he received from Ho Chi Minh, dated August 25, 1969. This letter was made public the day following the President's address.

In his reply Ho Chi Minh made many statements that apparently were ignored by our President. There were various openings in his letter which should have led to a prompt and reasonable reply from President Nixon. Unfortunately, President Nixon did not see fit to make further approaches direct to the North Vietnamese Chief of State which might have been effective toward bringing about a cease-fire, had our President himself responded to the openings offered him.

President Nixon stated in his speech that—

> The obstacle is the other side's refusal to show the least willingness to join us in seeking a just peace.

Ho's letter, dated 7 days before his death on September 2, 1969, contained nothing to justify the President's staggering denunciation. The tone of his letter was conciliatory. Ho referred to the fact that "with goodwill on both sides we might arrive at common efforts in view of finding a correct solution to the Vietnamese problem." It is a fact that he called for withdrawal of American troops from South Vietnam, but he did not demand, as he had theretofore, that this withdrawal must be immediate or unconditional. He mentioned the 10 points of the National Liberation Front of South Vietnam as a logical and reasonable basis for the settlement of the Vietnam war, but did not insist that they were the only basis for settlement, as demanded by North Vietnamese officials in the past.

Many Americans knowledgeable of past and present efforts to negotiate an end to the war, including Ambassador Averell Harriman who was our chief negotiator in the Paris peace talks during the Johnson administration, believed Ho's letter was a flexible document with important openings that could form the basis for future negotiations. Former French High Commissioner in Vietnam, Jean Sainteny, has spoken out that Ho's letter was conciliatory. He expressed surprise that it was not answered to Ho or to his successors in an equally conciliatory manner.

President Nixon did not state why he did not reply to Ho Chi Minh's letter. It went unanswered. Ho Chi Minh was a dying man at the time he wrote the letter. It would seem that, immediately following the funeral ceremonies, President Nixon missed a second opportunity to seek to achieve peace at the summit.

Instead, the President chose to predicate our withdrawal from Vietnam on the ability of the armed forces of South Vietnam to continue the war to ultimate victory without our aid. It is extremely doubtful whether that time will ever arrive. The President's policy holds forth the prospect of young Americans fighting and dying in Vietnam ad infinitum. He has in effect given a blank check to the corrupt Saigon militarist regime for the lives of our men and our resources.

The President also expressed the fear that with the sudden collapse of our support a massacre would ensue that would affect the million and a half Catholic refugees who fled to South Vietnam when the Communists took power in the north in 1964. This, despite the fact that the Catholic bishops of Vietnam have asked for an end to the war. This, despite the fact that leading Catholic churchmen and laymen in the United States and throughout the world have expressed their opposition to continuation of our involvement in that immoral, unpopular, undeclared war.

Recently, 93 Vietnamese Catholics living in Europe signed a declaration favoring the October 15 moratorium and said in part:

> War has not ceased to devastate our country for nearly 38 years and its cruelty has attained a degree without any precedent in history. . . . In South Vietnam, terror reigns always and everywhere, night and day, and thousands of American bombs are showered on the heads of 14 million innocent people. The presence of half a million American troops is a most frightful force.

Mr. President, the fear of a possible massacre is not an insurmountable obstacle to peace. Through negotiation it is possible to avoid, by an international guarantee of personal safety, the bloodbath so widely feared if the Communists should gain control of South Vietnam. A postwar massacre is hypothetical at best. Through negotiations, that possibility can be avoided. On the other hand, there is nothing hypothetical about past, present, and future casualties. In the last year more than a million Americans and Vietnamese—soldiers and civilians—have been killed, wounded, or maimed for life.

President Nixon is simply confusing the issue with his talk of "vocal minorities" and "silent majorities." The majority, in his view, does not want to face up to the fact that we made a mistake of historic proportions in trying to create a pro-American, anti-Communist buffer state in South Vietnam after the French were forced to give up their lush Indochinese empire. No one likes to lose, but there is a difference between losing and admitting a mistake. The fact is that we are fighting in Vietnam today because of our proud refusal to admit making a mistake. In short, we have been fighting to save face. Misplaced pride, the sort of pride that compounds an error because somehow one would "lose face" by owning up to it, is childish and stupid. Maturity, on the other hand, consists of taking a deep breath, swallowing hard, and admitting that a mistake has been made and taking steps to cut our losses and to correct the harm done.

Let us hope and pray that it will not take the loss of the priceless lives of 50,000 additional Americans for the administration to accept that fact. We should not persist in compounding this fantastic error. The killing must stop.

That Hanoi and leaders of the National Liberation Front were not inflexible on negotiations was also disclosed by Joseph R. Starobin, former foreign editor of the Communist Daily Worker, who is presently on the faculty of York University, Toronto, Canada. As an intermediary from Henry A. Kissinger, adviser to President Nixon, he conferred with Xuan Thuy, North Vietnam's chief negotiator in Paris. He states he informed White House adviser Kissinger and other White House officials "the North Vietnamese were ready to bargain in private for something between their conceptions and American conceptions." Starobin stated publicly that Hanoi's chief negotiator expressed the hope of a settlement and an end to the bloodletting in 4 or 5 months. Here is further evidence that President Nixon has not gone all out to achieve peace in Vietnam but appears to have surrendered to the warhawks and to the generals. This testimony of intermediary Starobin refutes, as being false, the statement emanating from the White House on November 3 that "there was an absolute refusal by the VC and Hanoi to join us in seeking a just peace." It is saddening to disclose these failures of President Nixon and his advisers to grasp these real opportunities for peace.

USE OF PENSION FUNDS BY PERSONS ASSOCIATED WITH ORGANIZED CRIME

Mr. HRUSKA. Mr. President, a series of articles recently appeared in the Oakland Tribune, Oakland, Calif., concerning the use of funds in the Teamster's Central States, Southeast, and Southwest areas pension fund by persons associated with organized crime. These articles were written by Jeff Morgan and Gene Ayres. I ask unanimous consent that they be reprinted in the CONGRESSIONAL RECORD following my remarks today.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the articles detail the use of the $628 million pension fund for the personal gain of a few intimates of Jimmy Hoffa to finance deals involving Mafia and Mafia associates. If true, this is a very serious matter and one which deserves the attention of all of us. Pension funds concentrate a vast amount of economic power in the hands of a few persons. These persons

must be responsible and exercise their power judiciously so as to protect the rights of the pension recipients.

Usually the managers and trustees of the Nation's 160,000 private pension funds recognize this duty and exercise their power accordingly. In a few cases this, unfortunately, is not true. The Tribune exposé has possibly brought to light one of these occasions and should be of great interest to the Criminal Division of the Department of Justice and the Intelligence Division of the Internal Revenue Service.

Our distinguished colleague from Arkansas, Senator McCLELLAN, has announced publicly that the Organized Crime Control Act of 1969 is ready for the Judiciary Committee's Criminal Laws and Procedures Subcommittee markup. This act represents a major effort to eliminate the evidentiary, procedural, and administrative problems now perplexing the Department of Justice's antiorganized crime effort. Many long hours of hard work have already gone into this legislation and many more are to follow.

I urge prompt and early consideration of this act and call upon our colleagues in the House to act swiftly in enacting these proposals.

EXHIBIT 1

[From the Oakland Tribune, Sept. 21, 1969]

BANKROLL FOR THE BIG MOBS

(By Jeff Morgan and Gene Ayres)

The $628 million Teamsters Central States, Southeast and Southwest Areas Pension Fund headquartered in Chicago has become a bankroll for some of America's most sinister underworld figures.

In a six months-long nationwide investigation The Tribune has found instances of cronyism, kickbacks, payoffs and questionable pension fund loans from California to the East Coast.

A careful examination of financial records shows that if the present trend in the management of the fund continued without gigantic employer contributions, which totaled $118.3 million last year, the fund would face insolvency in less than 10 years.

The close links between some characters in organized crime and the Chicago-based pension fund have led to a series of hitherto unrevealed local, state and federal investigations of the fund and the shadowy manipulators behind it.

One object of official scrutiny has been the apparent working relationship between the fund and one of the nation's largest life insurance companies, American National Insurance Co. The $1.3 billion Texas firm reportedly has invested more than $30 million in Nevada casino-resorts, with some loans secured by second and third mortgages.

Another is a pair of California real estate ventures put together with more than $32 million from the fund.

In one of the developments—now in foreclosure—the government is investigating possible fraud of the pension fund and allegations of payoffs to public officials.

In the other, a country club built by some of the same gamblers and former bootleggers who sold Las Vegas' Desert Inn to Howard Hughes in 1967, the government suspects the possible return to the United States of Nevada "skim"—casino profits raked off to avoid payment of taxes—and other "black money" that made its way to Switzerland and the Bahamas in the 1950's and early 1960's.

Under particularly close investigation are reports that pension fund loan "finder's fees" are being used to help pay as much as $250,000 of the legal defense costs for imprisoned union boss James R. Hoffa. Those payments ostensibly were cut off by the International Brotherhood of Teamsters after it was disclosed the union paid $542,000 between 1962 and 1964 to try and keep him out of jail.

A keystone of the broad-based attack is an unpublicized full-scale audit by the Internal Revenue Service to determine whether the huge fund should lose its tax-exempt status.

If such action were taken, it would mean a loss to the fund's 359,685 union member-beneficiaries in 20 states of millions of dollars a year.

The IRS in Chicago also is conducting an intense investigation into the complicated financial affairs of Allen Dorfman, the insurance broker accused but acquitted of complicity in the 1964 jury tampering case that finally resulted in Hoffa's federal imprisonment. The results of the probe are being given to the Criminal Division of the U.S. Justice Department.

Dorfman, a close Hoffa associate not connected with the union and neither a trustee nor officer of the pension fund, has nonetheless become one of its most influential figures since his 1965 designation as the fund's exclusive insurance agent.

"Without Dorfman's approval, you may as well forget about getting a loan," a source close to the fund told The Tribune.

A score of union leaders, Cosa Nostra members and businessmen—including a speculator who came to Oakland and tried unsuccessfully to put together a $5 million deal to buy the then financially troubled Edgewater Inn—have been charged in a half-dozen indictments by the U.S. Grand Jury in New York with conspiring to collect or pay "at least" $360,000 in illegal kickbacks for Teamster pension fund loans totaling more than $7.5 million.

Four other people were convicted earlier this year in New York of splitting about $150,000 for helping get $1.3 million in loans to a near-defunct sweater company the pension fund finally had to take over in foreclosure.

"My observation is that the Teamster fund is a sort of open bank to people well-connected in Las Vegas and well-connected in organized crime," a high-ranking federal official said.

Another man in the same agency added, "The government is alarmed at the potential evil in organized crime having access to a bankroll of more than a half-billion dollars."

The Tribune has learned the fund and its operations will be high on the list of investigative priorities if the Justice Department obtains the appropriations necessary to expand the number of organized crime "strike forces," now all east of the Mississippi, from nine to 20.

Nowhere does the relationship between the fund and the underworld surface more dramatically than in Las Vegas, where the trustees have approved loans with an estimated total between $50 million and $70 million, some secured by second mortgages or subordinated notes.

In that respect it is rare among the largest of the nation's 160,000 private pension plans. While virtually all other big funds invest a majority of their assets in growth stocks and securities and a minimum in mortgages, the Central States trustees this year reported $461,264,348—73.3 per cent of the assets—in real estate loans.

In the same report to the Labor Department the fund listed only 3.9 per cent of its assets in common and preferred stock, 1.5 per cent in bank accounts and less than 3-10 of 1 per cent in government bonds. In fact, since 1965, the fund has been divesting itself of government bonds, from more than $7.5 million four years ago to less than $2 million today.

The Landmark Hotel in Las Vegas, recently purchased in bankruptcy by Hughes for $17.3 million from a "developer" with close mob connections, was built with financing that included at least $8.8 million from the Chicago-based pension fund.

The government has collected evidence indicating the loan was granted only after the leaders of the Kansas City underworld interceded on behalf of the borrower.

Not far from the Landmark is Caesar's Palace, a gaudy pleasure dome managed by former mob figures. It still owes the Central States fund most of a loan of $16.7 million.

The pension fund trustees allowed their mortgage to be subordinated behind a $2 million loan by the Nevada Bank of Commerce, and then gave the bank the right to foreclose by itself after next July 1.

The Central States fund has made loans to the operators of many other Nevada casinos, resorts, golf courses, a couple of hospitals, a Las Vegas newspaper and a taxi company—which has been fighting a local Teamsters Union strike for longer than a year.

A pattern develops when cases are checked across the country. If a loan begins to turn sour, the trustees may pour in more money to keep the borrower afloat until alternative financing can be found, thus relieving themselves of the necessity to show a bad loan on the books.

Sometimes the practice is successful. Often, however, as in Reno's Riverside Hotel and Beverly Ridge Estates in Los Angeles, the fund has had to institute foreclosure proceedings.

In some cases, for example the sweater firm, the fund has ended up owning insolvent companies of "white elephant" real estate—although they remain on the books as assets at their foreclosure value.

In an exclusive interview in Chicago, Frank L. Griffin Jr., recognized as one of the world's leading pension actuaries, told The Tribune that any large fund with a normal stock portfolio should have grown in assets in recent years at a rate of about 6.5 per cent, in addition to employer contributions.

Leaving out the $118.3 million in employer contributions last year, the Teamsters Central States fund, on the other hand, actually would have dropped $36.8 million from the $548.3 million in assets reported the year before.

For the year ending last Jan. 31, the fund reported total receipts of more than $200 million, including the employer contributions. Although it paid out only $65.1 million in retirement benefits, salaries and administrative costs—leaving receipts of $135 million—the assets grew by a relatively meager $79.7 million to the present total of $628 million.

Under Griffin's formula the pension fund, including the employer contributions and 6.5 per cent normal growth, should have increased more than $150 million.

Griffin said responsible pension plans don't invest heavily in real estate loans because they find themselves locked in to lower interest rates for the life of the mortgages.

"And I don't care for anything but first mortgages in pension plans," he added. "It's like Caesar's wife—you have to exercise some caution and prudence."

The virtually autonomous 400,000-member Western Conference, to which California Teamsters belong, has its $400 million pension plan administered by the Prudential Life Insurance Co.

Conference director Einar Mohn, an international vice president of the union and a former Regent of the University of California, was reluctant to discuss the management of the Central States pension fund in Chicago.

But he observed at his headquarters in Burlingame, "I wouldn't invest any of my own funds in second or third deeds of trust."

Up to now the government has been stymied for the most part by a lack of manpower and regulatory legislation in its efforts to stem the growing influence of organized crime in labor unions and big business.

"We know the money changes hands," one

federal attorney said, "but we have a hard time making cases.

"The name of the game is informants, and in labor you just don't have them."

Some officials are pinning their hopes on a bill offered by U.S. Sen. Jacobs Javits, R-N.Y., which would set down the fiduciary responsibility of pension fund trustees, as well as establish other controls. However, the measure contains no criminal penalties, and the government must rely on present laws against embezzlement, mail and wire fraud and kickbacks to trustees and officers.

Federal agents now have uncovered some new sources of information, and they are trying to close in on two or three key men in the country whose testimony could unravel the complex tapestry of the fund.

SIX MONTHS TO GET STORY

For six months two Tribune reporters have been amassing data on the intricate operations of the huge Teamsters Central States, Southwest, Southeast Areas Pension Fund.

While the fund does not contain the money of West Coast teamsters, some of its largest and most unusual investments are in California and Nevada.

To put together this overview of the pension fund, reporters Jeff Morgan and Gene Ayres traveled more than 10,000 miles each, interviewed scores of persons and scanned hundreds of documents.

Their investigation led them to Los Angeles, Las Vegas, Carson City, Reno, Tucson, Sacramento, Seattle, Burlingame, Washington, New York, Chicago, St. Louis and Kansas City.

[From the Oakland Tribune, Sept. 22, 1969]

STATE ASKS PROBE INTO LOAN FIASCO

(By Jeff Morgan and Gene Ayres)

State Atty. Gen. Tom Lynch has asked U.S. Atty. Gen. John Mitchell to authorize a full-scale federal investigation into a huge fiasco involving loans from the Teamsters Central States, Southeast and Southwest Areas Pension Fund.

If Mitchell authorizes the task-force approach, it would bring probers from the Justice Department, the Federal Bureau of Investigation, Internal Revenue Service and the Labor Department into the case of the Beverly Ridge Estates development, a proposed 340-acre golf course-estates layout in the Santa Monica Mountains just north of Beverly Hills.

Already state and local authorities are prying into details of Beverly Ridge, which thus far is backed by about $13.5 million in Central States Teamster Pension Fund financing. But these agencies cannot follow leads reaching far beyond the state's boundaries.

Potentially, Beverly Ridge Estates is one of the largest and most questionable of a whole succession of incredibly generous loans selected by the Central States fund.

Attorney General Lynch already has his investigators busily seeking evidence to back allegations including bribery, malfeasance in office and conflict of interest on the part of some public officials.

The Chicago-based Teamster Fund loans were made to a series of Jimmy Hoffa cronies and members of the fund's palace guard, who are frequent borrowers from the huge reservoir of cash. The Beverly Ridge deal is turning sour with a vengeance.

Earlier this year, the Central States fund began foreclosure proceedings to recoup its investment in Beverly Ridge.

Some of the Teamster fund loans there are made on project land which was acquired by Jules Covey, a Los Angeles lawyer, and James Millard, a New York lawyer, who were trustees for Hyman Green, also of New York, and I. Irving Davidson, a confidant of Hoffa.

Officials describe at least some of Green's activity as that of a "money mover," a man who makes commissions by finding high-interest-paying institutions or investments for other people's money.

Davidson is a Washington "public relations" man, whose clients are mostly unidentified.

The Teamsters Central State Fund loans, made with the various parcels of land in Beverly Ridge as collateral, are secured by a clutch of first, second and even third mortgages.

Investigators found that the Chicago-based fund apparently had loaned money to buy some of the parcels, then loaned more money with those parcels put up as security for the new loans.

On May 7, 1969, a parcel of land in the Beverly Ridge project was signed over to another Central States fund courtier, Allen Dorfman, of Chicago.

Dorfman, an insurance agent doing a huge business with the Chicago-based fund, last week described himself to The Tribune as a "salaried consultant on general administration" for the fund.

Dorfman, indicted for extortion and jury tampering, but found innocent in each case, admits that Jimmy Hoffa made him wealthy.

Los Angeles County public records do not reveal whether there was anything paid when the parcel was transferred to Dorfman's name. However Dorfman said the land was transferred to him by Hyman Green, who, he said, is still connected with the Beverly Ridge project.

Dorfman said Green was transferring title to the parcel to the Central States Pension Fund to satisfy "certain obligations" to the fund. Dorfman said he didn't know what those obligations were.

When the ownership of the parcel was transferred to his name, Dorfman said, he was merely holding it in his name for the fund.

Apparently Dorfman had second thoughts on the transaction. Since the Central States Fund filed foreclosure on its Beverly Ridge loans, Dorfman re-transferred the title to the parcel to the fund itself.

Recorded documents show the parcels totaled 5.7 acres. Dorfman says they consist of only two lots totaling "maybe half an acre" which were never intended to be a part of Beverly Ridge anyway.

Beverly Ridge developers are now trying to stave off foreclosure on the loans by attempting to reorganize under the U.S. Bankruptcy Act. The Central States Pension Fund is fighting that move.

In Chicago last week, Nathan Wolfberg, an attorney for the fund, said his client and Beverly Ridge developers "have a real adversary proceeding going."

"I'm beginning to think the only solution may be to fight it out in court," Wolfberg said. He added that he has seen the property and thinks "the value is there" to secure the loans.

State investigators, before they formally requested federal help on the interstate tentacles of the project, isolated more than $600,000 in loans, contributions and payments to public officials.

Attorney General Lynch's letter to Mitchell said the state also believes it has evidence that interstate fraud has been committed against the Central States Pension Fund in the Beverly Ridge loans.

The U.S. Labor Department's Division of Welfare Pension Reports is interested in the Beverly Ridge loans, failing to see how the confidence of Central States Pension Fund trustees could have been inspired by a Beverly Ridge "team" which included:

—Leonard Bursten, who faces a retrial on his 1957 Miami Federal Court conviction for income tax evasion involving the collection of fees on loans from the Teamster Central States Fund.

On the recent application to reorganize under the Bankruptcy Act, Bursten signed his name as vice president of Beverly Ridge Estates corporation. Bursten was an assistant U.S. attorney in Milwaukee from 1946–48.

—Nathan Stein, also known as Nathan Stone, convicted in 1963 in Los Angeles Federal Court for criminal income tax evasion and obstructing justice in a Teamster Union case.

Stein-Stone is a sort of expediter around the project. Earlier, however, as "national sales manager," he asked—and was refused—permission of his federal parole officer to travel to Las Vegas, Chicago, Detroit, Cleveland, New York City and Miami, for Beverly Ridge.

—Calvin Kovens, Miami Beach construction firm head, currently appealing his 1964 convictions, along with Jimmy Hoffa and five other persons, for wire and mail frauds in connection with Teamster Central States Pension fund-financed projects.

Kovens had not been identified formally in the convoluted records of Beverly. But he is known to have attended a Dec. 5, 1967, meeting in Los Angeles between other Beverly Ridge developers and a Central States Pension Fund trustee, William Matheson of Detroit.

Kovens also succeeded a man named Roy Gene Lewis in the ownership of a one-time gambling operation at Incline Village near Lake Tahoe. The operation was called Sierra-Tahoe and was backed by a Central States Pension Fund loan.

Although state probers have subpoenaed some records in connection with its Beverly Ridge investigation, other pertinent files are expected to be unavailable.

The state has Beverly Ridge project correspondence indicating that Interstate Excavating Company, a subsidiary firm set up by the project's developers to handle grading and earth moving, may have been "sold" to Finco, S.A., a Panama firm.

State officials fear Interstate's records may have been moved to Panama and will be unavailable. They point out that in another unrelated case a firm under investigation by the Internal Revenue Service is arguing that Panamanian law forbids the removal of records from that country.

The conduct of several public officials is under scrutiny.

Among these are Los Angeles County Assessor Philip Watson and Los Angeles City Councilman James B. Potter Jr., who received loans from Interstate.

Also being investigated is the conduct of Roy Gene Lewis, who after disposing of his Nevada casino, moved to Los Angeles, became a car dealer, and was a member of the Los Angeles Building and Safety Commission until his "resignation" was announced in March 1968.

In documents filed April 16, 1967, with the State Corporations Commission, Lewis was named as a director in a corporation set up by Beverly Ridge to do some of the preliminary work on the project.

During the same approximate time, as a member of and often serving as chairman of the Building and Safety Commission, Lewis voted to reduce the Beverly Ridge Estates grading bond from $460,000 to $50,000 and later, when the acceptance of a less costly $50,000 treasury bond was reviewed, voted that it was adequate.

The earth moving done at the site was phenomenal. To hack out a golf course, roads and homesites from Beverly Ridge's hilltops, at least 6 million cubic yards of earth have been moved.

By comparison, Oakland's Hiller Highlands project several years ago absolutely boggled the minds of concerned hill dwellers when it obtained a permit to move 700,000 cubic yards of earth.

Lewis also voted to waive city regulations and accept a cheaper drainage system for the Beverly Ridge project.

It also was during this period when Lewis did something which investigators feel pro-

vides an explicit, irrefutable prima facie case of conflict of interest against himself.

While making those decisions on the project as a city official, Lewis in his own handwriting, identified himself as a Beverly Ridge developer.

He did this in a note to the Home Insurance Company of Los Angeles, holder of a blanket policy on the project, not long after he was involved in an auto crash on Dec. 1, 1966. Both Lewis and Beverly Ridge Estates were named as defendants—and owners of an involved 1966 Cadillac—in a lawsuit filed as a result of the crash.

The suit was dropped when Home Insurance settled the plaintiff's claim after being notified by Beverly Ridge that Lewis was covered by its policy.

In his account of the accident to the insurance company, Lewis identified himself as a Beverly Ridge developer and said he had been coming from a meeting with Leonard Bursten and another project official when the crash occurred.

Upon viewing the note, state agents notified the Los Angeles District Attorney's office of the Lewis relationship with Beverly Ridge. No action was taken at that time however, and Lewis since has left the commission.

Councilman Potter also appeared to have more than a passing interest in Beverly Ridge.

Potter was a salesman of electronics equipment when he was elected to the council six years ago at the age of 31.

Last year he hired a new field deputy, Paul Mackey, who previously had worked for Beverly Ridge.

Potter's sister, Mrs. Mary Madeline Hackney, had been on the payroll of So-Cal Engineers, a corporation connected with the project, and she also was listed as corporate secretary of a firm set up to operate a golf and country club there.

Mrs. Hackney received a $7,000 loan from Interstate, the Beverly Ridge subsidiary, and $2,700 of that money came to rest in Potter's bank account.

The state has subpoenaed Potter's bank records and Potter told The Tribune that because the matter is under investigation he cannot discuss it.

His interest went further, in December, 1967, a homeowner near the project, alleging that Beverly Ridge Estate's grading was improper, filed a lawsuit which threatened to delay the work. Potter sent a volunteer letter to the superior court judge involved, giving his opinion that the homeowner was wrong and public safety would be involved, due to the coming rainy season, if the work were impeded.

The councilman's interest in the project was so high that he maintained an informant in the city's planning department who told him when somebody checked out the Beverly Ridge file.

Early in 1968, with no payments made on the loans to Beverly Ridge Estates, rumors became widespread that chary Teamster Central Fund trustees wanted to "unload" Beverly Ridge Estates land as soon as possible.

About this time also, word was going around that the developers were trying to get the city to build an access road to the project. Otherwise the developers themselves would have to build the vital roadway at an estimated cost of almost $4 million.

One investigator drily noted that the guarantee of a 66-foot-wide, tax-financed roadway to the project would, in the opinion of many, make the sale of the property much easier.

Meanwhile, at City Hall, pressure had been growing on Mayor Sam Yorty to dump Lewis from the commission and it became apparent that Lewis was finally going. The mayor had appointed Lewis in 1962 to fill an unexpired term on the commission. When Yorty tried to appoint him to a full four-year term the following year, the city council rejected the appointment.

But Lewis remained in office when Yorty did not name a successor.

It is reported in Los Angeles that Frank Matula, a $57,000-a-year officer of Teamsters Local 396, and an International Brotherhood of Teamsters trustee, asked several well-known persons to call the mayor's office on behalf of Lewis. More than a decade earlier, Matula was convicted of perjury in connection with a grand jury investigation of Teamster contracts. Matula could not be reached by telephone by The Tribune last week for comment on the calls.

As Yorty's decision on Lewis grew nigh, Councilman Potter, out of town at the time, made several long-distance calls to the mayor's office during the week of March 18.

Officials say Potter at first asked that Lewis be retained, then asked that Lewis be allowed to remain on the commission for 90 days, a period of time, co-incidentally or not, crucial in the acceptance of Beverly Ridge's grading on the site.

Unsuccessful in these requests, Potter, officials say, then asked that Lewis be allowed to serve for 60 days more, then 30 days, and then, for just seven more days.

All of Potter's efforts were in vain. On March 21, Lewis's "resignation" was announced.

Potter said his interest in Beverly Ridge was high because the project was in his district and the proposed improvement of Beverly Drive would serve not only the developer of Beverly Ridge, but his constituents in the San Fernando Valley.

He knows the developers, as he knows those of other projects, through four years of normal bureaucratic attention to the project's details, he said.

Potter revealed that he did make enquiring phone calls to the mayor's office from Palm Springs where he was vacationing, about the Lewis resignation. He said, however, that he only made two such calls, asking that the requested resignation be put off "a couple of days," until he could return to Los Angeles.

Informed by a Yorty aide that the resignation was still wanted, Potter said he picked it up from Lewis's Sunset Boulevard office and delivered it himself to the mayor's office. Potter said further that the proposed relocation of Beverly Drive has been a part of the Los Angeles master plan since 1941 and he sees no reason for the recent furor about it. "Everybody's for it except the City of Beverly Hills and some homeowners up there," he said.

Records show that on May 15, on Potter's motion, the Los Angeles City council voted 13–1 to include the access road to the project in the city's master plan, thus relieving the Beverly Ridge developers of any costs for acquisition and work.

The access road, to cost $3.7 million, would be part of an overall $9.7 million Beverly Drive "realignment" from the City of Beverly Hills to the San Fernando Valley.

At that time, Los Angeles continued to push ahead on the new road planning even after the Beverly Ridge Estates development fell into money troubles and the City of Beverly Hills went to court to prevent widening of the road within its boundaries.

Not until just a few weeks ago did Los Angeles City fathers agree to hold up further action on the road until the Beverly Ridge legal mess has been cleared up.

Mayor Yorty, through an aide, last week said he had received no telephone calls about the Lewis resignation. The aide pointed out however, that a staff worker could have received them without passing them on to the mayor.

Yorty also repeated his recent statement that, acting on Los Angeles police department intelligence, he asked the district attorney's office to investigate Beverly Ridge four years ago.

Yorty said when the district attorney dropped the probe claiming there was insufficient evidence to proceed, he then asked the attorney general's office to investigate the project.

The mayor's statement did not indicate why Yorty was not satisfied with the district attorney's analysis of the case.

Actions of Los Angeles County Assessor Watson also have come under investigation.

Over the past several years, Beverly Ridge developers have sought assessment adjournments on the properties and the matter has been before Watson's office.

Watson borrowed $5,000 on a 90-day, no interest, unsecured loan from Interstate Excavating, the Beverly Ridge subsidiary.

Watson said he borrowed the $5,000 from Roy Gene Lewis, who, although a city commissioner, was an official of Interstate Excavating.

Watson said he needed the money to close the escrow on a $100,000 Hollywood home he had recently purchased. He went to Lewis as a possible lender at the suggestion of his real estate agent, Russ Vincent, the assessor said.

Watson says on June 19, 1968, he repaid half the loan. He has shown investigators a canceled check for $2,500 made out to Roy Gene Lewis.

Officials say however, that Interstate's president, a man named Howard Neidiech, maintains that Interstate did not get the repayment.

Officials say Watson contends he does not want to repay the second half of the loan until he gets a receipt for the first payment.

Investigators also are interested in the April, 1964, sale by the city of a key 17½-acre parcel in the middle of the project. The city had acquired it 17 years before in a tax sale.

Despite some neighborhood opinion that the land should be used as a park, the City Council sold it to Louis C. Blau—described by state agents as a "front." He was the only bidder at a city auction.

The purchase price was $147,000, or about $8,400 an acre, despite testimony before the council that nearby, less attractive, land had recently been sold for $15,000 an acre.

Within a year Blau had transferred the land to the Beverly Ridge Estates corporation. Earlier, he and a man named Al Hart had "fronted" for the transfer of another 100 acres to the developers, holding $300,000 in notes for a time during the early corporate juggling on the project.

Besides their other problems, developers of the envisioned luxury haven have lacerated community feelings. Simply put, they have been characterized by involved persons as "lousy neighbors."

Outraged citizens protested the construction of the Beverly Ridge access roads as an improper use of tax money. Lawsuits alleged that the developers carelessly sliced one man's lot in half by bulldozing, buried another man's access road under 27 feet of earth and ripped out his home's water lines by grading.

The fate of Beverly Ridge and the Teamster Central States Pension Fund loans rests with the courts. One could not blame weary fund trustees for preferring to turn their gaze southward where another project, also financed with huge Central States Fund loans, lies blooming in the San Diego County sun.

[From the Oakland Tribune, Sept. 23, 1969]

PENSION FUND LOANS BUY LUXURY

(By Gene Ayres and Jeff Morgan)

Seemingly remote from the death throes of the Beverly Ridge Estates project, with its huge Teamster Central States Pension Fund loan, the World of La Costa lies in splendor 90 miles southward, on the rolling terrain of San Diego County, two miles from the blue Pacific.

With its whirlpool baths, golf, riding, ten-

nis, homesites, restaurant and meeting facilities, La Costa apparently moves toward its destiny as a haven of serenity for international wheeler-dealers and other friends of the Central States Pension Fund.

The show-biz crowd also loves and frequents it. The villas of famous sports figures line its golf course fairways.

The atmosphere is lush, heady with celebrities. One's companion in the sauna might be an international tycoon or one of the several governors who have stayed at La Costa.

Or it could be a big-name professional golfer, attracted by the course that hosted the Tournament of Champions last April—the first time in 17 years the star-studded spectacle was held outside Las Vegas.

This 3,000-acre, modern-day Xanadu, a scant 30 miles from President Nixon's Summer White House at San Clemente, gets fascinated scrutiny by law enforcement officials.

Investigators cannot conceal their interest in La Costa, which, with more development to come, is financed thus far with $18.8 million in loans from the same Chicago-based Teamster Pension Fund where Beverly Ridge got its money.

La Costa's original developers include Allard Roen, who was convicted in 1962 on stock fraud charges, and Morris Barney "Moe" Dalitz, who, with Roen, was part of the old-time Cleveland gambling crowd. Later they were owners of the Desert Inn hotel and casino in Las Vegas.

Before coming to California, they sold the Desert Inn to Howard Hughes. Other developers in the early stages of La Costa were Mervyn Adelson and Irwin Molasky, associated with Roen and Dalitz in the Las Vegas Sunrise Hospital enterprises which also were backed by loans from the Chicago-based pension fund.

One high-ranking state agent flatly says La Costa attracts organized crime figures from the western half of the United States. He paints a verbal picture of the weary mobster, like any legitimate businessman, stepping off a jetliner at nearby San Diego, briefcase in hand, all set to talk a little business amid La Costa's sun and fun.

The writer of La Costa's promotional literature (which is distributed so widely that several upper level state and federal investigators are on the mailing list) seemingly is awe-stricken with his task.

"It is evident . . . that La Costa's time has come," promises the promoter. He says that the "mighty metropolis" of Los Angeles and the "awakening giant" of San Diego accommodate the "relentless stream" of westward-moving Americans.

Whether or not the mighty paths of progress are converging on La Costa, it is evident that long-time Central States Teamster Fund cronies and gamblers are.

Among La Costa's visitors have been Chicago "politicians" Marshall Korshak and Jake Arvey; St. Louis attorney Morris Shenker, a legal defender of James Hoffa in his fraud cases and recipient of fees for "finding" loans for the Teamster Central States Pension Fund, and Mrs. James Riddle Hoffa, wife of the imprisoned union chieftain.

One man who reportedly spends more time at La Costa than he does anywhere else is Allen Dorfman, the Chicago insurance magnate who wields tremendous influence over the Teamsters Central States Pension Fund.

The San Diego County Recorder's Office shows a quitclaim deed executed and recorded Sept. 18, 1968, by Allen M. Dorfman, on Lot 166, La Costa Valley Unit No. 4. Recorded at the same time was a $58,500 mortgage from Dorfman to Home Federal Savings and Loan in San Diego.

Investigators say they have heard reports Dorfman is planning to move his entire operation from Chicago to La Costa.

Other visitors there have been Wallace Groves and Louis Aaron Chesler, both with many connections in the Bahama Islands.

Groves was convicted in 1941 of mail fraud in the United States. Later his Port Authority Company was granted a fiefdom of 211 square miles on Grand Bahama Island through a government contract. His company there has spawned the posh Lucayan Beach hotel and casino operation at Freeport.

Chesler, a native-born Canadian entrepreneur who once controlled the Seven Arts film company, was heavily involved in Grove's Bahamas development and connected with the introduction of gambling there. They had a falling out and Chesler was bought out by Groves and other interests. Chesler's La Costa visit was within the month.

As early as 1965, American officials were publicly voicing their belief that Bahamas interests were serving as a conduit out of this country for as much as $100,000 monthly in underworld money.

Officials believed this flow of booty included "skim" money (cut out of gambling winnings before government inspection to avoid taxes) from Las Vegas casinos.

The government frankly fears that some of the money they believe exited through the Bahamas will enter California.

In government parlance "skim" and other illicit cash called "black money" becomes "washed money" after it passes through anonymous foreign bank accounts, loses the identity of its depositors and returns to the United States in the form of apparently legitimate loans or investments.

Agents also operate on the rule-of-thumb assumption that where Groves appears, Meyer Lansky, whose gambling locales over the past 30 years include Miami and Batista's Havana, will not be far behind. Lansky is a top ranking fiscal expert for the national network of organized crime.

Informants say Groves is under obligation to cut Lansky in on deals. And it does appear that Groves is involved in La Costa.

Guests—prospective investors—at a recent promotion dinner for La Costa were informed that a change of ownership had occurred within the past year, with the new owner-developer identified as the General Development Corporation, with major offices in the Bahamas, Frankfurt and London.

General Development, the guests were told, had developed several Florida resorts and the Lucayan Beach hotel-casino project on Grand Bahama.

It was a firm called General Investment Company which was controlled by Groves in the late 1930s and early 1940s. He was convicted of defrauding the firm's stockholders through the mails.

On March 27, 1968, La Costa was reorganized as an Illinois corporation with a Chicago man named Richard K. Janger listed as its incorporator and Burton Kanter listed as its agent.

The new LaCosta Land Company listed on its incorporation papers the value of all its property—none of it in Illinois—at an estimated value of $12 million. Teamster Fund loans on La Costa's San Diego County project already exceed $18.8 million.

The new corporation was empowered to issue 15,000 shares of preferred stock at a par value of $1,000 each, and 100 shares of common stock at a par value of $100 each.

Prospective investors are told that development on Phase I the opulent recreational core of La Costa, is ending. That represents a $20 million investment, its promotors say.

Phase II, to include a shopping center and full-scale residential development, is near. Minimum prices for lots will be $9,500 and the developer can make 90 per cent financing available to buyers, guests have been told.

The gently rolling empire is described by a neutral observer—a non-brochure writer as a "very valuable piece of land."

While La Costa is thrown open to the affluent of the world, federal agents doubt that the "straight" types whose kids join the two saddle clubs or plunge in the four pools, or even the portly elders who attend sales conferences there, will be invited to take part in some of the more cloistered activities.

There are recurring reports of private high stake card and dice games and other forms of big-time gambling on the secluded premises, a federal agent said.

The mere presence of operators Allard Roen, Moe Dalitz and their old-time buddy in Las Vagas, "Icepick Willie" Alderman is enough to pique federal interest, he said.

Another interested official pointed out in Washington recently that the reason the Las Vegas boys can operate in Southern California is because organized crime has staked out no formal boundaries there.

"A guy like Moe Dalitz can move around there," he said. "In New England he'd get killed if he tried to move in."

It may not be, as the promotor sings, that the ."resort-residential attractions of La Costa are the most monumental ever beheld by the eyes of man."

But it does seem that the developers of this paradise-on-earth, like many another wise and lucky recipient of a Teamster Fund loan, may as La Costa's promoter puts it, "taste the sweet rewards of their early foresight."

WEST HAS OWN FUND

The Teamster Central States, Southeast and Southwest Areas Pension Fund is based in Chicago and draws its participants from the Midwest and Eastern parts of the United States. Its investments, however, are from coast to coast.

California Teamsters belong to the Western Conference which has its own pension fund. Teamsters from the 11 western states in the continental United States, Alaska and Hawaii and the three western provinces of Canada, participate in the Western Conference Pension Fund.

The Western Conference of Teamsters has headquarters in Burlingame.

[From the Oakland Tribune, Sept. 24, 1969]

MOB CRONIES GET PENSION FUND LOANS

(By Jeff Morgan and Gene Ayres)

Since Teamsters boss James R. Hoffa went to prison in March of 1967, the giant Chicago-based pension fund he ruled as a personal fief has been run in the same self-serving way by his hand-picked successors.

The only difference is that now the Teamsters Central States, Southeast and Southwest Areas Pension Fund, fed by $10 a week in employer contributions for each of its 333,000 non-retired members in 20 states, has grown to $628 million.

It is now among the largest of the country's 160,000 private pension plans, which have combined assets totaling $107 billion. The funds are growing at a total rate of nearly $1 billion a month and rival banks and insurance companies as sources of investment capital.

But unlike the others the Central States Teamsters fund keeps more than 70 per cent of its money tied up in real estate loans—many to mob cronies of Hoffa and other Teamsters leaders.

And also unlike most other plans, many of the investments have gone bad, resulting in substantial losses.

In his final argument in a case leading to the government's first conviction for illegal kickbacks on Teamster loans, Asst. U.S. Atty. Paul Rooney of New York revealed that between 8 and 10 per cent of the fund's loans are defaulted.

The machinations of the fund have prompted the Internal Revenue Service to launch a sweeping investigation, disclosed by the Tribune three days ago, to determine whether the Central States fund should be stripped of its tax-exempt status.

The unprecedented action, if taken, would sharply affect the financial position of the fund. Although it has increased in size every year, from $391.2 million in 1966 to $468.5

million in 1967 to $548.3 million last year to the current $628 million, it has consistently lost money, at least in part because of sour loans.

During the same period employer contributions per member rose sharply along with the number of covered union members, from 273,986 at the end of 1966 to 359,685 last January, 26,684 of whom were retired.

Last year the fund's income of more than $200 million included $59.1 million identified simply as "Amort., etc. r-e loans and mtges."

Of the reported disbursement of $199.8 million, $134.1 million went toward "purchase of assets" including mortgages—and yet the reported total assets of the fund rose only $79.7 million.

Government and private experts have said flatly the only reasons a pension fund should show consistent losses are prolonged market plunges, in the cases of plans with high stock holdings, or drains of benefits from "mature" funds with high percentages of retired members.

The fund, contrary to the prevailing practice among nearly all other large pension plans, has only a negligible stock portfolio. About 7.3 per cent of its members are retired—20 percent is "not uncommon" for a healthy fund.

An investigation of several months by The Tribune has led to the conclusion that if a person wants to borrow money from the fund, it helps if he is or knows an underworld figure close to the Teamsters, and is willing to pay up to 10 per cent in fees or kickbacks to get the loan.

A businessman whose identity must be withheld once sought a $20 million loan to finance an apartment complex on Fire Island in New York. Despite the documented stability of the developer and even though the amount of collateral fit within the fund's stated but often-ignored policy of lending no more than two-thirds of a project's value, the application was held up,

The man said he was told he would have to borrow $22 million and kick back $2 million to those who arranged the loan. A substantial portion of the payoff was to be funneled through a Bahamas insurance firm owned by Allen Dorfman, the fund's insurance agent, who has emerged as one of the powers behind the throne since Hoffa's departure.

The Fire Island developers, unwilling to pay the 10 per cent, borrowed the money elsewhere.

In the case Rooney successfully prosecuted in New York, the fund made a $1.5 million loan to the Cashmere Corp. of Cleveland after the plant and inventory were appraised at only $480,000. The company made only four interest payments, got a loan extension to stay in business and then finally died in bankruptcy.

Convicted of conspiring to collect at least $150,000 in illegal payoffs were:

—Sam Berger, a theatrical agent, head of the Master Trucking trade association and friend of Dorfman and Johnny Dio, New York hoodlum-labor leader:

—Mrs. Yvette Feinstein, widow of the former president of New York Teamsters Local 237 and friend of Hoffa;

—Travis Levy, attorney for Cashmere president Shiah Arshan.

Also indicted were Chicago mortgage broker Robert Graff, who pleaded guilty to receiving $19,000 for helping to arrange the loan, and two men still awaiting trial, James (Jimmy Doyle) Plumeri, identified as a "captain" in a Cosa Nostra "family," and Frank Zulferino, president of Local 10 of the International Brotherhood of Production, Maintenance and Operating Employes, a union which gave Arshan's nearly bankrupt company a $1.2 million loan commitment to use as leverage in seeking loans from banks. Bankers were unimpressed and Arshan had to turn to the Chicago-based pension fund.

Herbert Itkin, a lawyer-turned-government-witness not charged in the indictments, said he received $7,000 for his efforts to assure the loan. The government proved that a $20,000 payoff went to Floyd (Spider) Webb, southern Missouri Teamster leader, now deceased, who was a trustee of the fund at the time the loan was approved.

"These guys took a page from the robber barons," a man privy to the management of the fund told The Tribune. "They never tell their members about a loss, and there have been colossal losses. But they've always been refinanced, or else the properties have been taken over.

"Huge amounts of money go through there in the most perfunctory fashion," he added, referring to what he described as the trustees' lax review of loan applications proposed by Teamsters insiders. Some loans have been approved by telephone conference call.

The casual way in which some loans are handled was demonstrated by a conversation between New York restaurateur Toots Shor and Harold Gibbons, Teamster chief in St. Louis. Gibbons resigned as Hoffa's $35,000-a-year executive assistant when Hoffa made the oft-quoted statement "That makes him (Robert Kennedy) just another lawyer" after the assassination of President John F. Kennedy.

Shor complained he was pressed financially, and that he needed $4.5 million to stay in business. Gibbons suggested he apply for a pension fund loan, which eventually was granted to Shor's Gotham Inc. company.

"That was a damn good price for a pleasant dinner," The Tribune's informant observed.

The fund is one of the joint retirement plans established under provisions of the Taft-Hartley Act, collecting pension contributions from sever-,* * * by a board composed of eight union and eight management trustees, the latter appointed by the employers associations which bargain with the union.

The union delegation, headed by Hoffa until his incarceration, now includes his hand-picked caretaker, International General Vice President Frank Fitzsimmons, who splits his $100,000 annual salary as head of the union with Hoffa's wife. The executive secretary of the fund is Francis Murtha, described by sources close to the fund as "powerless."

"And now," a source said, "Frank (Fitzsimmons) hardly makes a move related to financial matters without consulting Dorfman."

The employer trustees have been reluctant to question the actions of Hoffa's successors. In the past some have owed money or favors to him, his lieutenants or the fund, and all are in Teamster-related industries, vulnerable to union pressure.

Hoffa, now 56, was sent to Lewisburg Federal Prison, Pennsylvania, after he failed in an appeal from his 1964 jury tampering conviction in Chattanooga. His attorneys now are seeking to reopen the case on the grounds the government may have used illegally obtained electronic evidence against him.

Four months after his Tennessee trial ended he was convicted in Chicago of mail and wire fraud in a plot to chisel from his own union. A federal jury decided Hoffa and six others conspired to obtain $25 million in 14 loans from the pension fund in order to return in a series of complex transactions $400,000 taken from Hoffa's Detroit home Local 299. The $400,000 had been used as a security deposit on a Florida retirement development in which he held a 45 per cent interest. Much of the $25 million was spent legitimately, but $1.7 million went to the defendants or the project, Sun Valley Inc.

In spite of his convictions, Hoffa, who will remain international president of the Teamsters at least until next year's union convention, was reelected handily last year as president of Local 299.

Convicted with Hoffa in Chicago was S. George Burris, a New York accountant, who prepared inflated financial statements for many loan applicants. Once he obtained loans finally totaling $5 million for the First Berkeley Corp., a New York firm he put together and which had as its sole true "asset" a $27 bank overdraft.

He also helped engineer through a front man a $1.8 million loan from the fund to Fred Strecher, a St. Louis trucking company owner who was then a fund trustee.

John Murphy of Wisconsin, who is still an employer trustee, applied for and was granted a loan from the fund. But, unlike Strecher, he disclosed the full details of the deal to his fellow board members and disqualified himself from voting.

Burris was among those with connections to Las Vegas gamblers who first encouraged the fund to make loans to Nevada casinos that now total more than $50 million.

The man who took over from Burris was David Wenger, an accountant named in five other New York indictments charging $361,-000 in kickbacks on more than $6 million in loans from the fund.

In the year ending Jan. 31, the fund reported paying Wenger $18,375 for accounting services.

Named in two of the federal indictments is John M. Keilly, a Detroit loan broker who breezed into Oakland in May of 1967 purporting to represent a consortium of Eastern sports figures and investors. He tried to piece together a $5 million deal to acquire the then nearly bankrupt Edgewater Inn from hotelman James Stockman.

The dream collapsed after Keilly revealed he didn't have the cash, only "commitments" for about 85 per cent of it.

A year ago Keilly's investment combine, including manager Mayo Smith of the Detroit Tigers and former professional football stars Doak Walker and Tobin Cornelius Rote, filed a $52 million civil fraud suit charging that the California Financial Corp. of San Jose reneged on a $4.5 million commitment and then took over the Edgewater itself through a foreclosure by its subsidiary, Security Savings and Loan.

In one indictment Keilly, who gave 10 Hegenberger Road in Oakland as an address, is accused of conspiring with Plumeri and 10 others to offer Wenger a share of a $200,000 kickback for his help in obtaining a $1,050,-000 pension fund loan for Mid-City Development, owner of an industrial complex in Warren, Mich.

Earlier Keilly, Wenger, Plumeri and mobsters Hyman (George Lewis) Levin and Salvatore Granello, who also was named in the Mid-City accusation, were indicated in New York for allegedly trying to grease a $1.35 million pension fund loan to the Big Value discount department stores of Florida. The government claims the applicant paid at least $20,000 in kickbacks, $15,000 of which assertedly went to Wenger.

Another figure looming large near the fund is Morris A. Shenker of St. Louis, a Hoffa lawyer and one of Missouri's most powerful Democrats.

Shenker was born in Russia in 1907 and went to St. Louis in 1923. He was admitted to the Missouri bar in 1932, after attending St. Louis and Washington Universities, and has become one of the best known criminal defense attorneys in America.

In 1963, Shenker headed a citizens committe to re-elect U.S. Sen. W. Stuart Symington, D-Mo., and the following year he was named Missouri coordinator of the National Democratic Party campaign.

In 1967 then U.S. Sen. Edward V. Long, D-Mo., was accused of accepting about $48,000 in referral fees from Shanker over a period of

two years. Long said he sent Shenker five clients, but refused to comment on a later disclosure by the St. Louis Post-Dispatch that the fees actually totalled $140,000 dating back to 1961.

The Senate Ethics Committee said it found no evidence to support the allegation that Long had used his position as head of a Senate investigation of wiretapping to try and keep Hoffa, Shenker's client, out of prison. Long was defeated in last year's Democratic primary by former State Atty. Gen. Tom Eagleton, who won the Senate seat.

A confident informant said that at the time Hoffa entered Lewisburg, he owed Shenker nearly $250,000, his private defense expenses having been cut off by the union.

The Tribune learned that Shenker has received finder's fees for referring at least three potential borrowers to the pension fund, including the Chase Park Plaza Hotel in St. Louis, which did get a loan.

The government still traces to Hoffa the coalition between elements in the Teamsters Union and organized crime, which Senate investigators estimate makes $7 billion a year from gambling alone.

"Jimmy Hoffa was very mob oriented in Detroit," a high-ranking federal source said. Referring to the Teamsters local leaders in Detroit added, "You need a very sophisticated scoreboard to tell the difference between the Teamsters and the Mafia there. In some ways they're interchangeable."

Attorneys have predicted Hoffa's appeals in the Chicago case could take another year to 18 months to decide. He becomes eligible for parole on the Chattanooga conviction later this year.

Meanwhile, union lawyers have posted a $250,000 reward for evidence leading to his release, and a similar reward of $100,000 has been offered by William Loeb, publisher of the Manchester, N.H., Union Leader and New Hampshire Sunday News, a newspaper which got a loan from the pension fund.

Dreams of riches on the part of ambitious amateur and professional bounty hunters have made government attorneys reluctant to discuss the union or the pension fund. A Justice Department lawyer said he has even been visited by "student journalists" who say they are writing term papers, but whose questions betray the fact they are seeking some fact to reverse Hoffa's convictions.

HERE'S GOVERNING BODY OF $628 MILLION FUND

The Teamsters Central States, Southeast and Southwest Areas Pension Fund is governed by a 16-member board of trustees divided equally between Teamsters officials and representatives of the employer groups with which they negotiate contracts in 20 states.

The Chicago-based fund, with assets now totaling $628 million, is supported by employer contributions. Under the contract in effect until next March 31, those payments are $10 a week per non-retired, working member. The contributions totaled $118.3 million last year.

The following are the pension fund trustees:

Union

1. Frank E. Fitzsimmons, Teamsters general vice president and official stand-in for imprisoned Teamsters President James R. Hoffa.
2. Herman A. Lueking, Jr.
3. Frank H. Ranny.
4. Donald Peters.
5. William Presser.
6. Joseph W. Morgan.
7. Odell Smith.
8. Roy L. Williams.

Employers

9. Thomas J. Duffy.
10. Champ J. Madigan.
11. Albert D. Matheson.
12. J. A. Sheetz
13. John F. Spickerman.
14. Charles J. Morse.
15. Robert Holmes.
16. John A. Murphy.

The executive secretary for the past several years has been Francis J. Murtha. The headquarters office is at 29 East Madison, Chicago, Ill.

[From the Oakland Tribune, Sept. 25, 1969]

BEING JIMMY HOFFA'S FRIEND CAN BE QUITE PROFITABLE

(By Gene Ayres and Jeff Morgan)

Friendship can be a wonderful and profitable thing if it is with Jimmy Hoffa, the now-imprisoned chieftain of the Teamsters Union.

Allen Dorfman, businessman, banker, real estate dabbler, money finder and insurance agent extraordinaire, can testify—and has in court—that his warm relationship with the volatile and loyal Hoffa made him a wealthy man.

Dorfman, now 43, was named exclusive insurance agent in 1965 for the vast Teamsters Central States, Southeast and Southwest Areas Pension fund that Hoffa ran.

That action by the trustees of the Chicago-based fund gave Dorfman for 10 years the power to place annual premiums which government sources estimate exceeded $100 million.

Some federal estimates place Dorfman's insurance income alone at about $10 million a year.

With Hoffa in Lewisburg, Pa., federal prison since March, 1967, on a jury tampering conviction, Dorfman, according to federal investigators, is the one man who can flatly say yes or no to an application for a loan from the huge pension fund.

Dorfman firms handle insurance and claims for the Chicago-based fund. But Dorfman also says he is a salaried consultant for the fund.

Asked what he "consults" about, Dorfman last week replied, "general administration." The possibilities for a man of Dorfman's inventiveness are staggering.

Congressional committees and federal grand juries have long been interested in Dorfman's meteoric career, but he has never been convicted on criminal charges.

However, the Internal Revenue Service is now engaged in a little known, but full scale, investigation and audit of his affairs.

At the same time the IRS also is auditing fund records to determine whether it should lose its tax-exempt status. The IRS is operating under the belief that there is much profit being made out of the use of the Teamster Central States Pension Fund itself by some individuals.

With the use of subpoenas, the IRS could, for the first time, be able to assemble something more than an educated guess as to the extent of Dorfman's activities.

When his transactions occasionally surface, probers have the frustrating feeling they are looking at only the visible tip of the Dorfman financial iceberg.

What probably is his most profitable activity is very visible indeed. On March 10, 1965, two years before Hoffa entered prison, trustees of the Chicago-based fund adopted a resolution appointing Dorfman's Conference Insurance Consultants, Inc., the "sole and exclusive agent of the fund for the placement and representation of the fund for all of its insurance needs for a period of 10 years. . . ."

The trustees trustingly empowered Dorfman ". . . to place the insurance coverage with such sources as you deem, in your judgment, to be in the best interest of the fund . . ."

Experts say the arrangement gave Dorfman competition-free control of the huge insurance business until 1975 and allows the insurance carriers he selects a profit and expense margin of at least, 7½ per cent, leaving plenty of room to Dorfman's firms for brokerage and service fees.

An acknowledged insurance expert, intimate with the workings of the pension fund, recently observed that Dorfman's agency, with its volume of business, "should have a 10-story building full of clerks," but added that Dorfman had only a few dozen.

Here are a few other Dorfman enterprises, all allied with well-known teamster personalities or the use of Teamster Central States Pension Funds:

Beverly Ridge Estates in Los Angeles, where more than a year ago I. Irving Davidson, another Hoffa friend, and lawyer, transferred a 5.7-acre parcel of land in the development to Dorfman. Records do not show whether money changed hands. The Teamster Central States Fund, with about $13.5 million invested at Beverly Ridge, is now trying to foreclose on the loans. Developers, with the fund fighting them, are trying to reorganize under the U.S. Bankruptcy Act. After foreclosure began, Dorfman transferred title to the 5.7 acres to the fund itself.

A directorship of the Villa National Bank, at Denver.

An association with several persons, including James Hoffa Jr., in the Aetna Resources Association, a real estate firm, in New York.

Obviously in many of his enterprises, Dorfman may be associated with legitimate businessmen who know only about Dorfman that he is a canny operator and represents a source of capital.

The IRS is now poking among Dorfman's labyrinthian insurance dealings, some of which are the subject of continuing interest to a federal grand jury in Arizona.

These deals include the purchase by Dorfman and his mother, Rose, of the Reliable Insurance Company of Ohio, through another man, Bernie Nemerov, by an alleged option-purchase agreement.

Nemerov had purchased Reliable several years earlier, in 1963, with a Teamster fund loan of more than $4 million. The loan was obtained, Nemerov said, by his merely filling out loan applications brought to him by Allen Dorfman.

According to a letter written by the California Insurance Department in 1965, during the time Nemerov held Reliable, millions of dollars in premiums flowed to Nemrov's other company, California Life Insurance Co., from Dorfman-affiliated agencies.

Records show that during 1963 and 1964, more than $25 million in premiums of Teamster fund insurance flowed to Reliable, after first being filtered through two other firms.

Republic National of Texas wrote the group accident, health and life insurance business, then reinsured about half of that to Nemerov's California Life.

California Life kept its portion of the life insurance business and re-ceded the accident and health portion to Reliable of Ohio, a firm financed by a loan from the pension fund itself.

Allen and Rose Dorfman did not formally—and openly—assume ownership of Reliable until mid-1966, but in March of that year, the Insurance Department of Ohio called for insurance examiners from six zones in the United States to go over Reliable's books.

The examiners reported that in the last annual report, major liabilities were "understated," and assets were "overstated."

Reliable's records were so "confused" and there were such great time lags in bookkeeping, that "any accurate presentation of the actual financial condition of the company at the present time is a physical impossibility," the examiners wrote.

A conservator was appointed for Reliable and a certified accounting firm, trying to put Reliable's books in order, lopped $3.5 million from the company's statement. At the end of that year, 1966, Reliable showed a policyholders' surplus of only $23,449, compared

with a similar figure of $437,934 the year before.

After the examiners' report, the California Insurance Department forced California Life to stop dealings with Reliable. Thus, the two-firm buffer, which had the effect of obscuring the fact that premium money was flowing from the Chicago-based Teamster Pension Fund to a company (Reliable) purchased by a loan from the fund itself, was destroyed.

After the trustee resolution of March, 1965, Allen Dorfman, his mother Rose, and his brother, Jay, came into the open on June 30, 1966, as the full owners of Reliable.

On that date they signed a contract stating they owned 100 per cent of Reliable and listing as its debts $150,000 to Health Plan Consultants, Inc., another Dorfman firm; $1.2 million to American National Bank, and more than $4.9 million to the Teamsters Central States Pension Fund.

In the contract, the Dorfmans were to sell 75 per cent of Reliable to a group of four companies and, as agent for the Pension Fund, turn millions of dollars in business their way.

Within a year, the Insurance Department of Michigan found one of the contracting firms on the verge of insolvency and ordered more money invested to bolster it. When this was not done, the department forced that firm's merger with a non-involved, healthy company.

Other firms in the deal, alleging they were not getting their promised volume of Teamster fund business, filed lawsuits and the arrangement broke up into a legal tangle of suits and countersuits.

Investigators are interested in how Dorfman had obtained the huge insurance business of the fund without competition.

A representative of a Michigan firm of actuaries and auditors, trying to puzzle out the Dorfman agreement, wrote that the Teamster group insurance arrangements appeared to him to be "unique."

One government worker observed that all those complex insuring agreements apparently allowed Dorfman's agency to place tens of millions of dollars in fund premiums with an insurance company—Reliable—which had something like only $20,000 in policyholders' surplus.

Some of these aspects of the Dorfman-pension fund relationship do not really "puzzle" investigators in the strict sense. The Dorfman-Hoffa friendship has been on public display for years and Hoffa has never denied being loyal to his friends.

In 1959, the U.S. Senate Rackets Committee probed the Hoffa-Dorfman relationship and issued a blast that Hoffa had paid a "long standing debt to the underworld" with the $3 million in fees and commissions paid the Dorfman family in the preceding nine years.

The committee defined the Dorfman family as Paul (Red) Dorfman, ex-boxer, Hoffa crony and bully boy, and officer of a Chicago Waste Handlers Union along with his insurance activities; Rose Dorfman, Paul's wife; and Allen, Paul's stepson.

Over that nine-year span, the Dorfmans had overcharged the Central and Michigan Teamster Conferences more than $1.6 million for their insurance, the rackets committee charged.

"The evidence is clear," the committee said, "that James R. Hoffa used these two (conference) funds to pay off a long-standing debt to the Chicago underworld and to the corrupt labor leader who introduced him to Midwest mob society—Paul Dorfman."

The committee also said that the Dorfmans had no experience in the insurance field and no office space "until a few months before Hoffa successfully maneuvered the insurance business to them" in the early 1950s. Paul Dorfman had since then, "pyramided his friendship with Hoffa into a financial empire of 11 insurance agencies and about 10 other business entities," the committee charged in 1959.

More recently, Allen Dorfman's acquisitions have exceeded Paul's substantially in volume and complexity, government investigators agree.

"Allen Dorfman has built himself an empire," one federal agent who has worked on the case said. "This guy Dorfman is massive. We could put 25 agents on him. It requires an effort on Dorfman similar to the effort on Hoffa."

In recent years, Allen has grown almost as close to Hoffa as step-father Paul.

Allen Dorfman, Hoffa and four others were codefendants in a 1964 trial in Chattanooga, Tenn., on federal charges of tampering with an earlier Hoffa jury. Hoffa and three others were convicted; Dorfman and another man were acquitted.

During that trial Dorfman testified that after his discharge from the Marine Corps, he became a physical education instructor at the University of Illinois in 1946.

After meeting Hoffa in 1948, he obtained the bulk of the Teamster Fund insurance business, whereupon his income increased five-fold, Dorfman testified. By 1964 he said he controlled eight companies.

In those days he also was a business partner with Hoffa in at least three enterprises, the Whispering Pine Ranch Camp and Jack-O-Lantern Lodge, both in Wisconsin, and the North Western Oil Co.

A few months after he was acquitted on the jury tampering charge, he and his step-father, Paul, were indicted by a San Francisco Federal Grand Jury for alleged attempted extortion in their dealings with San Francisco insurance broker Stewart B. Hopps.

In what must have been a startling experience, the Dorfmans lost money, about $100,000, according to the indictments.

Testimony at the trial revealed that the Dorfmans' insurance group had "laid off" about $100,000 in Teamster Fund insurance funds to Intercontinental, a Hopps-controlled Panamanian insurance firm with offices in Nassau, the Bahamas.

Visiting Nassau, where they thought the insurance money was to remain without their express permission to remove it, the Dorfmans learned the money had been placed in another Hopps insurance outfit, Atlantic Brokerage.

In telephone calls to Hopps, Allen Dorfman offered to "cut a new hole" in his head, made references to a "concrete overcoat," and threatened his grandchildren, Hopps testified.

The Dorfmans claimed they actually lost a total of $275,000 in defunct Hopps ventures. They were acquitted on the extortion charges.

Hopps earlier had been convicted in Baltimore in a mail fraud trial. He later became a government "consultant," aiding insurance fraud investigations, and received a five-year probation term.

Despite Allen Dorfman's vast influence on who does and who does not get loans from the Teamster Pension Fund, he has never been charged with taking "kickbacks."

Washington spokesmen point out that the laws against taking "finders' fees" on loans are aimed at officials or legal "agents" of a fund.

Strictly speaking, up to now, Allen Dorfman has not been considered an official or "agent" of the Teamsters Pension Fund.

But some Dorfman observers are wondering whether his 10-year insurance broker's agreement and his position as consultant does not make him a fund "agent" in the legal sense, as well as merely a good, good friend.

[From the Oakland Tribune, Sept. 26, 1969]

PENSION LOAN AND VEGAS LANDMARK

(By Jeff Morgan and Gene Ayres)

The night they opened Howard Hughes' 31-story Landmark Tower hotel and Casino in Las Vegas, comedian Danny Thomas introduced all the notables in the audience except one.

"What about me?" a voice asked. "I only built the joint."

Nobody had introduced Frank Caroll who, at 9:15 a.m. the day before the July 1 opening, gave up his interest in the 364-foot space needlelike monument he had started building in the desert eight long years earlier.

According to various versions, he received something between "very little" and nearly $2.8 million after $14.5 million of the $17.3 million purchase price went to creditors, including the Teamsters Central States, Southeast and Southwest Areas pension fund in Chicago.

That mortgage had grown from $5.5 million to a reported $8.8 million including unpaid interest on a hotel that had stood empty a block off The Strip for a half-dozen years.

Information gathered during a months-long investigation by The Tribune revealed the original loan from the fund to Caroll's company was made only after underworld elements in Kansas City went to bat for him.

Many loans have been made in Nevada from the pension fund, estimated at more than $50 million. The largest single class of investment in the fund's $461.2 million nationwide mortgage portfolio consists of "amusements" such as bowling alleys and sports arenas, and Las Vegas casinos and resorts.

For instance, on Caesars Palace which has among its management convicted professional sports fixer Jerry Zarowitz and New England Cosa Nostra associate Eliott Paul Price, the pension fund loaned $16,777,000 toward the $20 million total cost of the opulent casino.

In a complicated series of agreements culminating July 15, 1968, the fund trustees subordinated their outstanding mortgage balance of $15.4 million behind a $2 million loan to the casino's 80-odd owners from the Nevada Bank of Commerce. The bank is controlled by the family which includes Nevada State Sen. Darwin Lamb, Clark County Commissioner Floyd Lamb and Clark County Sheriff Ralph Lamb.

The fund promised to buy up the Nevada Bank of Commerce loan by July 1, 1970. If it fails to do so, the bank will have the right to foreclose on its own.

Last month the Nevada State Gaming Commission approved the purchase of Caesars Palace by Lum's Inc., for $60 million.

Among other Nevada loans, the fund at one time or another has advanced millions of dollars to the Dunes, the Sands, the Riviera, the Stardust, the Fremont, the Horeshoe and the Four Queens in Las Vegas, and several enterprises at Lake Tahoe and Reno, including the Riverside Hotel, on which it had to foreclose.

Records at the Clark County Courthouse in Las Vegas show that many of these loans were made directly to men identified as members of the Cosa Nostra or to mob cronies of Hoffa.

But it's the history of the Landmark which provides one of the best examples of the close links between the underworld, some Teamsters leaders and the pension fund.

These are the principal actors in the Landmark drama:

Caroll, the developer, also known as Frank Badami and Frank Caracciolo, a Kansas City "contractor" virtually unknown to other builders there. He is the husband of Maria Assunta DiGiovanni, niece of "Scarface Joe" and "Sugarhouse Pete" DiGiovanni, old-time Midwestern Mafia chiefs. Caroll's only convictions, other than traffic offenses, were two small gambling fines paid in 1943, although in 1968 he was charged with assault and battery after he allegedly dragged an interior decorator through a casino by his hair. The charge was dropped.

Nichola "Nick" Civella, the "executive vice

president" of the Kansas City Cosa Nostra family, who was caught with mob elder statesman Joseph Filardo in a taxi just outside Apalachin, N.Y., during the infamous convention there of the organized crime syndicate in 1957. Civella's influences in political, judicial and labor affairs is pervasive, although he is neither a public office holder nor union member. His criminal record has dozens of entries dating back to 1932. He and his brother, Carl, are among nine living underworld figures banned from Nevada casinos in that state's "Black Book."

Motel Grezebrenacy, better known as Max Jaben, the third Kansas City man named in the Nevada Black Book. A powerful figure in the Civella-controlled North Side political faction, he is an admitted gambler and was a shareholder in Kansas City's former $34 million-a-year illegal gambling empire.

Morris "Snag" Klein, an oddsmaker and Civella's financial advisor, who served a year in federal prison for his part in the sensational Kansas City vote fraud scandals of the late 1940's. He was released from probation several months ago after a prison term on a federal income tax evasion conviction.

Roy Lee Williams, president of the 6,500-member Teamsters Local 41, head of Teamsters Joint, Council 56, an international union organizer, a trustee of the pension fund and a close personal and political friend of Hoffa. In 1962 he was indicted with six others on charges of embezzling union funds. Four of the seven were convicted but Williams, his legal defense paid from the union treasury, was acquitted.

In 1961 Caroll, who then owned an interest in the Golden West Shopping Center in West Las Vegas, began to build a hotel and casino he first called the Flight Deck and later the Landmark. Up to that time he had never constructed anything larger than a small medical building.

In the spring of 1962, he obtained minor financing from two Los Angeles loan firms. By June 29 of that year, according to records of the Nevada Gaming Control Board, less than $2 million had been spent on the project.

On July 1, 1962, in Kansas City Sam Ancona, an official of Joint Council 56 who was hand-picked by Civella, contacted Williams and set up a meeting at Williams' home which included Civella and Gaetano Lococo, an aging mobster whose name is attached to one of Kansas City's better restaurants and whose relatives operate restaurants in other major cities.

According to witnesses Civella asked Williams to seek a $7 million loan for the Landmark from the pension fund. Another meeting on the same subject was held Nov. 3, 1962, at the Prom Motor Hotel in Kansas City, attended by Caroll, Williams, Jaben, Klein and Civella.

In January of 1963 the fund trustees turned down the loan application.

Caroll finally obtained a $3.5 million initial loan from RCA-Whirlpool, on the recommendation of a Whirlpool client, a vending machine company in Kansas City. RCA agreed to grant the loan and another $1.5 million provided the pension fund would guarantee to buy up the total $5 million short-term note.

In September the fund trustees tentatively agreed to loan Caroll the $5 million.

Informants said that Civella was to receive a percentage of the Landmark and Williams a cash payment for their efforts to obtain the loan. Williams later boasted to associates he would get $70,000 plus a 2 per cent finder's fee if the loan went through. However, the deal was nullified during a series of events in November of 1963.

First, insurance man Allen Dorfman of Chicago, one of the controlling forces in the operation of the fund and a close friend of Hoffa, went to Kansas City to tell Williams the terms were not satisfactory.

The next day Caroll flew from Las Vegas and met Klein and Williams at Blue Springs near Kansas City. He told them the RCA loan had fallen through, and that he now needed $7 million to finish the Landmark.

In January of 1964 Caroll went to Chicago where Hoffa and Williams were attending a two-week Teamsters meeting. He telephoned both union leaders repeatedly while he was there to press for the loan. Nothing came of his attempt immediately.

More than two years of intense negotiations followed. At one point Williams told a friend he was tired of the delays, and that he was going to wash his hands of the whole affair.

Finally, in August of 1966, the fund granted a $5.5 million loan to resume construction of the hotel to Plaza Tower Inc.

The officers of the corporation were identified as Caroll, his wife, Kansas City attorney Bernard L. Balkin, Las Vegas contractor L. T. Scherer and Hugh Wallace and George Bathe, owners of the Copper Kettle restaurants in Kansas City.

The next month Caroll complained privately that it cost him $500,000 to get the loan, and that percentages of the operation had to be given to others in Kansas City, Chicago, Milwaukee and Los Angeles. Specific shares were carved up at a meeting in Milwaukee in March of 1967, at which time an organization referred to only as "the San Francisco group" also was represented.

In September of 1966 Hoffa associate Jake Gottlieb, who had purchased the adjacent $1.65 million Landmark Apartments from Plaza Tower Inc. in 1964, sold the property back to the corporation. He wrote a check for $90,000 to Jerry Katz, a known mob courier and Kansas City coin dealer who employed Jaben in his shop when the North Side gambler was released from federal prison in late 1965 after a term for income tax evasion.

Katz, now dead, cashed the check at a Kansas City bank and got 70 $1,000 bills and the rest in $100's. It was learned Civella, Jaben and Klein each received $30,000. Gottlieb deducted the $90,000 from his federal income tax as a finder's fee paid in the Landmark deal.

In June of 1967 Kansas City police received a query from authorities in Las Vegas about Klein, who had asked his federal probation officer for permission to go to Las Vegas to manage the Landmark casino at a guaranteed salary of $20,000 a year. The request was denied.

Nine months later Caroll testified before the Gaming Control Board:

"Chairman Frank Johnson: Do you know a gentleman by the name of Snag Klein?

"Mr. Caroll: Yes.

"Mr. Johnson: Would you tell us a little bit about him?

"Mr. Caroll: I went to school with his wife, and I've known him since I was probably about 20 years old, I imagine. But I have no association with Mr. Klein.

"Mr. Johnson: Did you ever attempt to borrow money or did you ever borrow money from Mr. Klein?

"Mr. Caroll: No.

"Mr. Johnson: At no time?

"Mr. Caroll: At no time."

And then Caroll changed the subject.

On March 20, 1968, the control board voted to deny Carroll a gambling license after a day-long hearing tracing the corporation's attempts to secure adequate financing. A month later he withdrew his application. On May 15 the mortgage holders began foreclosure proceedings.

The sale to Hughes was announced in October. It didn't become final until just before the July opening, first because of objections from Justice Department anti-trust attorneys that it would give Hughes six casinos, and later because of an appeal in bankruptcy court charging Caroll had reneged on deal to pay the Sun Realty Co. of North Las Vegas $500,000 to sell the Landmark.

Tom Bell, legal counsel for Hughes Tool Co. and a public relations executive of Hughes Nevada Operations, said that of the $17.3 million in cash paid for the Landmark, $9 million went to secured creditors, including the pension fund, $5.5 million went to pay unsecured creditors and $2.8 million went to Plaza Tower Inc. "with the possible exception of any other obligations he (Caroll) had that were unknown to us."

Sun Realty President Bob Campbell, who has appealed a federal judge's ruling against his claim, said Caroll made "more than $2 million" on the sale.

Caroll himself, in an interview in Kansas City, told The Tribune he realized "very little" profit from his ill-fated venture, but he refused to be more specific than to observe, "Would 50 cents an hour sound like much, or $1 an hour . . . for eight years work?"

Immediately after the transfer of ownership and the opening of the Landmark, Caroll, who now lives in Las Vegas, went to Kansas City for a "rest and vacation."

The burning question in the mind of government investigators is, if Caroll didn't get his full share from the sale, where did the money go?

Caroll said he had originally sought financial help in Kansas City for the project, but added, "This town you couldn't get 25 cents out of."

He said he couldn't recall being acquainted with anyone in the Kansas City Teamsters Union. Asked how a potential borrower applied for a loan from the pension fund in Chicago he replied vaguely:

"You just have to go to national headquarters and stand in line."

AN UNUSUAL LOAN TO TAXI COMPANY

One of the more unusual mortgages held by the Teamsters Central States, Southeast and Southwest Areas Pension Fund is on the Checker Cab Co. in Las Vegas—which has been fighting a local Teamsters Union strike for longer than a year.

The 60-cab firm, successfully operated with non-union drivers since Jan. 1, still owes the pension fund something less than $100,000, according to its attorney.

Local Teamsters have lately taken advertisements in newspapers castigating Checker Cab and pointing out the half-dozen other taxi companies in Las Vegas have signed three-year contracts.

The original $225,000 loan to buy the company was made in 1962 to Homer L. "Dutch" Woxberg, secretary of a Los Angeles Teamsters local and a close ally of now imprisoned union boss James Hoffa.

Six months before he was to start a federal prison term of his own for embezzling union funds, Woxberg sold Checker along with the 10-year, 6½ per cent pension fund mortgage to the present owner, Eugene Maday, a public relations man and hotel owner from Detroit, Hoffa's home base.

Since then the firm has been a focal point of two bitter strikes by Teamsters Local 881.

Union members in Las Vegas (the local is not a member of the Central States pension fund) were particularly unhappy during a long 1965–66 walkout when the fund trustees in Chicago forgave a $17,500 regular mortgage payment rather than threaten to foreclose on Maday, whose cabs were kept off the streets by union pickets.

The current strike began July 31, 1968, over a $2 increase in drivers' $18 daily minimum guarantee and other contract issues. The company was shut down six months before resuming business with non-union drivers.

Asked how the striking members regard the Teamsters pension fund loan, a ranking union official in Las Vegas replied, "They don't really understand it."

About the original Woxberg loan a witness who has testified often before Federal Grand

Juries on the subject of the pension fund observed, "A bank gives a faithful employe a watch; the Teamsters under Hoffa give them a hotel or a cab company."

[From the Oakland Tribune, Sept. 27, 1969]

INSURANCE FIRM, PENSION FUND COMPETE FOR VEGAS FINANCING

(By Jeff Morgan and Gene Ayres)

An old-time Texas life insurance company appears to be overtaking the Teamsters Central States, Southeast and Southwest Areas Pension Fund as a major source of financing for Las Vegas casinos and hotels run by men close to the underworld.

The American National Insurance Co. of Galveston, one of the 15 largest life companies in the nation with assets over $1.3 billion, has invested at least $30 million in Las Vegas—some of it secured by second mortgages—a unique venture for an otherwise conservative insurance enterprise.

The principal movers behind this relatively new infusion of capital into the gaudy money mills along the Las Vegas Strip were William L. Vogler, until his death Sept. 15 the $108,-725-a-year chairman of American National's executive committee, and Rollins A. Furbush, now the board chairman of the 64-year-old firm.

Furbush, the company's $86,985-a-year president until he succeeded Vogler as board chairman last May, has announced his retirement Oct. 10, when Phil B. Noah will become both president and chairman of the board.

The advisers and associates of Vogler and Furbush in their Las Vegas ventures included Morris A. Shenker of St. Louis, a prominent Missouri political and civic leader and defense attorney for imprisoned Teamster boss James Hoffa, and E. Perry Thomas, the dapper chairman of the Bank of Las Vegas, who has helped arrange many of the Nevada loans, estimated at more than $50 million, granted by the Chicago-based Teamsters fund.

Vogler was and Furbush is a stockholder and director of Continental Connectors Corp., the oddly-named conglomerate that owns the Dunes Hotel and Country Club in Las Vegas. Thomas is chairman of the board.

The intimate business relationship between Vogler and Furbush and another Continental Connectors director, James "Jake" Gottlieb, a Chicago trucker close to Hoffa, has been the subject of federal investigation, The Tribune learned.

Government agents say privately they encounter stiff resistance when they attempt to look into the operations of American National, still largely held by one of the most powerful families in Texas, known corporately as The House of Moody.

A federal source said that when Internal Revenue agents arrived in Texas a couple of years ago to begin a discreet inquiry into the affairs of the firm, they were greeted with the horrified comment: "Why, that's Mr. Moody's company!"

The tax investigators also were surprised, at the time, when Shenker arrived in Houston where the probe was headquartered and entered an appearance as American National's attorney of record. Shenker, one of America's best-known criminal lawyers and never before openly associated with the firm, did so even though no criminal proceedings were underway.

"Mr. Moody" was W. L. Moody Jr. who, upon his death in 1954 at the age of 89, owned American National, 29 of the country's most famous hotels, the W. L. Moody & Co. bank, two Galveston newspapers and a significant portion of the Texas countryside.

Although some of Mr. Moody's descendants still are on the board of directors, Vogler and Furbush took over as chief executive and chief administrative officers of the insurance company respectively after the founder's death.

Sometime after 1957 Vogler and Furbush became 50 per cent partners in the AMCO Insurance Agency Inc. of St. Louis, which had been founded by Missouri financial manipulators Jack Molasky and Max Lubin, and their associate, Thomas R. Green.

AMCO was immediately awarded an agency contract by American National, and the records indicate it was highly successful. Although it was a Missouri corporation and Vogler and Furbush were from Galveston, payments to them from the agency were funneled through a bank in Denver.

In December of 1962 Vogler and Furbush arranged the sale of the agency to American National for $4 million (AMCO's original subscribed capital was only $2,500). The transfer was held up for a year, reportedly because of complaints from some insurance company directors over the high price. The deal finally was renegotiated for $3 million. All the money was paid to Green, Molasky and Lubin, with Vogler and Furbush apparently waiving any proceeds.

However, that loss was more than made up by Vogler and Furbush in a series of lucrative Las Vegas transactions involving the same cast of characters as AMCO and guided by AMCO's legal counsel, Morris Shenker.

A firm in which the two insurance executives shared a majority interest parlayed $2.8 million into $22.8 million in less than four years.

The government is interested in learning what personal profits Vogler and Furbush might have made as a result of investments by encouraged American National to make, and how that might affect the insurance company's stockholders.

Some time after the AMCO sale, Vogler and Furbush and their St. Louis partners, Green, Lubin and Molasky, bought 52 per cent of a Nevada partnership formed for the single purpose of buying the Dunes in Las Vegas from Hoffa associate Jake Gottlieb.

The partnership was named Leonard J. Campbell Enterprises after Gottlieb's brother-in-law, a minor shareholder.

The other owners of Campbell Enterprises were the principal shareholders of M & R Investments, who held 36 per cent, and a group of bankers headed by E. Perry Thomas, who owned 12 per cent.

M & R was the business name for a consortium of gamblers which ran the Dunes under a lease from Gottlieb. It was headed by Major Arterburn Riddle, Chicago and Indianapolis trucker close to Indiana gambling interests and a friend of Hoffa, former Teamsters boss Dave Beck and union enforcer Paul "Red" Dorfman.

In September and October of 1963 Campbell Enterprises, controlled the Vogler-Furbush group, bought the Dunes buildings but not the land through a paper corporation set up by Shenker with his own secretary as president.

The publicly announced purchase price was $11.25 million—far below the Dunes' reported actual value of $15 million.

On Sept. 6 of that year the paper corporation agreed to pay Gottlieb $2.8 million in cash, and gave him a 10-year, no interest note for $4,598,758.58.

The rest of the announced "purchase price" represented two mortgages owned by the Dunes: a balance of $1,601,241.42 on a 1961 joint loan from the Bank of Las Vegas and the Chicago Laundry and Dye Workers Union, and $2.25 million owed to the Central Teamsters pension fund.

In what appeared to be an unusual move, Gottlieb agreed to remain liable for those two loans, although the paper corporation assumed them and agreed to make the payments. The minutes of the Central States trustees show Hoffa stipulated that if the Dunes were to be granted additional loans from the fund for expansion—which later happened—Gottlieb's name would have to remain on the old notes. Government experts say the reason was Hoffa's personal confidence in Gottlieb.

On Oct. 24, 1963, Campbell Enterprises paid $2.8 million in cash and took over the deal from the paper corporation, which Shenker later said he had set up to insulate the Campbell partnership from any other liabilities related to Gottlieb.

On Jan. 1, 1967, M & R Investments bought out the other partners in Campbell Enterprises, including Vogler and Furbush, for $22.8 million, and the Campbell partnership was dissolved the same year.

Last year Riddle, as titular head of M & R announced the merger of the Dunes with Continental Connectors, originally a small New York electronics firm which also merged with Gottlieb's Western Transportation trucking firm in Chicago.

Gottlieb owns 98 per cent of the preferred voting stock of Continental Connectors. Vogler and Furbush ended up with 11,400 each of the 135,200 oustanding shares of common stock. Continental Connectors common stock closed on the American Stock Exchange this week at $48 a share.

Vogler and Furbush involved American National Insurance Co. in several deals with Gottlieb during the same years they owned a piece of the Dunes.

Not long after Gottlieb sold the buildings to Campbell Enterprises for an apparent loss to himself, he and his associates sold 86 acres of the adjacent Dunes golf course to M & R Investments for $3.3 million, about $1 million more than its estimated value.

Vogler and Furbush arranged for American National to lend $2.5 million to M & R to help buy the land.

The loan originally was secured by a first mortgage. But, by December of 1965, the insurance company's note had been subordinated into a second mortgage behind a series of Teamster pension fund loans to the whole Dunes complex totaling $12 million.

Vogler and Furbush also helped Gottlieb get $4,150,000 in loans from American National on other properties he owned, the Albany Hotel in Denver, the Tulsa Hotel in Tulsa and the Landmark Apartments in Las Vegas, which ultimately became part of the pension fund-financed Landmark Hotel now owned by Howard Hughes.

In addition to untangling the financial affairs of Vogler and Furbush, investigators would like to now more about the nature of the relationship between them and the $628 million Teamster Central States pension fund.

[From the Oakland Tribune, Sept. 28, 1969]

JAVITS ASKS OVERHAUL OF PENSION LAW

(By Jeff Morgan and Gene Ayres)

A major overhaul of laws governing private pension plans which would prevent abuses such as "conflicts of interest, kickbacks and payroll padding" was urged by U.S. Sen. Jacob Javits, R-N.Y., in a major speech to the AFL-CIO.

"My investigation of private pension programs, which has been going on for a number of years now, leads me to believe that there are a number of major changes which need to be made—either voluntarily or by law—in the structure of private pension plans in this country," Javits told the giant federation's Industrial Union Department in Atlantic City.

". . . This trust money—now over $100 billion in reserve assets (for all pension plans) is, I believe, the largest aggregate of essentially unregulated money in the nation. What is being done with it?"

The senator, author of a sure-to-be controversial pension reform bill, appealed Friday for support of the measure at the IUD's annual convention.

It is now questionable whether the full bill will be reported out of the Senate Labor Committee during the current congressional session.

However, during a six-months investigation by The Tribune into the management

of the Teamsters Central States, Southeast and Southwest Areas Pension Fund headquartered in Chicago, it was learned some action could be taken this fall if the Administration makes an expected recommendation to tighten the responsibilities of trustees of retirement plans.

The Tribune's exclusive series of articles last week disclosed instances of cronyism, kickbacks, payoffs and questionable loans involving the $628 million Teamsters Central States fund and associates of imprisoned union boss James R. Hoffa. That pension plan covers 359,685 union members in 20 Midwestern and Southern states.

The Javits bill, like earlier proposals, would impose a "prudent man" requirement on fund trustees to make reasonably sound investments, and would prohibit loans, fees or kickbacks to employees or trustees of pension funds, participating unions or employers.

It also would reduce the number of years before workers get a vested interest in their retirement benefits, provide government reinsurance of funds, create a new federal policing agency called the U.S. Pension and Employee Benefit Plan Commission, and give the government power to seize and preserve funds if there is evidence of mismanagement.

One of the most important provisions of the bill is pension reinsurance, under which the government would guarantee retirement benefits for workers if a company or pension fund goes out of business.

Javits told the unions the plan would cost the government nothing, but would be financed by insurance premiums from participating pension plans.

But, he added, "No government is going to issue this sort of insurance policy without inspecting and regulating and, to some extent, controlling the funds it insures—any more than the government's Federal Deposit Insurance Corporation would insure banks without imposing strict standards of conduct . . . and without inspecting them regularly.

"In fact, without (inspection and regulation) such an insurance program would make insolvency attractive," he said.

"Why not promise the pension plan members more than can be delivered? Why not take imprudent risks? If the fund cannot deliver, the government will.

"Realistically," the senator warned, "that kind of reinsurance is not going to happen." * * * of the most fundamental forms of regulation—so familiar in the banking field . . . is the establishment of basic standards for the administration of these funds.

"Conflicts of interest, kickbacks, payroll padding, etc., have to be prohibited. We have seen example after example of abuse in a series of investigations on Capitol Hill.

"While this kind of abuse is clearly not widespread in any percentage sense, it is substantial enough to require tough standards of conduct and tough enforcement . . ."

Javits said he believes pension plans should, among other investments, try to supply capital "to help eradicate the conditions which pervade our slums," and pointed out some unions which have taken that course.

Maintaining that "it is an essential fact of modern life that more and more workers tend to change jobs, to move around the country," he spoke of the need for portability, the right of workers to transfer their pension entitlement from one fund to another.

In an interview conducted during The Tribune's investigation, Einar Mohn, chief of the Western Conference of Teamsters, said, "I wouldn't be opposed to government guidelines on portability and vesting."

However, he said, "I'd hate to see the government get involved in correcting defects we could find other ways of correcting."

The $400 million pension fund of Mohn's Western Conference, which covers Teamsters in the Western United States and Canada, is an "insured plan" administered entirely by the Prudential Life Insurance Co., and totally separate from the Chicago-based Teamsters Central States Fund.

"If we had a funded plan (similar to the one in Chicago) I would want it to be an irrevocable condition of the trust that the decisions on investments be made by a bank or some other financial institution," Mohn said, "perhaps even a blue ribbon committee of financial experts, and that the trustees only be free to direct investments into areas beneficial to our members.

"I don't think a layman has any business trying to sweat out the market," he said. "Our pension fund trustees aren't qualified to make those kinds of investment decisions, and I think they'd agree with me."

The Javits bill would give federal courts jurisdiction in lawsuits involving pension funds.

"We prefer that system—civil remedies—to criminal penalties," a spokesman for Javits told The Tribune. "In a criminal case nothing can be done to save a fund until there's a conviction, and that can take years."

The U.S. Justice Department is more worried about the links between some labor leaders and organized crime. It hopes some criminal provisions eventually will be included in the law, to dry up a prime source of working capital to some underworld figures.

More than new regulations, many federal attorneys argue, the government needs manpower to investigate the violations of existing laws against embezzlement, conflict-of-interest loans and illegal kickbacks to trustees and agents of pension plans.

"With modern computers and bookeeping methods, these people are in the jet age," one government lawyer said. "We're still driving horses and buggies."

SUPPORT OF U.S. LIVESTOCK QUARANTINE STATION

Mr. HRUSKA. Mr. President, our livestock industry is the most efficient and productive in the world. It provides our growing population with an ample supply of wholesome and inexpensive meat and dairy products, and provides numerous allied industries with the basic supplies for their ultimate products.

A challenge facing our livestock industry which could be critical to the industry's future productivity and the price of its products is that of providing a greater quantity of produce on smaller amounts of land.

Seeking to meet this challenge, the livestock industry has become vitally concerned with "hybrid vigor" which is the description used for the benefits of new germ plasm for breeding stock. Hybrid vigor can improve productivity, improve the survival rate, promote more rapid growth, and improve the feed conversion rate.

This interest in new bloodlines has directed the attention of the livestock industry to new and different breeds from foreign countries. Importing new breeds is not easy, however, due to the threat of foot-and-mouth disease. The tariff law of 1930 prohibits the importation of all livestock and meat products from countries with foot-and-mouth disease and rinderpest. These prohibitions would be retained without modification under S. 2306.

On June 5, 1969, I introduced S. 2306, a bill entitled the International Livestock Quarantine Station Act. This bill would authorize the Department of Agriculture to establish and operate an international animal quarantine station within the territory of the United States, and, in connection with the station, permit the movement of animals into the United States which would otherwise be restricted under the Tariff Act.

The prohibition of the Tariff Act would remain in effect for all importations of livestock except those that pass through the international quarantine station under the rigid standards imposed by the Department of Agriculture. I discussed this proposal in detail in the RECORD when I introduced S. 2306 on June 5, 1969, and also on October 11, 1968, when the proposal was first being discussed.

Many livestock producers and organizations have written to me expressing their strong support for S. 2306. The interest in this bill is growing, as both consumers and producers see the benefits that can accrue.

An outstanding article on the subject is contained in the November 1969 issue of Top Op, a new farm publication for executive farmers and ranchers. The article was written by Mr. Lane Palmer, editorial director for this exciting and valuable new journal.

Mr. President, I ask unanimous consent that the article from Top Op, entitled "Let's Get That Quarantine Station," be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Moreover, Mr. President, the U.S. Department of Agriculture recently recommended enactment of S. 2306 in a report to the Senate Agriculture Committee subject to amendment of clarifying nature. This report was attached to a letter sent to Senator ELLENDER, as chairman of that committee. The Department expresses the view that the potential benefits from new foreign bloodlines can be gained, and the attendant risks avoided, only by the establishment of an international animal quarantine station.

I ask unanimous consent that the memorandum of the Department in support of S. 2306 also be inserted in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HRUSKA. The letter and memorandum were transmitted without objection from the Bureau of the Budget.

It is my hope that the Committee on Agriculture and Forestry will soon schedule hearings and action on this measure. It should progress to enactment as early as possible.

EXHIBIT 1

LET'S GET THAT QUARANTINE STATION

(By Lane Palmer)

When the U.S. stamped out its last outbreak of Foot and Mouth Disease 40 years ago, it slammed the door on further imports of livestock from FMD-infected countries.

But now there's a loud and persistent pounding at that door as U.S. livestock interests maneuver to introduce new bloodlines from Europe. So many of its imported cattle

were being resold over the border that Canada slapped a 3-year embargo on them. And Japan and Ireland, two more countries that are free of the disease, are getting set to clear new breeding stock to the U.S.

"The Department of Agriculture cannot continue to send American veterinarians to these nations to accompany foreign livestock through all the elaborate quarantine controls," declares Senator Roman Hruska (R.-Neb.). "Nor can we afford to take the risk of not sending veterinarians."

The ideal solution is a quarantine center owned and operated by the United States, Hruska told the Senate, as he and Congressman Graham Purcell (D-Tex.) introduced identical bills to establish the station. He pointed out that such a center would give importers a wider choice of cattle, would greatly reduce costs as well as increase the safety.

Judging from the support of the idea by U.S. stockmen, it's amazing that we've gone this long without one. The improvements and hybrid vigor that cattlemen have gained by crossing Charolais on their existing cattle have whetted their appetites for introducing other breeds from Europe.

"The pent-up demand for new germ plasm is terrific," says Dr. Robert Anderson, associate administrator of the USDA's Agriculture Research Service. "Some industry people are so anxious to have this station that they talk of raising the funds and building it privately, then leasing it back to the government." Otherwise, the USDA will have to spend an extra year conducting a feasibility study before Congress will appropriate funds.

Big thing behind the growing clamor for a quarantine station has been Canada's apparent success at importing breeding stock while keeping out disease. U.S. livestock interests have watched closely ever since Canada opened its station in late 1965 on the island of Grosse Ile in the St. Lawrence River.

"We have concluded that certain cattle can be imported safely from FMD-infected countries—IF we carry out all precautions in minute detail," says Anderson. But he emphasizes that this involves multiple tests and inspections of each animal cleared.

"Several other countries that are preparing to export cattle to us say they are following the same guidelines as the Canadians," Anderson adds. "But the more people that are involved, the greater the chance of disease outbreaks. We are convinced livestock can be imported safely, but we want it under our complete control."

Industry leaders agree with him. "We have had excellent cooperation from Canadian breeders who have made new genetic material available," says L. W. Keeley of the American Breeders Service, DeForest, Wis. "However, we shouldn't have to depend upon the good will of our friends across the border. The need is too great for a single Canadian station to handle."

The ABS has had a chance to sample the interest in new breeds for crossing. With only the briefest of announcements that they had Simmental semen available, they were deluged with requests. They have not settled an estimated 20,000 cows with Simmental semen, and that may be only half of the total for the U.S.

Prevented from testing the European breeds themselves, Texas A & M scientists have been cooperating with research people in Argentina, who have been crossing the European breeds on Hereford, Angus and Shorthorn cows.

"So far, they've found Simmental the most promising for crossing on the English breeds," says T. C. Cartwright. "But they are also getting good results with Red and White Friesian."

Cartwright says the Simmental has particular interest for many Texas breeders. "Its color pattern is very similar to the Hereford," he explains. "So you can get the hybrid vigor from crossing without much loss of the Hereford appearance."

But like most other geneticists, Cartwright thinks we should investigate all the variations, not only among breeds but within a single breed. "Even when we pick out and buy the best available bull, we need to remember that we're not getting a representative sample of the breed—we get a very biased sample," he says.

Dr. R. E. Hodgson, director of the animal husbandry division for ARS, makes the same point: "With our new animal research station at Clay Center, Neb., we have the capacity at last to test breeding stock in large numbers," he says. "So we need a faster way of getting them."

Hodgson lists a dozen or more European cattle breeds that his researchers are interested in testing. Among them are: Limousin, Normandy, Maine-Anjou and Garonne from France; the German Red, the German Brown and the Pinzgau from Germany; the Piedmont, Chiana and Romagnola from Italy; the Red Flemish from Belgium; the Friesian and Meuse-Rhine Ijssel from Holland; the Red Dane from Denmark; and Switzerland's own lines of Simmental and Brown Swiss. Then, of course, additional lines of the Charolais.

The tests for Foot and Mouth are not as dependable for sheep and hogs as for cattle. Also, there's the added threat of scrapie for sheep. But Hodgson would very much like to introduce additional stock of Finnish Landrace sheep, the breed that's noted for "litters of lambs." And of course, hogmen would love a chance to introduce Danish Landrace, the German and Dutch White and the Pietrain.

The USDA's recommendations to Congress on the quarantine station haven't yet been made public. But it's not hard to piece together the general outlines: The bills provide for the station to be established "within the territory of the United States" and "on an island selected by the Secretary of Agriculture." Officials are speaking in terms of an island in the Caribbean—likely one in the Virgin Islands chain.

Dr. E. E. Saulmon, who would administer the station as director of the USDA's Animal Health Division, says they are thinking of a capacity of 150 to 250 head. With the animals in quarantine for 150 days and allowing for clean-up between batches, they could probably process between 300 and 500 head per year.

Dr. Saulmon thinks the quarantine procedures would be similar to those followed by Canada. First animals would have to be selected from areas and herds thought to be free from FMD. Even then, the farm where they originate would likely be placed under quarantine for a specified period before shipment. From the farm they would go to a quarantine station in the country of origin.

During the time they'd spend at our quarantine station, they'd undergo tests for TB, brucellosis, anaplasmosis, leptospirosis, and a whole battery of tests of FMD. Besides blood tests, they'd have to pass the Probang test, in which small amounts of tissue are taken from the esophagus area of the animal in question and injected into susceptible animals.

It's a long and expensive procedure that has cost Canadian importers as much as 2,000 to 3,000 a head, but USDA officials consider it a small price to pay for protection against Foot and Mouth. "No amount of breeding stock could justify an outbreak of Foot and Mouth like that which hit Britain two years ago," says Saulmon.

Congressman Purcell thinks our Foot and Mouth defenses have now advanced to the point where we can safely take the risk. "I've seen estimates that the new blood lines we could introduce through our own station could add $600 million annually by 1980 to the incomes of our beef cattle producers alone," he says.

EXHIBIT 2

USDA POSITION IN SUPPORT OF S. 2306

The Tariff Act of 1930, as amended (19 U.S.C. 1306), contains an absolute prohibition against the importation of all ruminants and swine (except wild zoo animals) and fresh, chilled or frozen meats of such animals from countries declared by this Department to be infected with foot-and-mouth disease or rinderpest. Under very stringent restrictions, including authority for permanent post-entry quarantine, wild ruminants and swine may be permitted entry under the Act when such animals are solely for exhibition at an approved zoological park from which they cannot be moved except to another approved zoological park.

Provisions in the Act of February 2, 1903, as amended (21 U.S.C. 111) and the Act of July 2, 1962 (21 U.S.C. 134 *et seq.*) provide additional authority and responsibility for prohibiting or restricting importation of animals, meat, and other articles in order to prevent the introduction or dissemination of foot-and-mouth disease and other destructive livestock or poultry diseases and pests such as African swine fever, exotic ticks, African horse sickness, and fowl pest.

These statutes are implemented by extensive and strict regulations in the Code of Federal Regulations, Title 9, Parts 92, 94, 95, and 96. These regulations apply to the importation of animals, meats, animal by-products and materials such as hay, straw, and forage from all countries, especially those where foot-and-mouth disease exists. The regulations are based on the best scientific information available, including the research being done at our Plum Island Animal Disease Laboratory, Long Island, New York.

Our primary responsibility is and will continue to be the prevention of livestock and poultry diseases and pests gaining entry from foreign countries. At the same time we recognize that there are breeds and types of foreign livestock with the potential of bringing about specific desired improvements more rapidly in U.S. livestock production than can be accomplished with domestic breeds. Research activities have demonstrated the high potential of cross-breeding to increase reproduction, vigor, growth, and efficiency in livestock production. Cross-breeding can bring about changes in the character and composition of the product more rapidly than any other breeding procedure. It has been further shown that the wider the genetic diversity of the parent stock used in cross-breeding, the greater benefits from hybrid vigor and the greater the possibility for changing production and product characteristics. For instance, the introduction into the United States of exotic germ plasm of plants from all over the world has been a most important factor in bringing about the phenomenal new varieties of high yielding crops of numerous kinds that are in every-day use on farms and ranches.

The potential benefits in our livestock production, especially of meat-producing animals, from the importation and organized use of exotic breeds of animals are expected to be similar to those experienced in crop production. Some of the improvements in livestock production would include:

(a) *beef cattle*—an increase in weaning weight, post-weaning growth rates, and muscularity and a decrease in carcass waste fat; and improved fertility and calf survival;

(b) *dairy cattle*—an increase in milk production, fertility, and calf survival;

(c) *sheep*—an increase in lambing rate, lamb growth rate and muscularity and a decrease in carcass waste fat;

(d) *swine*—an increase in prolificacy and muscularity, and improved efficiency of gain.

In spite of the benefits to be derived, the importation of new and different animal breeds from foreign countries must not be

done at the risk of introducing diseases and pests not now present in this country which would greatly reduce livestock production. We believe that both objectives can be obtained only by the establishment of an international animal quarantine station. The establishment and operation of such a station would have to be under the direct control of the Secretary of Agriculture. It would involve selection of an island site where maximum disease security measures could be utilized.

THE MEDIA

Mr. DOLE. Mr. President, Adlai Stevenson, twice candidate for President, Governor of Illinois, and Ambassador to the United Nations, made a speech in 1952 in Portland, Oreg., about the free press.

I am certain no one has ever suggested that Mr. Stevenson would dream of advocating any kind of censorship. What Adlai Stevenson had to say about the newspapers then is quite similar to recent statements by Vice President AGNEW with reference to the media generally and particularly network television.

Because many members of the Democrat Party are now wringing their hands and inferring that Vice President AGNEW is advocating Government censorship, I believe the late Ambassador's remarks might be of interest. Perhaps some of my Democrat friends hope to carry the favor of so-called analysts and commentators on network television by rushing to their defense, but it appears in 1969 as well as in 1952 the great majority of Americans, including a number of responsible leaders in both political parties, agree with the comments by Vice President AGNEW and the late Ambassador.

I trust the television and radio critics who can so freely dish it out will also accept the valid criticism of Vice President AGNEW. It should be made clear that the Vice President was not suggesting Federal intervention, censorship, or intimidation. He stated:

> Now I want to make myself *perfectly clear*. I'm not asking for Government censorship or any other kind of censorship.

He did accurately state that we have censorship now, imposed by a small group who wish to shape the policy of America by ignoring the moderate and conservative views or by criticizing those who may differ with their generally liberal philosophy.

I ask unanimous consent to insert in the RECORD at this point the speech referred to by the late Ambassador Adlai Stevenson.

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

[Speech given in Portland, Oreg., Sept. 8, 1952]

THE ONE PARTY PRESS

(By Adlai Stevenson)

A free society means a society based on free competition and there is no more important competition than competition in ideas, competition in opinion. This form of competition is essential to the preservation of a free press. Indeed, I think the press should set an example to the nation in increasing opposition to uniformity. *What I think I detect is a growing uniformity of outlook among publishers*—a tendency toward the trade association mentality of uniformity of attitude toward the public, the customer, if not toward one another as producers of consumer goods. . . . *I think you will argee that we cannot risk complacency. We need to be rededicated every day to the unfinished task of keeping our free press truly free. We need to work even harder for the time when all editors will honor their profession*, when all publishers will have the sense of responsibility equal to their power and thus regain their power, if I may put it that way.

It's not honest conviction honestly stated that concerns me. Rather it is the tendency of many papers, and I include columnists, commentators, analysts, feature writers, and so on, to argue editorially from the personal objective, rather than from the whole truth. As the old jury lawyer said, "And these, gentlemen, are the conclusions on which I base my facts."

This generation has been summoned to a great battle. The battle to determine whether we are equal to the task of world leadership. . . . *We must look largely to the press for enlightenment* that will arm us for this conflict. *We should be able to look to the press for much of the sober certainty that will carry us to victory and peace. Our government and our arms and our wealth will avail us little if the editors do not accept this invitation to greatness.* The agents of confusion and fear must not usurp the seats of the custodians of truth and patriotism. In saying this, I want to emphasize my belief that the leadership for this development of a free press must come entirely from the profession itself. Government has its cooperative part to play. It must do everything possible to oppose censorship and to free the channels of communication.

Beyond that point it cannot safely go. *The basic job can be done only within and by the free press itself.*

THE "OLD" NIXON RIDES AGAIN

Mr. YOUNG of Ohio. Mr. President, the Toledo Blade of my State of Ohio is nationally known as an outstanding independent newspaper. On November 14 it published a lead editorial under the caption "The 'Old' Nixon Rides Again." This, in my judgment, was a tremendous and most important editorial, and I ask unanimous consent that it may be inserted in the CONGRESSIONAL RECORD at this point as part of my remarks.

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

[From the Toledo (Ohio) Blade, Nov. 14, 1969]

THE "OLD" NIXON RIDES AGAIN

I thought you promised me that when the mudslinging started, I could do it, the Old Nixon said.

I know I promised it, but I've got to give Spiro Agnew something to do.—ART BUCHWALD.

That talented satirist, Art Buchwald, devoted one of his delightful essays recently to complaints by the Old Nixon to the New Nixon (the President, of course) that Vice President Agnew, in his forays into political demagoguery, is getting all the best lines.

That imagined conversation was only humorous comment on the emerging role of the vice president as the master of invective and insult within the Nixon administration. And indeed, there is little doubt that a good many thinking citizens in this country have been inclined to treat Mr. Agnew's fulminations as the utterings of a bumbling clown.

It is no longer a laughing matter. The fact is that the type of performance Mr. Agnew has been presenting across the land is a coldly calculated—and successful—effort to appeal to the same base fears, suspicions, prejudices, and superpatriotism that were the object of the siren call of the late Joseph McCarthy during his Red-hunting binge. What makes it so distressing and even dangerous is that Mr. Agnew speaks not as a publicity-hunting senator but as the alter ego of the White House, the second highest elected official in the nation, and the man only a heart beat, as the saying goes, from the presidency.

There may be disagreement over whether Mr. Agnew writes his own speeches, but there can no longer be any doubt that he is spewing forth his angry rhetoric with the full consent and even commendation of Mr. Nixon. And in this, the depressing conclusion is obvious that Mr. Agnew is being used by the President to take the low road along which in years past the Old Nixon was a familiar figure. The bare-knuckle oratory, the lunge for the jugular vein, the impugning of disloyalty to anyone who disagrees are all familiar tactics of the Old Nixon.

President Nixon campaigned and took office with a commitment to bring this nation together by ending the profound divisiveness spawned by the unpopular war in Vietnam, racial conflicts, urban problems, and other crises of the times. Yet, he has unleashed the man he personally tapped to be his vice president to insult the intellectuals, to deride the young, to smear and castigate dissenters, to malign the political opposition, and to attack those forces that seek to spur a swifter end to a pointless war. It is a strange and unsettling way to bring about a healing lowering of voices so that good will and reason can be brought to bear on problems that affect all of us.

Nothing can be gained from returning to the frightened mood that prevailed in America when Joe McCarthy was riding wildly on his broom. But unless the New Nixon quickly muzzles the Old Nixon—now running rampant in the body of Spiro Agnew—there is real danger that that is precisely, where this nation is headed.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 11363) to prevent the importation of endangered species of fish or wildlife into the United States; to prevent the interstate shipment of reptiles, amphibians, and other wildlife taken contrary to State law; and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message from the House also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the President pro tempore:

S. 499. An act for the relief of Ludger J. Cossette;

S. 632. An act for the relief of Raymond C. Melvin;

S 757. An act for the relief of Yvonne Davis;

S. 2000. An act to establish the Lyndon B. Johnson National Historic Site;

H.R. 7066. An act to provide for the establishment of the William Howard Taft National Historic Site; and

S.J. Res. 26. Joint resolution to provide for the development of the Eisenhower National

Historic Site at Gettysburg, Pennsylvania, and for other purposes.

PRESIDENT NIXON'S SPEECH: THE HOPE THAT FAILED

Mr. YOUNG of Ohio. Mr. President, the huge mobilization rally held here in Washington last Saturday strongly indicated that the majority of Americans are very quickly seeing through the rhetoric of President Nixon's November 3 nationally televised and highly publicized Vietnam speech.

Mr. President, I participated in that moratorium. I marched many blocks. I was on the platform with Coretta King, with the distinguished junior Senator from South Dakota (Mr. McGOVERN), and with my personal friend, Dr. Ben Spock, for whom I testified as a character witness at his trial in Boston, the verdict of which was subsequently nullified. Also on the platform with me was my personal friend Leonard Bernstein. Before me I beheld, not 250,000 men and women, but at least 400,000, gathered in Washington for a peaceful demonstration to their Government, asking for a redress of grievances.

What those who participated in this huge mobilization rally saw in the President's speech was a continuation of the same false premises and the same tragic policies which have mired us in the Vietnam quagmire for 8 years. The President brought forward no new plan for peace to the Presidency as he pledged in his campaign. Instead, he brought a new package in which to wrap the discredited and futile approach of his predecessor.

On November 5, 2 days after the President's speech, our colleague from South Dakota (Mr. McGOVERN), who has since 1963 warned, in speech after speech in the Senate Chamber, against our deepening involvement in Vietnam, made precisely this assessment in an outstanding speech before the student body of St. Xavier College in Chicago.

The distinguished junior Senator from South Dakota in his Chicago speech pointed out that simple hope for a miracle is more and more exposed as the sole justification for the continued slaughter.

Senator McGOVERN said:

Like some preposterous nightmare that keeps repeating itself, American Presidents and American governments come to believe that they can impose their will, not only on the people of Vietnam, but also on the people of the United States. In our common search for a way out of an involvement all agree was a mistake, the leaders of our governments always fix not on reality, but on some misty vision of a world that never was and never will be.

Mr. President, I ask unanimous consent that the speech by Senator McGOVERN be printed at this point in the RECORD, as a part of my remarks.

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

PRESIDENT NIXON'S SPEECH: THE HOPE THAT FAILED

For eighteen months the American people have waited for candidate and now President Nixon's plan to end the war in Vietnam. For twenty-two days we have been treated to an unprecedented intensive preparation for the long-delayed unveiling of that plan. During this period, the Administration has tantalized us about its new departures in Vietnam. The Minority Leader suggested that a ceasefire might be forthcoming. The President alluded to beating the timetable for withdrawal proposed by former Secretary of Defense Clark Clifford. The Department of Defense leaked plans of a possible 200,000 troop cut. The senior Senator from Vermont (Mr. Aiken), the distinguished Majority Leader (Mr. Mansfield) and the chairman of the Senate Committee on Foreign Relations (Mr. Fulbright) agreed that hearings on the Vietnam issue should be postponed pending the expected announcement of major policy changes by the President yesterday. There was general assurance that the November third address would put to rest the Nation's concerns about the war.

Now the President has spoken. The waiting is over.

And we can only conclude that never in recent memory has a speech been so extravagantly advertised in advance only to be so hollow and empty upon delivery.

The President, despite his suggestion of a few more secrets for later revelation, has in fact revealed his policy in Vietnam to the American people. But what he has offered us is an echo from the past. The tired rhetoric of Dulles and Rusk. The hopeless policy on Thieu and Ky. The President has stumbled into a well-worn rut of endless war and called it the road to peace.

In the last analysis this is a speech we could have heard from Dean Rusk or Walt Rostow; indeed we did hear it from them many times. The only difference is that while their speeches, at least, gave lip-service to the need for reform and democracy in Saigon, the President has asked nothing from the military rulers of that troubled land. Yet there is no solution to the war except through a new regrouping of political forces in Saigon. All of us should understand that the true nature of that conflict is not military but political. The Vietnamese are fighting for a political purpose to determine who will control the government in Saigon. There can be no peace while we maintain the present regime, in defiance of the will and the interest of most Vietnamese. There can be no peace until we are ready to permit the political forces in Vietnam to work out their own solution to the struggle.

The President quoted from the late President Kennedy on Monday night indicating that John Kennedy had thought we should stay in Vietnam. Yet President Kennedy spoke in the context of extremely limited aid and advisors, not bombs and massive combat forces. And it was President Kennedy who in his last statement on the war reminded us that in the last analysis it is "their" struggle and "they" must win or lose it themselves.

What is the essence of the policy described last night? The President tells us that peace is dependent on progress in Paris and he also tells us that there is no progress in Paris. He tells us that peace will come anyway if we just put our faith in the generals of Saigon—the very people whose failures brought us into the war in the first place.

On Monday all the familiar arguments were trotted out—the domino theory and the vision of a world in chaos if we end the war.

If Vietnam has not taught us that our actions do not shape the destiny of other nations, when will we learn that lesson? The President has talked of "letting down" allies if we now end our involvement in Vietnam. Who are these allies, and what value do they place on the military effort in Southeast Asia? Are our historic allies standing with us—the British—the French—the Canadians—our friends in western Europe, Latin America, the Middle East, or Asia? Where is the substantial aid one expects of allies supporting our course in Southeast Asia? Where, indeed, are even the members of SEATO? Why do we almost alone continue to throw lives and treasure into this war?

One of the reasons the President gave was that, even if we were in error originally, we now have a responsibility to our friends in Vietnam. The assumption behind this concern seems to be that if we end our involvement, the present government of South Vietnam will immediately collapse and the Communists will take over. But how can the Administration hold to this view on the one hand while on the other claiming that we are on the way to "Vietnamization" based on the growing strength of South Vietnamese forces.

Mr. President, you cannot have it both ways. In any case, Vietnam after American involvement is in the category of speculation. What is certain is Vietnam with American involvement. One million dead Vietnamese; 40,000 dead Americans; 3 million homeless; 250,000 Americans wounded. That is the policy we know about. That is the policy we want changed.

Yet, what the American people were told Monday night is that the United States will no longer take new initiatives in Paris, that only Hanoi holds the key to a negotiated settlement of the war.

We were told to expect a renewed escalation of the war if our casualties or if their infiltration should increase. Indeed, the President's speech carefully set the stage for a renewed escalation of the war. Does this mean the Administration has in mind a resumption of the bombing in the north or the use of nuclear firepower?

What we are witnessing from the Nixon Administration is the exercise of the same tired cold war policy in which our actions are devoid of initiative and totally dependent upon the actions of our adversaries. Do we not surrender the control of American foreign policy and American lives to Hanoi and to General Thieu when we say that our policy is dependent upon what these foreign capitals do? Why do we surrender our policy to others instead of basing it on our national interest?

The fact is that President Nixon has no policy for Asia and no plan for ending the war. The fact is that the so-called new "Nixon Doctrine" is no different from the Dulles Doctrine or the Rusk Doctrine, predicated upon the threat of nuclear retaliation, a readiness to police the world with men and arms either directly or subversively on the assumption that the dominoes will fall if we are not ready to intervene at any time in any place to halt what is viewed as aggression by a monolithic Communist conspiracy. There can be no timetable of U.S. disengagement worthy of the name when the President conditions it upon enemy infiltration rates and the capacity of the South Vietnamese army. Dependence on changes in these areas has brought us to our present level of disaster.

The real way to peace lies in a firm and definite withdrawal schedule. We must of course insure the safety of our forces, the mutual release of prisoners, and some provision for amnesty or asylum of those Vietnamese who are threatened. These are straightforward steps, but they require turning around a massive military bureaucracy. I recognize that this is not easy for a President to face up to. But I never expected that the President or the Vice President would distort these prudent steps into reckless and precipitous behavior.

Monday night we were again stunned witnesses as our leaders blindly press on.

Like some preposterous nightmare that keeps repeating itself, American presidents

and American governments come to believe that they can impose their will, not only on the people of Vietnam, but also on the people of United States. In our common search for a way out of an involvement all agree was a mistake, the leaders of our government always fix not on reality, but on some misty vision of a world that never was and never will be. Thus, a few months after taking office, President Nixon referred to a foolish and self-defeating war as "our finest hour." Thus, he came to call General Thieu one of the four or five great statesmen of our times. Thus, he has come to see the General's corrupt government, kept in power only by American arms, as the agent of freedom in Vietnam. And thus, he has shaped a policy which at heart depends for its execution on Generals Thieu and Ky, who can't afford to have us leave, on the South Vietnamese army, which a recent careful study tells us is less effective than ever, and on our enemies in Hanoi. Where is the hope for peace in this course?

How can the President claim our confidence or call for patience when he has so obviously fallen prey to the same distorted view of our interest and role in Vietnam which destroyed his predecessor's administration? How can he ask for unity in order to prosecute the war when the only thing that will unify the American people is peace. It's no good saying that silence now will lead to peace later. It's no good, because millions of Americans feel that they were silent too long.

Perhaps the President's policy is not so much misguided as it is irrelevant; for it is based not only on a misunderstanding of what has happened in Vietnam, but also on a misreading of what is happening in this country. The American people in their common sense and basic morality have seen what wise men in government had to be taught. That this war was a mistake, and is not worth the life of another American soldier.

That is a simple lesson. The President is president because millions have learned it. The time is long past for him to learn the lesson as well. When will that day come?

In the 1950's we followed a policy of trying to Vietnamize South Vietnam by propping up a regime in Saigon of our own choosing. When that effort failed, we devoted the 1960's to Americanizing South Vietnam. Now we are about to return in the 1970's to another effort to Vietnamize the Vietnamese. If this further effort fails, will we devote the 1980's to another crusade to Americanize the Vietnamese?

Mr. President, the time has come to end this insanity and to end it now. There is no longer any acceptable alternative to peace. And there is no way to peace except to bring our forces home. So let us begin now to remove these brave young men from the futile course to which they have been consigned by a mistaken policy not of their choosing.

As the wise and informed foreign affairs editor of Look magazine, Mr. Robert Moskin, puts it in the current issue of his magazine:

"We have absolutely no sane reason left for killing more than 1,000 young Americans before the end of this year. Our present course—spooning out American lives in an infinitely complex, inscrutable Asian game—is inexcusable.

"If we learn the lesson of Vietnam—that American power has its limitations—this war may at least mark the end of an era and the beginning of a new, less punitive and more imaginative role in the world for the United States."

Monday night the President talked of the higher purposes of this nation. He termed his chosen course the hard one. I cannot in conscience let that pass. For the President, in fact, like his predecessor has chosen the easy course—postponement of the inevitable. If only he is given another year or two, maybe something will turn up. He reasons, perhaps, after several years, the massive use of American technology, more and more commanded by the generals of Saigon, will have wreaked enough havoc, caused enough deaths, to permit us to learn. Then we will continue to supply the weapons of death and air power to fuel another generation of bloody civil strife among the Vietnamese.

Is this our higher purpose? Is this the call to greatness our President owes the American people?

I say that America's mission is not to destroy, not to help others to destroy. Our mission is to lead in peace, to demonstrate justice and compassion at home and in our relations with other nations as the basis for leadership.

Only when we turn from our futile course in Vietnam can we lay any claim to leadership in the world.

I pray that day comes soon.

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business?

Mr. YOUNG of Ohio. Mr. President, I ask recognition on another matter.

The PRESIDING OFFICER. The Senator from Ohio.

PRESIDENT NIXON'S PLAN TO END THE WAR WOULD PERPETUATE IT

Mr. YOUNG of Ohio. Mr. President, on moratorium day, last November 13, Ernest Gruening, former U.S. Senator from Alaska and an outstanding American statesman, scholar, and author who has held numerous important posts throughout his long lifetime, not only in his State of Alaska, but also in the service of our country, and who has behind him a lifetime of achievement in our country and Mexico—where he also served our country on important missions—made a noteworthy speech.

Mr. President, I was much impressed by the address of our former colleague on moratorium day, and ask unanimous consent that it be printed in the RECORD at this point as part of my remarks.

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

PRESIDENT NIXON'S PLAN TO END THE WAR IS A PLAN TO PERPETUATE IT

(Address by Ernest Gruening)

During his campaign for the Presidency, Candidate Nixon promised the American people that he would stop the war in Vietnam, but that he couldn't reveal his plan at that time. He had to keep it secret, he said, so as not to interfere with the Paris peace talks.

Now his highly suspense-publicized plan to end the war is just the opposite.

Far from being a program to end this unjustifiable, needless, illegal, immoral and monstrous war, it is a blue print to prolong and even to perpetuate it.

That war—and it has been stealthily spread to Laos and Thailand—will not be ended as long as President Nixon remains in office. At least it will not be ended by him. It will be ended only by an uprising of the American people, of which let us hope, the demonstrations begun on October 15 and continued today, tomorrow, the day after tomorrow, and as long as may be necessary, put an end to the obscene carnage in Southeast Asia.

For make no mistake. Under Nixon's plan our boys will continue to die, and they will die in vain, just as have the 40,000 fine Americans already killed in combat, and many more will be maimed and crippled like the quarter of a million already wounded, many of whom are blinded, armless, legless, paralyzed.

It was until now Mr. Johnson's war, a war into which the American people were lied and tricked.

It will henceforth be also Mr. Nixon's war, and indeed he repeats the same old falsehoods with which the American people have been misled for the last six years.

For it should be made unmistakably clear that the reasons for our being militarily in Southeast Asia, alleged by President Johnson six years ago and now repeated by President Nixon, are devoid of truth.

It is not true as alleged by President Johnson in his State of the Union Message in January 1965 and repeated in his Johns Hopkins speech and now re-echoed by President Nixon, that we are there because a friendly people asked us to help them repel aggression. The record is wholly bare of any such request. On the contrary, we asked ourselves in.

The truth is that President Eisenhower offered economic aid and only economic aid to our puppet Diem, but surrounded that offer with conditions which were never fulfilled. No military aid was asked for and none was given by President Eisenhower.

The truth is that we invaded Vietnam unilaterally in violation of all existing treaties—the United Nations Charter, the SEATO Treaty and the pledge to support the Geneva Accords and hold nation-wide elections—and when we started bombing North and South, it was we, the United States, who became the aggressor.

In his campaign for the Presidency in 1964, President Johnson pledged not once, but repeatedly, that he would not send American boys to fight in a ground war on the continent of Asia; pledged not once, but repeatedly, that he would not send American boys to do the fighting that Asian boys should be doing. Yet while he was making these solemn promises to the American people—pledges on the basis of which he was swept into office—plans were being matured in the Pentagon to do just what he had pledged not to do.

Now we know also that the Tonkin Gulf incident of August 1964 was spurious, and that by its misrepresentation to the Congress in the resolution drafted in the White House giving President Johnson a blank check to use American troops as he saw fit anywhere in Southeast Asia, he hornswoggled the Congress—with only two dissenting votes—into giving him that power.

These facts, first disclosed in hearings of the Senate Foreign Relations Committee last year, and now detailed in Joe Goulden's recently published book "Truth is the First Casualty" reveal that the version presented to the American people by President Johnson in a nation-wide televised address and then to the Congress, was false.

The U.S. destroyer, "Maddox", far from being on a routine patrol mission in international waters, was first, a spy ship like the "Pueblo", second, she had penetrated the coastal waters of North Vietnam, third, that at that very time, a raid by South Vietnamese vessels, supplied and directed by us, was taking place on North Vietnamese ports, and fourth, that the "Maddox" had instructions to try to draw away some of the defending North Vietnamese vessels. In other words, she was, from the North Vietnamese standpoint, engaged in hostile operations and they were justified in firing on her. Yet none of their shots hit her. The further allegation that on the next day there was another attack on the "Maddox" and on another American destroyer, the "C. Turner Joy," also proved untrue. In this deception every important U.S. official collaborated—President Johnson, Secretary of State Dean Rusk, Secretary of Defense Robert McNamara, the brothers Bundy, the Gebrüder Rostow, and the high naval command in the Pacific.

President Nixon's plan revealed on Novem-

ber third, if viewed in the most favorable light possible, is nullified by innumerable escape clauses:

"The rate of withdrawal" says President Nixon "will depend on developments on three fronts."

That means that there will be three alibis.

One of those three, he says, "is the progress which may be made in the Paris talks."

Well it's obvious there will be no progress in the Paris talks, and I repeat my oft uttered conviction that there will be no peace by negotiation, for our opponents feel there is nothing to negotiate. They have made that abundantly clear.

"Another factor," says President Nixon, "is the progress of the training program of the South Vietnamese forces." Well, the high rate of desertions from those forces does not augur well for speedy progress; nor is it likely that President Thieu has any eagerness to hasten the American pull-out. Nor has the Pentagon.

Then President Nixon sounds another "note of caution," namely "If the level of enemy activity significantly increases we might have to adjust our time-table accordingly" and to emphasize this hazard further, President Nixon says "If I conclude that increased enemy action jeopardizes our remaining forces in Vietnam, I shall not hesitate to take strong and effective measures to deal with that situation." In other words, send back more troops, resume bombing, or whatever.

Well, of course, enemy action is not going to subside, as Ho Chi Minh's letter to President Nixon in reply to his—both released in connection with President Nixon's speech—makes clear. Our adversaries consider that the United States is the invader, the aggressor, and they intend to fight for their nation's freedom from foreign control, for independence and for self-determination.

On top of all this hedging, are the statements of Defense Secretary Laird, that even after we pull out, we'll have to leave some troops there to keep on training the South Vietnamese. This rigmarole will go on indefinitely.

Let us now turn to another aspect of President Nixon's program. He asserts that the only thing that is not negotiable is "the right of the people of South Vietnam to determine their own future."

That's a fine sentiment, but its implementation as seen on the one hand by President Nixon and on the other hand not only by the South Vietnamese of the National Liberation Front, but by those non-communist South Vietnamese whom Thieu and Ky jailed after the last election, represent a divergence as wide as the distance between the poles. Nixon's program will fasten the corrupt and oppressive dictatorship of Thieu and Ky on the people of South Vietnam. There will be no true self-determination. Moreover, South Vietnam itself has no juridical validity. It was created by the force of American arms and money in violation of our specific pledges. Everyone of its regimes from Diem—our first puppet—on, has been kept in office by our armed might and money. Our imposition of these characters has made our allegations that we are there to free the South Vietnamese, a grotesque mockery.

Nor can we, on the basis of past performance, put any faith in the numbers game of troop withdrawals. The week after President Nixon announced the withdrawal of 25,000 men—in itself a minuscule figure—the draft call was for 29,000.

And why, if President Nixon wants to scale down our military commitment, does he not suspend the draft for the duration? Instead he and some misguided Senators and Representatives urge reforming the draft law. It can't be reformed. What difference does it make whether our young men are selected by lot or by any other method to become cannon fodder in an unjustifiable war? It is the draft itself that is the atrocity and the injustice.

Consider that under it our young men are asked to fight in a war they consider immoral, to kill people against whom they feel no grievance, maybe get killed or maimed in the process, with the alternative if they follow their conscience and refuse, to go to jail for five years at hard labor, thereby probably ruining their future career in civilian life. This is an infamous dilemma to which no American, or indeed no member of a society that calls itself free, should be subject. I have never been able to see why the Thirteenth Amendment to the Constitution does not apply to the draft. Let me quote it:

"Neither slavery, nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

What is the draft for this war to those who object to it, but involuntary servitude, and where the refusal to serve brings more involuntary servitude? Please note that the draftees are the only ones subject to it. Those who enlisted voluntarily in one of the Armed Services—Army, Air Force, Navy or Marine Corps—committed themselves when they took their oath of enlistment. Even if they now feel, as I and an ever-increasing number of Americans feel about the war, they have made their commitment voluntarily to go wherever they are sent. The draftees have no such choice. That is why I tried twice, while in the Senate, to amend the Selective Service Act to provide that service in Southeast Asia be voluntary. Of course it did not pass.

This calls attention to the responsibility of Congress in this war. For while we not unjustifiably continue to call this Johnson's war and now Nixon's war, the Congress also shares in the responsibility. They could end this war far more speedily than President Nixon will by refusing to vote for the authorizations and appropriations for this war in Southeast Asia. They would be thereby exercising their constitutional authority of control over the purse. Now would they thereby, as might be alleged, be failing to "back our boys." They would instead be helping to bring the boys *back* home. Actually, there is enough in the pipeline to carry on for a year or more if not a cent were voted.

There are now movements in both Senate and House to endorse President Nixon's plan, whatever it turns out to be. Let me say that any member of the Senate and House who so votes will have the blood of every boy who dies down there henceforth, on his head.

Let us not forget that unlike World War I and World War II when our nation was imperilled and when a vital American interest was jeopardized this is not the case in *this* war. Had our nation been attacked as it was at Pearl Harbor in 1941, and when our security was at stake, the American people would have rallied to our country's defense almost to the last man. That is why the Administrations, past and present, have had to resort to mendacious propaganda to make the American people believe otherwise.

Actually our misguided policies have defeated the very objectives they allege we seek.

If our objective had been truly to achieve self-determination for the Vietnamese we would have supported the Geneva Accords as we pledged to do, and allowed the elections for all Vietnam to take place.

If our objective, as alleged, was to halt Chinese southward expansion we would not have sought to destroy the buffer State of North Vietnam, hostile to the Chinese for over a millenium; we would instead have supported Ho Chi Minh who not only would have fought any Chinese invaders, as he did the French, the Japanese, and now the Americans, but we would have created a state like Tito's Yugoslavia which the United States supported because while communist, it was not part of what was then called the "Communist Conspiracy."

Actually our policy, instead of defeating communism has laid the groundwork for it in Vietnam where the bombing and slaughter of thousands of non-combatants, the burning of their villages, and the making of millions of refugees, will not endear us or those we have supported in power. What nation will ever again want to be saved by us?

Indeed if the rulers of Russia and China had wanted to devise a policy that would bring us down, they could not have done better than what we have done to ourselves. For while we have wrought death and destruction abroad, we have thereby fostered decay and deterioration at home. While we pour our billions into killing in Southeast Asia our long overdue domestic needs go unattended.

Now the only test of a policy proclaimed as one to end the war is whether it will prevent more casualties. It is ghastly to hear the cheerful official releases that only 69 were killed last week. Everyone of them was a mother's son. Every death is one too many.

What is the alternative?

It is to be found in one proposed by a most distinguished Republican, a great American, the senior member of his party in the Senate, George Aiken of Vermont, namely to declare that we have won the war, and get out—NOW!

That would indeed be victory, a stirring demonstration that a great nation can admit by its actions that it has erred, that it will no longer pursue a policy of unrelieved disaster, that it will no longer betray America's finest, noblest, traditions, professions and practices.

Is it not high time that we return to sanity, that we revert to an America whose historic concern, despite occasional lapses, was for the life, liberty and pursuit of happiness of our own as well as of other people, and whose military mission is one of *defense* of our country and not global policing, with offensive action anywhere at the behest of the executive?

My friends, it is heartening that Americans, young and old, are to-day again mobilizing to try to put an end to this tragic and shameful involvement. We must all continue to work to achieve that result, and to turn the course of history back to where our country's policies were those we could, as we once did, esteem, love and cherish.

VICE PRESIDENT AGNEW AND THE TELEVISION NETWORKS

Mr. DOLE. Mr. President, Vice President AGNEW's criticism of the television networks has provoked a great deal of commentary by members of all the media as well as the general public.

While some members of the media immediately became defensive and termed the speech "unfair," others granted that the Vice President had a point.

Analysis of his speech and outcries of "foul play" will probably continue for some time, but the fact is—the Vice President does have a point. Two editorials published in last night's Washington Star recognize that.

The articles, written by William F. Buckley, Jr., and Richard Wilson, offer illuminating and fair studies of the reasons for AGNEW's speech and the reactions to it. 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 Washington Star, Nov. 19, 1969]

CALLING TV TO ACCOUNT APPLAUDED

(By William F. Buckley, Jr.)

Spiro T. Agnew's criticism of the television networks is the most serious act of lese majeste since the mayor of Chicago threatened to punch the king of England in the snout.

The responses ranged from panic through apoplexy. Dr. Frank Stanton of CBS has accused Agnew of making "an unprecedented attempt to intimidate a news medium,"—which suggests that fairness could only be effected by intimidation, which come to think of it maybe is so, over at CBS. Leonard Goldenson of ABC reports that "the performance of ABC news has always been, and will continue to be, fair and objective," in sickness and in health, till death do us part.

Thomas Hoving, in behalf of the National Citizens' Committee for Broadcasting, whatever that is, sounded like, well, Agnew on the subject of demonstrators, "Agnew's disgraceful attack against network television news officially leads us as a nation into an ugly era of the most fearsome suppression and intimidation . . . the beginning of the end for us as a nation . . . (his) terrible and fraudulent evaluation . . . (is) the most shocking use ever of political power," which suggests that Hoving's readings in history are not as extensive as his readings in art.

Now, as a matter of fact, Agnew wrote a very good speech. It was, moreover, a balanced speech. He praised much of what the networks have done as extravangantly as if he were nominating them for president. But he said that the networks are also given to much bias. Specifically, he homed in on the elaborate rebuttal—that in effect was what it was—given to Nixon's Vietnam speech of Nov. 3.

How, for instance, do you cope with the following analogy used by Agnew: "When President Kennedy rallied the nation in the Cuban missile crisis, his address to the people was not chewed over by a round table of critics who disparaged the course of action he'd asked America to follow."

That's true. In plain fact, on the night of Oct. 22, 1962, the networks didn't chew up every word of Kennedy's speech into its constituent atoms. And again "When Winston Churchill rallied public opinion to stay the course against Hitler's Germany, he didn't have to contend with a gaggle of commentators raising doubts about whether he was reading public opinion right, or whether Britain had the stamina to see the war through."

So then what? It may be too late to revive Hoving, but in fact Agnew said: "I want to make myself perfectly clear. I'm not asking for government censorship or any other kind of censorship." So much for that particular smear. "I am asking," he said, "whether a form of censorship already exists when the news that 40 million Americans receive each night is determined by a handful of men" who (and they'll never get over this charge, aimed at the Medici of cosmopolitan New York) "bask in their own provincialism, their own parochialism."

Is there in fact a discernible and regular bias in network news and commentary? How do we know? How do we find out? It happens that a very little foundation in New York City, the Historical Research Foundation, has made a few grants to investigators who, after consulting with specialists in the evaluation of polls and public opinion, have been very hard at work analyzing the bias in the coverage of the presidential campaign of 1968.

I am not aware that Agnew knows of this project. But it is far and away the most thorough and the most nearly scientific of any that has ever been attempted. The results will not be released until the research is complete. But already one thing is stunningly clear. It is that the news and the commentary were overwhelmingly favorable, by any criterion, to the Democratic candidate.

What Agnew has said is: This is the factual situation. What are we going to do about it? Not eat CBS, and force its roasted flesh on Mr. Hoving for breakfast. But force CBS, by the pressure of public opinion, and NBC, and ABC, to take a look at their own situation, and ask themselves, what can the public legitimately demand from an oligopoly? A good question. A good speech.

[From the Washington Star, Nov. 19, 1969]

MOVE AGAINST MASS MEDIA BOLD AND CALCULATED

(By Richard Wilson)

The Agnew shock waves are running through the mass media. It will take a while but there will be results. Some say the results already have come with the low key television coverage of the anti-war demonstration in Washington..

This is likely, however, to be only a beginning because the mass media feels vibrations and waves. When its editorial product becomes sufficiently ineffective, objectionable or questionable, heads are likely to roll. Mass resignations attend such crises of editorial management. New editors, producers, writers, reporters, and commentators take over and another beginning is made. The format or tone of the editorial medium is often changed.

Sometimes these editorial changes come because of competitive factors and economic decline. This has been noticeable lately in the mass circulation magazines. Changes in these magazines, however, have moved toward the new thing—serious attention to bizarre permissiveness in thought, art, drama, mores, culture, fashion and a more advanced political orientation well beyond the left of center, viz. Time, Newsweek, Look and with Life striving for some new tempo and stride it cannot quite reach.

The reverse pressures have been brought to bear on radio-TV by the combined efforts of the White House establishment as expressed by Vice President Agnew, Communications Director Herbert G. Klein and other White House assistants.

This has been a bold and calculated move which can only be seen in its true perspective as a part of President Nixon's attempt to hold public opinion to his measured course of liquidating the Vietnam war at his own pace and then proceeding with broad governmental domestic reforms and his own re-election in 1972.

The move is bold and calculated beyond anything previously dared by a President. The benchmark from which this present effort rises was a mostly forgotten happening at the Republican National Convention of 1964.

Gen. Dwight D. Eisenhower, addressing the Republican delegates whom everyone knew would nominate Barry Goldwater for president, called upon Republicans to scorn those who would spread divisiveness, "including sensation-seeking columnists and commentators." The GOP convention burst into applause with some delegates booing and shaking their fists at newsmen covering the convention.

There were other incidents at the convention involving TV commentators and it cannot be denied that there was uncovered a reservoir of distrust and even hatred for familiar TV faces and voices deemed to have blackened the name of Goldwater and all conservative Republicans.

Lyndon Johnson could look upon this manifestation of distrust with confident detachment, but it was not long before he, too, was beginning to grumble, and in more secluded moments, to roar over his own treatment by knowing and lordly princes of the air waves passing final judgment on the lord and master. But President Johnson did not dare take the final step of Vice President Agnew, presumably because he did not think it was expedient and that he might better accomplish his purpose by direct and intimate contact with his harassers.

The Nixon administration has bypassed intimate contact with those who write and speak to carry its case directly to those who watch, listen to and read them.

The moment was regarded as right because there had been a gratifying response to Nixon's Vietnam speech in contrast to some unfavorable analytical comment by commentators following it. This seemed to afford a provable example that TV comment was not reflecting majority public opinion but was instead an influence for an unfavorable reaction.

The response of the heads of the TV networks was not convincing. They uniformly took the position that the government was invading the right of free speech by bringing pressure on a medium which can only operate by government license. There is no immediate or prospective threat of denial of a government license for reasons of political or cultural orientation, although there could be, it is true.

The weakness of the position of the TV network heads was that the Nixon administration had correctly sensed the right moment to bring into question the detachment and fairness of TV coverage, on grounds of both its pictorial techniques and the tone of its commentary. This distrust had been growing and expanding into new areas at least since 1964, and it presently focuses on the choice of that which is photographed, the emphasis given and the general atmosphere created. Pictures can lie when a crowd of 100 can be made to look like an uncontrollable mob of thousands.

The present generation of commentators, producers and reporters probably have more to fear from the reactions they have induced among their listeners than from government repression.

COAL MINE HEALTH AND SAFETY LEGISLATION NEARS FINAL PASSAGE

Mr. RANDOLPH. Mr. President, it was 1 year ago today that explosions in a northern West Virginia mine took 78 lives and brought to the Nation the awareness of the need for new and stronger legislation to protect the Nation's coal miners.

As the Congress nears completion of a comprehensive revision of coal mining statutes, the specter of Farmington still hovers over the coalfields of America. The bodies of only two of the 78 who died have been recovered in the agonizingly slow process of reopening the mine.

The tragedy near Mannington, while a grim reminder of the hazards of mining coal, was not the end of death under the ground. Since that day a year ago, 202 more miners have died at their work. They died not in large disasters, but individually and in small groups from roof falls, fires, asphyxiation, haulage accidents, and other causes that make coal mining our most dangerous industry.

Congress has devoted much time to improving Federal laws protecting the health and well-being of America's miners. The shock of Farmington provided the impetus for this effort in the hope that such an event should never occur again.

The Senate and House of Representa-

tives have worked diligently, and both have passed strong, effective bills that are being reconciled in a conference that started earlier today.

The two measures contain differences, but I do not believe they are so large that there will be undue delay in resolving them. I know that the conferees are aware of the urgent need for this legislation and will resolve the coal mine health and safety act as a pressing matter of business.

Mr. President, I represent the State that is the Nation's largest producer of coal and the one with the largest number of miners. Because of this important role, the reality, and expectation of death and disability in the mines is a factor of life with which West Virginia has lived since the day the first mine was opened.

The passage of this legislation will herald a new day for coal miners in all regions of the country where this vital energy source is produced.

PRIME MINISTER GOLDA MEIR CONGRATULATES PRESIDENT NIXON

Mr. GURNEY. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Mrs. Meir Hails Nixon on Speech," published in the New York Times of November 17.

The article recounts the personal message of congratulations that Mrs. Meir, Prime Minister of Israel, extended to President Nixon after his November 3 address on Vietnam. Mrs. Meir's kind words on this occasion should be known to the American people.

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

[From the New York Times, Nov. 17, 1969]

MRS. MEIR HAILS NIXON ON SPEECH—SHE SAYS VIEWS ON VIETNAM ENCOURAGES SMALL NATIONS

(By Peter Grose)

WASHINGTON, November 16.—Premier Golda Meir of Israel has offered her personal congratulations to President Nixon on his statement of Vietnam policy Nov. 3.

Mrs. Meir's message, disclosed today by Administration sources, said the Nixon speech "contains much that encourages and strengthens freedom-loving small nations the world over."

White House officials, in emphasizing the favorable telegrams that the President has received from Americans, have said little about the reactions of foregn leaders. A White House spokesman was unable to discover today whether any other foreign heads of government had sent comments.

Mrs. Meir's message, as conveyed through the United States Ambassador to Israel, Walworth Barbour, said:

"The Prime Minister wishes to congratulate the President on his meaningful speech, and express her hope that he will speedily succeed in bringing about peace in Vietnam. The President's speech contains much that encourages and strengthens freedom-loving small nations the world over, which are striving to maintain their independent existence looking to that great democracy, the United States of America."

THEY MET IN SEPTEMBER

Mr. Nixon and Mrs. Meir became acquainted during the Israeli leader's official visit to Washington late in September. That was the first time they had met.

One of her main purposes on assurance of support from the Nixon Administration—diplomatic support in international peacemaking efforts as well as more specific military support, assurance that this country would remain a source of supply of aircraft and other military needs to maintain Israel's armed strength against the Arab states.

The Nixon Administration is honoring President Johnson's agreement to supply Israel with 50 supersonic Phantom jet fighter-bombers by the end of next year. No further arms agreements were announced after Mrs. Meir's visit, but Israeli diplomats declared themselves satisfied with the sympathetic relationship established between their Premier and President Nixon.

Mr. Nixon mentioned Middle East tensions in passing in his Nov. 3 speech as being among the justifications for his Vietnam stand, a fact that presumably comforted the Israeli leaders.

"Precipitate withdrawal" of American troops from South Vietnam, the President said, would set off violence "wherever our commitments help maintain peace—in the Middle East, in Berlin, eventually even in the Western Hemisphere."

"A nation cannot remain great if it betrays its allies and lets down its friends," he said.

Mr. Nixon was pursuing an argument developed by former President Lyndon B. Johnson to link support of Israel and support of the war in Vietnam as similar in purpose—a connection discomforting to many critics of the war in Vietnam who nevertheless favor a strong stand behind Israel.

JOHNSON LINKED ISSUE

In a speech at a Jewish Labor Committee dinner in November, 1967, Mr. Johnson said "the same kinds of issues are at stake" in the Middle East as in Southeast Asia.

In the weeks before the Arab-Israeli war in June, 1967, Mr. Johnson complained that many of the doves on Vietnam were outspoken champions of militant support for Israel.

In private discussions many Israeli diplomats here are outspoken in criticism of anti-war protests, though Mrs. Meir herself avoided taking a formal position on the Vietnam war during her Washington visit.

She did concede her sadness at the divisions in American society during an interview with The New York Times on Sept. 27.

"I would like to see the United States united again," she said, "because the United States is a country not only for its inhabitants—it matters to the world a lot what the United States is."

For their part, Saigon's leaders have been unequivocal. "I'm for Israel," then-Premier Nguyen Cao Ky said during the six-day war of June, 1967. He concurred in the suggestion that the Arabs were backed by "international Communism."

SCIENTIFIC PROGRESS AND BUDGET CUTS

Mr. WILLIAMS of New Jersey. Mr. President, Dr. Robert A. Moss, of the School of Chemistry at Rutgers University, New Brunswick, N.J., recently gave a perceptive, indepth report on the grave situation pertaining to Government support of university research. The administration's drastic cuts in research grants allow only 10 of the 130 NIH projects up for renewal this year to be continued, with the remainder to be reduced by about 20 percent.

Inadequate levels of funding in support of university research will have extremely dire consequences for our Nation. I ask unanimous consent that the text of Dr. Moss' excellent article be printed in the RECORD.

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

SCIENTIFIC PROGRESS AND BUDGET CUTS

(By Dr. Robert Moss, associate professor of chemistry, Rutgers College)

Several weeks ago, at a meeting on Science and Society sponsored by the American Chemical Society, word leaked out that the National Institutes of Health (NIH) was going to cut back 20% on the funding of many research grants. We had expected cuts. Rumors had been buzzing like bees for months. Just a day or two before the newspapers had carried a story that 19 of 93 special clinical research centers for the testing of experimental drugs would be closed within the year. These centers, at leading medical schools, were largely supported by NIH funds. Those funds were being cut; the centers would have to close.

The day after I attended the meeting, the New York Times reported that the Institute of General Medical Sciences of the NIH would be so hard hit by budget cuts that only ten out of the 130 research grants up for renewal this year would be continued. The rest of us, the lucky ones whose grants would not yet expire for a year or two could expect cuts of 20%.

Some of my colleagues had not heeded the Times. Their mail had brought them official notification in the form of new budgets, cut 20% without prior warning. In one case a colleague had just finished negotiating a 10% cut in his NIH grant, only to find his new budget surcharged downward an additional 20%.

I wrote a letter to the Times which appeared on September 17. The letter began: "The public should clearly understand the consequences of the drastic cut in funding of the Institute of General Medical Sciences of the National Institutes of Health . . ." That letter brought me an invitation to prepare this talk; and those consequences of funding cuts are its subject. These cuts do not threaten only NIH-supported research, but all federally supported research. In discussing their meaning, I am going to omit discussion of the specific benefits which we derive from the basic research carried out at American universities, though these benefits have been enormous, and instead, concentrate only on one aspect of university research—its role in training new scientists. It is at the university that the slightest change in the funding of scientific education makes the biggest difference in the future of American Science. How does it happen that the university is so sensitive to the ebb and flow of federal funds?

In 1967, there were 172 doctoral granting university chemistry departments in the United States, employing 3,628 full time faculty members which, together, awarded 1,672 doctorates in chemistry among the 13,638 full time graduate students then enrolled. These statistics represented great increases over the corresponding figures of a decade before, 1957. We had had a 56% increase in doctoral granting departments, a 95% increase in faculty, and we were awarding 70% more Ph.D.'s.

Why is 1957 a significant date for comparison? Because it was in October of that year that the Soviet Union successfully launched the first man-made moon. We all remember the shock which spread across the United States; the paralysis of will which followed the shock, and then the reaction. New money for education, new construction funds, new fellowships. We recognized that modern science was expensive; we resolved to catch up.

Thus university centers now train large numbers of new Ph.D.'s. In chemistry, these

graduates go into industry, where their research contributes directly to our individual needs in the form of medicinals, synthetic fabrics, plastics. Others join university or college faculties where they play a role in training their younger successors. The role of the university in providing for the scientific future of our country is enormous. It has been expanding, but so, too, have the problems which our country faces. Environmental problems such as air and water pollution, over-population, the need for more food; medical problems, such as cancer and heart-disease. These problems are world-wide. We need research to attack them, we need researchers. We need to be about the business of training those researchers.

It is expensive to train a Ph.D. chemist. Consider only the cost of one year at Rutgers University Graduate School for a student working on his Ph.D. research. Last year, full time support came to $3032 for salary (or stipend) and $493 in tuition. That's a total of $3525 per student per year, exclusive of chemicals and equipment. Remember that the average student requires such support for four years, and that's $14,000 for each new Ph.D., exclusive of the cost of his college education. Where does this money come from?

In 1967, 28% of full time chemistry graduate students had fellowships and 28% had research assistantships. The remaining 54% were mostly supported by teaching assistantships, salaries paid to them by the university for teaching duties, mostly in connection with undergraduate laboratory instruction. The first two categories, Fellowships and Research Assistantships, largely come from the federal government.

In 1967, the United States government supported 45% of all graduate chemistry students and 42% of all graduate science Ph.D. students. About half of this support came to the students as research assistantships derived from research grants held by professors. What is a research grant?

It is a sum of money obtained to work on the solution of a particular scientific problem, generally over a period of 2–5 years. Where does this money go, and why is it important that the government not cut back on such grants? Consider, as an example, last year's budget of a grant I currently hold from the National Institutes of Health. The yearly budget was about $21,000. Of this sum, $10,000 or about half, went to support three graduate students with research assistantships. $500 went to the department of chemistry to help defray secretarial expenses; and $5800 went to Rutgers University as overhead. The overhead payment is an important financial asset to the University—it helps pay for the facilities necessary to do research. Only $4250 of the original $21,000 budget actually went to buy chemicals, equipment, and so forth for three students and their research director; surely not an extravagant level of support.

From this example we learn an interesting fact. Most of the money derived from government support of university research goes into financial support of the graduate students and a sizeable portion goes to the university. Rather less goes to the research itself. Now we can see why university science is so sensitive to federal funding. That funding supports nearly half of the graduate students doing university research, and, through overhead payments, contributes substantially to the universities housing such research. A 20% cut in funding will cause a 10% cut in places for graduate students. The arithmetic is not complex.

The expansion we have had in the production of scientists over the past decade was largely a product of federal funding. But the expansion is not irreversible. Remove the funding and it will disappear. But our problems will not disappear. The problems in our complex world move only in the direction of greatest complexity—we are challenged to keep pace.

Moreover, it takes years to train competent scientists; you can't turn on a stream of scientists like you can a water tap. The damage that we do now, if we fail to train adequate numbers of young scientists will pursue us for years. In fact every year of inadequacy will be multiplied about fourfold in its effect on our scientific potential. A commitment to excellence, even to adequacy in science must be an open and growing commitment.

We have seen that federal support is essential to training adequate numbers of graduate students in the sciences. Much of that support comes from agencies like the National Science Foundation and the NIH. The National Science Foundation has a yearly budget of less than $500 million. This budget has not increased substantially over the past few years. But the cost of scientific equipment has gone up by more than 50% in that time. The cost of graduate student stipends has similarly increased. If the cost of doing research increases, while the available funds do not, we must either lower the quality or the quantity of our research. It is a choice which is bitter, but clear. We will do less research. We will accept fewer graduate students, and train fewer new scientists. If budgets actually are decreased, as they threaten now to do, the collapse of university science could be accelerated to an alarming degree. The NIH has followed the announcement of 20% research grant cuts with some second-thinking. Now we are told that the cuts will be less, perhaps only 5–10%. But that's only this year's cut. There was also a 10% cut last year. What we are in fact worrying about is not a given cut, but a trend toward cuts as an annual certainty.

Why is all this happening? After all, a country spending nearly $100 billion a year for defense should be able to spend $500 million a year for its National Science Foundation. It should not have to close 19 experimental medical centers, nor cut off hundreds of scientists without warning. The problem is that our lawmakers choose the path of least resistance. This senseless war in which we are engaged is draining $30 billion yearly from the United States. Someone has to pay for this. Economy is in the air. Cuts must be made in other areas. Basic research, as carried out at universities does not have a lobby or a union. Its practitioners are spread out and isolated. With a single push of the cork, legislators, in the relative anonymity of drowsy committee rooms can plug up many leaks in the federal reservoir.

We must tell the lawmakers that scientific progress is not bought with budget cuts, that scientists are not turned off an assembly line, and cannot be produced in cheaper models. That the problems this country, and this planet will face in the next quarter-century cannot be solved by a new manned bomber, costing $12 billion, by an ABM system costing $10 billion, by a war costing $30 billion a year. We can hope to face those problems only if we invest in the future—in the future of science and the future of man. Right now, relative to our military expenditures, the price of this investment is insignificant. But it is going up every day. We need to put our priorities in order and train the people we will need, in science and in all areas of human endeavor.

DOUBTS GROWING ABOUT MEDIA'S OBJECTIVITY

Mr. MUNDT. Mr. President, the speech by Vice President AGNEW last week calling for greater objectivity on the part of the news media has resulted in a reaction by some elements of the press and television alleging that they cherish suspicions that the Nixon administration is behind some sinister plot to curb freedom of speech. Nothing, of course, could be further from the truth. Such comments completely miss the point of the Vice President's remarks and the objectives he had in commenting on this subject.

Richard Harwood and Laurence Stern dealt with this subject in a column entitled "Sneers at Vice President Won't Dispel Doubts About Media's Performance" and published in the Washington Post of November 19. The column puts the Agnew speech in proper perspective. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington Post, Nov. 19, 1969]

SNEERS AT VICE PRESIDENT WON'T DISPEL DOUBTS ABOUT MEDIA'S PERFORMANCE

(By Richard Harwood and Laurence Stern)

When Vice President Agnew unloaded last week on the alleged biases of the "tiny and closed fraternity of privileged men" in the television news business, cries of foul were heard throughout the land.

That often happens when public figures attack the media, probably because there is a theory in the industry that people shouldn't bite back at their dogs.

In Agnew's case it has been charged that he seeks to erode "freedom of the press," that he is trying to muzzle the administration's critics, that he is subliminally blackmailing a $3 billion industry with a reminder that TV licenses are given and taken away by a Federal Communication Commission whose members are appointed by the President. There is even talk about a new era of McCarthyism.

"My feeling," an overwrought CBS commentator told Newsweek, "is that the White House is out to get all of us, all the liberals in all the media . . . We're in for some dangerous times."

Perhaps. But the issue of media performance is not going to evaporate in this country simply because publishers and network presidents wrap themselves in the First Amendment and sneer at Spiro Agnew. For the facts are that the media are as blemished as any other institution in this society and that there is growing public concern over their performance.

This is reflected in the spectacular proliferation of underground newspapers whose constituents are young radicals and dropouts turned off by the Establishment press. It is reflected in the creation (with private and public funds) of a vast network of "educational" television stations offering an alternative to whatever it is that the commercial networks happen to be selling.

In Chicago, reporters and editors think so little of their daily product that they produce each month a Journalism Review cataloguing the sins and omissions of the newspapers that employ them.

Politicians from Dwight Eisenhower to George Wallace to Eugene McCarthy have raged at the Eastern Liberal Press. Newton Minow, a former chairman of the Federal Communications Commission, and Nicholas Johnson, a present member of the Commission, made their reputations assaulting the TV "wasteland" to the cheers of many of the same editorial writers and critics who are now shocked at Agnew's gall.

Indeed, Commissioner Johnson has been one of the principal advocates of community pressure groups that are trying, in Agnew's phrase, to make television stations more "responsive" to public desires in programming.

If successful, these efforts will lead to the transfer of television licenses in various

cities—Jackson, Miss., New York and Washington, for example—from "conservative" to "liberal" owners and managers.

One of the reasons for all this agitation is that people have come to recognize that the selection and presentations of information and "news" is a very unscientific enterprise. Except for a few platitudes about "objectivity," "responsibility," and "news that's fit to print," there are no accepted or enforceable standards in this business.

"News" is what the media say it is and the definition varies from day to day and place to place. It was "news" in The Washington Post and The New York Times last week when three doves in the Senate announced support for the antiwar demonstrations on Nov. 15. It was not "news" at all in The Times the following day when 359 congressional hawks and dawks endorsed the President's negotiating posture on the war.

In some parts of the country last week, people were told that Washington was braced for war against the howling mobs in the city. Elsewhere they read about love and singing and picnics on the public lawns.

There is no conspiracy in any of this, despite Spiro Agnew's dark suspicions. But there is much room for criticism, debate and discussion. And that debate and discussion need not be limited—should not be limited—to the dreary convention hails of the broadcasters and editors.

SESQUICENTENNIAL OF THE ARKANSAS GAZETTE

Mr. FULBRIGHT. Mr. President, today marks the 150th anniversary of the Arkansas Gazette, the oldest newspaper west of the Mississippi.

Volume 1, No. 1 was printed 150 years ago today by William Woodruff in the village of Arkansas Post on the Arkansas River. In 1821, Woodruff moved the newspaper to Little Rock, where it has been published since.

Arkansas is blessed with a number of outstanding newspapers. Little Rock is one of the few cities its size which supports two independent newspapers, the Gazette and the Arkansas Democrat.

The Gazette is not only the oldest, but also the largest paper in the State. As Bill Lewis, a current member of the Gazette staff, writes:

> If any institution is inextricably bound up in the history and development of Arkansas, it must be the Arkansas Gazette, not merely from the standpoint that at 150 years, it is the oldest business firm of any kind in the state but also because, by its nature, it has always been, and continues to be, directly involved in that development.

The Gazette is known as "The Old Lady," a sobriquet first applied in scorn, but, as pointed out by Lewis, now assumed by the Gazette in pride. The nickname indeed personifies the chastizing, scolding dowager seeking to guide and prod a recalcitrant following to do right, an image that the appearance of the paper itself, perhaps by association, seems to reflect.

The Gazette has earned a national reputation, both for its quality and its determined editorial stands.

The newspaper and its officials have been honored with numerous important journalistic and public service awards. In 1958, the Gazette won the Pulitzer Prize for public service, and its editor, Harry Ashmore, won the Pulitizer for editorial writing. Among the many awards won by John Netherland Heiskell, who has been the newspaper's editor for 67 years, and who was a Member of this body for 23 days in 1913, are the Columbia Journalism Award, the distinguished service award of the Syracuse University School of Journalism, the Elijah Lovejoy Award from Colby College, and the John Peter Zenger Award of the University of Arizona. He was also named a fellow of Sigma Delta Chi, the national journalism society, which has also designated the Gazette as an historic site in journalism.

Mr. Heiskell set forth the Gazette's ideals in accepting the Columbia Award in 1958:

> The supreme goal of the responsible head of a newspaper should be to fulfill the obligations of the trust that has been committed to his hands . . . so let me still borrow words from Saint Paul and say for my associates in the Arkansas Gazette and for myself: We will strive to fight a good fight as long as it is granted us to follow our course. And that we may be saved from accusation by conscience and show ourselves worthy of the respect of our fellow men, we will keep the faith.

The Gazette has a great tradition of service. In Arkansas it is a part of the way of life. I am certainly pleased to be able to extend my congratulations on this 150th anniversary to everyone associated with this great newspaper.

Mr. President, I ask unanimous consent that the article written by Bill Lewis, entitled "Arkansas—History of a State, and Its Newspaper," be printed in the RECORD.

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

ARKANSAS—HISTORY OF A STATE, AND ITS NEWSPAPER

(By Bill Lewis)

If any institution is inextricably bound up in the history and development of Arkansas, it must be the Arkansas Gazette, not merely from the standpoint that at 150 years, it is the oldest business firm of any kind in the state but also because, by its nature, it has always been, and continues to be, directly involved in that development.

Most school boys are familiar with how it all began.

William E. Woodruff, born in 1795 on a small farm in Suffolk County, Long Island, N.Y. was bound at his father's early death as an apprentice to a Sag Harbor printer who published the Suffolk Gazette. Six years later, his apprenticeship completed and his indenture endorsed to prove to the world his status as a full-fledged journeyman printer, the ambitious young man, then in his early 20s, decided to seek his fortune in the rapidly opening West.

He set out, with the savings of his last two years of his apprenticeship job in his pocket, for Wheeling, W. Va., where he transferred to a skiff on the Ohio River and floated downstream to Louisville, Ky. He worked there for a while, and was offered a newspaper partnership which he declined.

Woodruff pushed on, walking across Kentucky to Nashville, Tenn., where he again stopped to work as a printer until the Congress approved the act creating the Arkansas Territory.

Woodruff recognized the opportunity inherent in having the first newspaper in the new Territory of Arkansas, and he lost no time in buying a Ramage printing press and other supplies and setting out for the new Territorial capital at Arkansas Post. Leaving Nashville in September 1819 aboard a keelboat—steamboat navigation had barely begun—Woodruff began the rough trip with a trunk filled with clothing and personal belongings, his press, type cases with type, four bundles of paper, a supply of printers' ink, a stack of newspapers that would provide him with the "news" for his first editions, and other printing incidentals.

The first leg of the trip, to the mouth of the Cumberland at Smithland, took 14 days. From there, Woodruff's keelboat came down the Ohio to the present site of Cairo, Ill., where it moved into the Mississippi, following it to the White. Woodruff and his belongings were deposited on the bank and the keelboat, loaded with flour, continued on to New Orleans.

The last leg of his trip was in a hollowed-out cottonwood log called a pirogue, with a crew of two. Woodruff snaked up the White River, through the cutoff into the Arkansas River and from there to the village of Arkansas Poet, a town of some 30-odd houses on a high plateau in a broad curve of the Arkansas. Woodruff arrived in October, set up shop in a makeshift building and, on November 20, 1819, issued No. 1 of Vol. 1 of the Arkansas Gazette.

An assessment of that event, written in 1883, recounted it colorfully: "In his own person, for its preparation, the publisher boxed the compass of newspaper requirements—for he filled every station in the office—he was editor, publisher, foreman, compositor, press-man, ball-boy and mail clerk. Carrier he did not need for he started without a subscriber! The few copies of the first number which have been preserved, now nearly two-thirds of a century old, show that he was a master of his business, and an accomplished printer. No typographical error mars its fair pages, and as a specimen of letter-press, difference in paper considered, it compares favorably with the best printed newspaper of the present day."

The Gazette began life politically as Democratic Republican, a party that was to evolve later as the Democratic Party. The Gazette's political persuasion was to change over the years to Whig, Know-Nothing and nonpartisan before returning to the Democratic fold.

Woodruff continued publishing at Arkansas Post until November 24, 1821, when one of the rare breaks in the continuity of publication of the Gazette occurred, as he moved to the newly designated Territorial capital at Little Rock. The next issue came out December 19, 1821, and for about five years, Woodruff avoided politics. The first expansion came in 1825 when Woodruff added a fifth column to the original four. When Woodruff did become interested in Territorial politics, he did so with a vigor that was prophetic.

The Gazette opposed statehood when agitation for it arose, and the move failed. The agitation was renewed the following year, the Gazette had a change of heart and the proposition carried. The newspaper helped to usher in statehood July 13, 1836. The same year, it supported the presidential bid of Van Buren, and its candidates for governor and Congress, James S. Conway and Archibald Yell, were overwhelmingly elected.

Woodruff, ostensibly to devote more time to his land agent's and various other business interests, sold the Gazette December 19, 1838, to Edward Cole, who operated it with ability until October 7, 1840. The Gazette in this period continued its political successes.

Cole was succeeded by George H. Burnett, and when Burnett died in 1841, the paper again reverted to Woodruff, who took charge only "until some permanent disposition could be made of it." Cyrus W. Weller became editor under Woodruff in 1842 and the following year, the owner again sold the paper, this time to Benjamin J. Borden, who turned it into a politically-losing Whig instrument. Borden, who survived a politics-inspired duel with a rival editor, Solon Borland, in 1845,

named his brother, John B. Borden, a junior editor the same year. John's newspaper career was cut short, however, by his volunteering as a private in Yell's Arkansas Cavalry Regiment, which was then about to march to Mexico.

The Gazette supported Taylor for president in 1848 and the same year, Bordon sold the paper to George B. Hayden, who continued it as a Whig instrument until January 1850.

Woodruff, who had retired to private life and was wholly disconnected from politics, was forced back into the newspaper business in 1846 by his involvement in a dispute between Congressman Yell and Senator Chester Ashley. Woodruff favored Ashley, and consequently became a target of Yell as well. The dispute became so bitter that Woodruff resolved to establish a paper that could serve in his own defense. The first issue of his Arkansas Democrat appeared May 12, 1846. It was so successful that Ashley was reelected by the legislature in November of that year. The combination of Woodruff's newspaper experience and acumen and its being on the right side politically were too much for the rival Gazette, which Hayden had sold in January 1850 to Dr. A. W. Webb. The Gazette was on the verge of folding, so Woodruff—for motives readily understandable—bought it and combined it with his own paper as The Arkansas State Gazette and Democrat.

John E. Knight, who had entered the Democrat (no relation to the present Little Rock afternoon paper) venture with Woodruff, withdrew in 1850 and Alden M. Woodruff, a son of the founder, replaced Knight, as associate editor. Woodruff Sr., retired from newspapering permanently in March 1853, selling the Gazette and Democrat to Capt. C. C. Danley, who became its sole editor and publisher.

A fire in February 1854 destroyed everything but the Gazette's files, but four months later the newspaper again made its appearance. Solon Borland became a joint editor in June 1855, but remained only until March 1856. The following September, William F. Holtzman became a partner and in July 1859 "Democrat" was dropped from the newspaper's title.

Until the fall of Fort Sumter, the Gazette had espoused the Union cause. Lincoln's call for 75,000 men prompted it, however, to cast its fortunes with the South. The federal army occupied Little Rock September 10, 1863; the Gazette had been forced to suspend publication five days earlier, and it did not resume until May 10, 1865, when Captain Danley and Holtzman began publication of the Daily Gazette, and, three days later, the Weekly.

Holtzman became sole owner on Captain Danley's death October 3, 1865, and the following July he sold the Gazette to William E. Woodruff Jr., the founder's son. Holtzman himself died a month later.

There then followed a succession of partners, associates and assistants to Woodruff—Capt. John W. Wright, W. D. Blocher, William J. Buchanan, Col. John M. Harrell and J. N. Smithee. Woodruff sold his interest in the paper in the fall of 1870 to Maj. John D. Adams who, with Blocher as a partner, continued. Maj. T. C. Peek and Phillip H. Thomas served brief tours as editor and local editor, and in May 1872, Woodruff Jr. again repurchased an interest and assumed charge. Blocher sold out to his partners, and in 1873, Woodruff bought them all out, continuing the newspaper alone until November 20, 1876. Adams and Blocher became publishers of the Gazette in November 1876; Adams sold his interest to A. H. Sevier, and there were again a number of editors, chief editors, associates and local editors, one of them the famed Opie P. Read, who went on to become one of the nation's best-known humorists, lecturers and authors.

From then until June 1902 was marked by various other changes, and the paper was owned for brief periods by D. A. Brower, J. N. Smithee, George William Caruth and W. B. Worthen. The Gazette in 1888 was acquired by a group of Democrats who formed a stock company to buy the Gazette and thus insure its continuance as a Democratic voice.

That was the situation in June 1902, when controlling interest was acquired by John Netherland Heiskell, his brother, Fred Heiskell, and their father, Carrick W. Heiskell, and Fred W. Allsopp. The group later acquired all of the stock to become sole owners. The Heiskell family still owns the Gazette outright, a remarkable record in that ownership has remained stable for well over a third of the Gazette's century-and-a-half existence.

Although it has been at its present location at West Third and Louisiana Streets since 1908, the Gazette's earlier years were far more nomadic. It occupied, or reoccupied, about 18 different buildings—two, and a possible third, at Arkansas Post, and 16 at Little Rock, all within an area bounded by the alley between Markham Street and the Arkansas River and Cumberland, Center and Third Streets.

The first domicile was a two-room log cabin rented from Richmond Peeler at Arkansas Post. While there, Woodruff jointly owned another lot with Robert Briggs, who was associated with him in the Gazette for about a year. Although no proof has been found, the Gazette may have occupied a building on that lot sometime after April 1820. A few weeks before his move to Little Rock, Woodruff moved his newspaper into a frame house at Arkansas Post that was, according to a contemporary account, "nearly opposite Colonel Brearley's new store."

The first Little Rock office of the Gazette was another log cabin, built by a British immigrant builder, Joseph Thornhill. It was not much to look at but it was sturdy enough to last 66 years. The Gazette left it in January 1824 for a two-story brick building at the southwest corner of Cherry (now Second) and Cumberland Streets. The building, like all of the other Gazette homes but the present one, no longer stands.

Newspapering in those earliest days was primitive in a great many respects, but the patterns established then have been remarkably enduring.

Founder Woodruff, for example, decreed from the very beginning that the newspaper would be delivered to subscribers' homes in the city of publication, and he made good his word. For those living outside the hand delivery area, circulation had to rely on the then-incomplete and irregular mail system, by private conveyance or the help of friendly travelers. Postoffices at first voluntarily delivered the papers free when this involved no actual transporting of it; in those cases where the paper had to be sent to another postoffice for delivery to the subscriber. postage was collected from the addressee on delivery. (At least one postmaster, it is reported, came up short in his quarterly accounts because he had permitted Gazette subscribers to put their postage on a tab, and they hadn't paid up in time. The practice was summarily halted.)

During the period of Borden's ownership, he claimed a circulation that reached into every state—a not-unlikely claim, since the Gazette was then an only source for news about a prospective new home for Americans in other areas who were on the move. It also was a favorite source of political information for Washington residents; there exist copies of the Gazette's nameplate imprinted with the name and address of such political figures of the era as John Quincy Adams.

The staffs of the early papers were trained more in the mechanical aspects of printing than in the journalistic aspects of writing, and the reporter as an employee who gathered and wrote the news did not evolve until the Civil War and later. The claim of Woodruff Sr. that he was "editor, publisher, foreman, compositor, press-man, ball-boy (a name ascribed to the person who applied ink to printing plates with a stuffed sheepskin ball, the inking rollers not having been invented yet) and mail-clerk" was not an idle one. For many years, increases in the staff of the newspaper were largely in the composing area, not the editorial.

Advertising, following the English custom of long standing, was carried on the front page, along with legal printing and dated news gleaned from weeks- or months-old exchange newspapers. The local and current news was inside, protected from the elements by the non-critical cover page. These outside pages were printed first then allowed to dry. For reasons not now clear the paper apparently had to be dampened before being used, and the printing inks of that era no doubt dried more slowly than modern inks. Thus the inside pages were the last to be made up, and therefore the most nearly current in news value.

Rarely were advertisements published only once. Those that were dealt with timely events, like announcements of meetings or entertainments. Merchants got a better rate by contracting for long-term advertisements, of three, six or 12 months. The wording of these ads could not be changed, and accordingly they rarely ever mentioned prices or specific merchandise, emphasizing instead the name and type of store, product or service. The reason for this was simple: The availability of goods for sale depended almost wholly on the navigability of the rivers over which the goods were shipped, and transportation was unreliable at best. Summer brought low water levels and winter, ice. And not infrequently the Gazette's shipment of paper was delayed by ice on the Ohio River, out of Cincinnati.

Advertisements carried inconspicuous keys showing when they were to expire. One often used listed the issue number of the current volume first, followed by a dash and the initials, "tf." They stood for "till forbid"—or, the ad was to be run continuously until ordered stopped by the advertiser.

To historians, early ads have become the only source for names of some of the individuals who lived then. Without the Gazette ads, their names would have been lost forever.

The news columns were filled with accounts of national and international events taken from exchange newspapers that reached the Gazette weeks or months after their publication, which itself often was long after the news they printed had actually occurred. Travelers provided accounts, and the paper also printed news from letters mailed to townspeople, and from its early years the Gazette encouraged, as it does to this day, a lively column of letters to the editor, which were sometimes used as devices of political intrigue.

The Gazette in time came to rely on friends in county seats for election returns. Sent by mail, these were unofficial but a month to six weeks faster than the official returns.

Illustrations of any kind in these early papers were rare, and consisted of line drawings only until the use of half-tone engravings began on October 11, 1908.

The paper stock on which the Gazette was printed from the outset until well after the Civil War, except for periods during the war itself when the preferred stock was unobtainable, was of 100 per cent rag content. Because of that, the original early issues that survive are in better physical condition than are issues printed as recently as a decade ago. (Permanence is achieved now through microfilming.)

Woodruff Sr., and some of his successors, had great difficulty in making financial ends meet. They had to pay cash for their paper and other supplies, yet they found it almost impossible to collect from subscribers. Woodruff printed polite requests, appeals to the

subscribers' sense of justice and honesty, explanations of his need for money and suggestions that prompt payment would make improvements in the paper possible. All were ignored.

Woodruff and later owners managed to survive these vicissitudes and to continue to expand the physical plant of the Gazette as it moved from owner to owner and from place to place. The Ramage was succeeded by a Franklin Press, and it in turn by a Hoe. The Gazette, in fact, was equipped with a press capable of steam-powered operation as early as 1854, but Danley, who was then its owner, could ill afford the power plant, and it continued to be operated by hand.

Even so, the capabilities of that frontier press were considerable. Woodruff Jr., by the time his tenure as owner ended, had built one of the most complete job-printing offices in the Southwest, and the Gazette was able to print job (but not newspaper) work in color by 1868. Woodruff also could print music and he had the symbols necessary for printing the Indian languages of Cherokee and Choctaw.

Steam finally arrived at the Gazette, a good 15 years after its competition had acquired it, in 1870. The six-horsepower system engine not only was put to use driving three job presses but also heating the Gazette building.

The beginning of the Heiskell era marked the beginning of the Gazette's development from a financially shaky, provincial publication into what is now authentically claimed for it, one of the nation's most honored newspapers.

Heiskell added a Monday issue November 20, 1906, making the Gazette a 365-days-a-year publication. The first half-tone engraving appeared October 11, 1908, the first sports page October 24, 1908, the first society page two months later. Departmentalization of the news, a concept only vaguely followed in the early years, became the rule.

The first cartoons appeared as early as 1900, but the first regular Sunday comics section was an addition of 1906. The following summer, the Gazette became the first Arkansas newspaper to offer Sunday comics in color, and two years after that, in 1909, Bud Fisher's "Mutt and Jeff" made its Gazette debut as the first daily comic strip.

Advertisements had continued to appear on the front page until 1924; thereafter, they were moved inside, and the front page achieved the prominence it now holds as the preeminent place for top news. The development of business news as a new news category preceded World War I, and by 1925 had established itself as a separate page.

The Sunday Magazine came in 1930; commemorative editions were issued marking the 80th anniversary of the newspaper December 12, 1899; the 100th anniversary November 20, 1919, and the State Centennial June 15, 1936. All three were issued as bound magazines.

Hugh B. Patterson, Jr., the first and, so far, only person to hold the title of publisher, joined the staff after his World War II service, to be followed soon by Harry S. Ashmore as executive editor. Their philosophies of newspapering and of editorial stance coincided, and during intensive planning sessions that correlated major changes in format and editorial handling with innovations in the business area, the modern Gazette emerged.

One of Patterson's first moves was to bring in persons who could strengthen key positions in the paper's management—Frank Duff in personnel, J. R. Williamson in business management, Leon S. Reed in circulation, Bill Moffitt as national advertising manager, and others. (All but Duff remain on the staff.) Ernest D. Dodd resumed his duties as composing room foreman after the war, and is now the senior man in mechanical management. Claude M. Collie progressed from accountant to controller and assistant treasurer, and Louis S. Munos joined the staff as advertising director.

In the news department A. R. Nelson returned from the Navy at war's end to resume his duties as telegraph editor, and successively became news editor, then managing editor, and is now Executive Editor. William T. Shelton joined the news staff in 1950, and moved up to his present position of day managing editor and city editor. Robert R. Douglas, the night managing editor and news editor, came to the paper in 1948 after graduation from the University of Arkansas. James O. Powell became the Gazette's editorial page editor following Ashmore's departure, and is assisted by Jerry Neil and Jerry Dhonau in writing the paper's editorial opinion.

Parade, the syndicated Sunday color supplement, was a 1950 addition, making its debut on the same day that the Gazette's modern—and still-used—divisions were unveiled.

The Gazette's subscription to wire service news dates to post-Civil War days, when transmissions were by Morse code and required a Morse operator to send or receive them. Wire services were added as the paper grew—the Associated Press, United Press (now United Press International), the New York Times News Service, and, within the month, Reuters, a British-based service with worldwide resources, like AP and UPI.

From the Morse Code days, the wire services have progressed technologically to the point now where high-speed printers that are a part of the national network of wires serving newspapers now simultaneously produce perforated tape as their "copy" is printed out. The tape then may be fed into attachments on the Linotype machines, automatically reproducing in column width the copy as it was sent out from Washington, New York or wherever.

The use of the tape doubles the production of a Linotype machine, of which the Gazette has 22, and has the further advantage of requiring only one-fourth the manpower to operate that a hand-operated Linotype must have. Thus, one person can keep four Linotypes fed with tape, and they can produce type at twice the hand-operated rate, for a net efficiency gain of eight-fold.

Except for classified and display advertisements, mats, engravings and the like, almost all of the written content of the newspaper is now first "punched" into tapes, on a battery of eight tape-punching machines.

The tapes then are fed through a computer which justifies the lines, so that the copy is produced in the proper column width. (If a line is made too long by a word, the offending word is flashed rapidly on a dial of the computer, beneath which are buttons. An operator presses the appropriate button, telling the computer where the grammatically correct syllable break should be.)

The tapes then are fed into the Linotype machines, and the resulting columns of type formed by the machine of molten lead, are "made up" into pages by printers following directions provided by the news editors. Each page already will have its advertisements in place. A proof of each column of type is "pulled" and sent to the proof reader, who corrects any errors and returns it, with the type, to a hand-operated Linotype, where lines containing errors are reset.

The next step is the pressing of a full-page mat from the page form. A damp, porous papier mache sheet is placed over the mirror-image page and is pressed, under tremendous pressure, down onto the page form, creating a positive image on the now-hard mat. The mat then is subjected to a "mat roller" that dries, shrinks and curves it. From there it goes into a casting box, where molten lead is poured onto its surface to create a second mirror image. This half-round of lead is dressed and trimmed if necessary, then sent by conveyor to the press-room, where it is placed on the press as one page of the next day's paper.

The daily volume of local and state news, features, society, sports and business issue from the news staff which daily must gather, write, edit and assemble the equivalent of an average novel. "Stringers"—correspondents who acquired their nomenclature from the custom of being paid by the amount of printed news they provide, as evidenced by their "string" of clippings, pasted end to end and measured by the inch—are located in every county of the state. They telephone, mail or telegraph their news articles to the state desk, which has jurisdiction for the coverage of all of Arkansas outside of Pulaski County.

Within the county, a staff of "beat" reporters—those covering on a regular basis the City Hall, Courthouse, Capitol, Federal Building, police and North Little Rock—produce articles from their beats. General assignment reporters cover the rest—civic clubs, political and other conventions, interviews, features and so on. Sports, the Sunday Magazine, the Business and Farm Review, Society, Home and Food, Editorial Page, Church and School, Radio and Television, and photography, all have their own staffs. Most have their own space allotments, and like Sports, Sunday, Society or the Editorial Page, their own editors. The beat and general assignments newsmen work directly under the city editor, who funnels their copy to a news desk for editing, the addition of headlines and subheads, placement on a page "dummy," and, finally, transmission to the composing room where it begins the mechanical process described earlier.

Additions to the Gazette presses in 1964 enabled the paper to print 64 pages of black and white plus four pages of full color at a speed of 45,000 papers an hour, an increase before the additions of 16 pages. The entire press complex now consists of eight units, three half-decks, a double color cylinder and two folders. A "pasterpilot" added at the same time enabled pressmen to change rolls of paper without stopping the press, as was previously required.

The Gazette has contracted to buy from the Atlanta Journal and Constitution another press line consisting of 16 units of Goss Mark I Headliner units with six half-decks and three double folders, all equipped with full-speed pasters. These will double the press capacity. It is scheduled for installation in 1971.

The Gazette maintains storage outside the immediate plant for about 12 carloads, or 1,000 tons, of newsprint, of which it uses more than 13,000 tons a year, together with a thousand gallons of ink every week.

Among recent plant additions are the most modern engraving system available, which produces most—and in time will produce all—of the halftone engravings used by the Gazette; and the installation of a Photon 560 system with an 1130 IBM computer for the electronic setting of display advertisements.

The present Gazette Building, designed by George R. Mann, father-in-law of J. N. Heiskell, has been described by Little Rock architects as transitional in style, reflecting both Federalist influence and what they called the Chicago School, which evolved from Louis Sullivan, the teacher of Frank Lloyd Wright. It was built by Peter Hotze and was occupied in 1908.

The three-story building, at the northeast corner of West Third and Louisiana Streets, includes rental space as well as the entire Gazette operation, except for outside storage. The Gazette alone has 342 full-time and 82 part-time employees, who earn $50,000 a week. With circulation having increased from about 20,000 at the time of the building's construction to some 110,000 to 130,000 at present, the space occupied by the

newspaper no longer is adequate. Accordingly, the Gazette has bought almost four blocks of land immediately east of the Freeway between Second and Fourth Streets, with the Rock Island Lines tracks as the east boundary, and plans for a new plant are well along, with the announcement of construction of the new building expected soon.

Fewer than 10 per cent of the 115,400 daily and 132,400 Sunday copies of the Gazette that roll off the presses wind up as single copy sales. One of the newspaper's circulation strengths is the high proportion of home-delivered subscriptions. The Gazette is one of only three major American newspapers that provide home delivery state-wide. (The other two are the Denver Post and the Des Moines Register and Tribune.)

To achieve this enormous daily feat, the Gazette contracts with the operators a fleet of 47 trucks which cover the entire state between 10:30 p.m. and 5 a.m. 365 days a year. They deliver Gazettes to some 300 dealers and some 250 carrier boys outside Pulaski County, who in turn deliver papers to individual subscribers. The in-county delivery is handled by about 400 carriers. Thus there are more than a thousand Arkansans who earn part or all of their income from the sale of the Gazette.

The whole delivery network is based on the independent contract system under which the newspapers in essence are wholesaled to dealers and carriers, who in turn retail them to their customers.

The circulation department, which has some 50 internal employes and representatives in nine of the state's major cities, not only must maintain and collect for distribution but also is responsible for the paper's efforts to increase sales, and thus circulation. The paper has scored some notable firsts in this regard, among them the use of two-way radio in serving subscribers. (A subscriber who doesn't get his paper may call the Gazette before 10 a.m. and have one delivered to his home—no extra cost.)

As this complex delivery system has grown, the number of Gazettes that must depend on the mail for delivery has declined to half its level of 20 years ago. Fewer than 6,000 copies are mailed, but they go throughout the world—there is a subscriber, even, in Afghanistan. (The cost of that subscription is astronomical.)

A woman scorned cannot compare in fury, nor can hell itself, with a Gazette subscriber whose paper doesn't arrive well before sunup. A delivery boy's failure becomes a personal affront of the subscriber by the Gazette. One lady was infuriated on an icy morn that her paper was not there. Had it happened before? "No," she replied, thoroughly disgusted, "but wouldn't you know it would be on the day my husband can't get to work!"

Gazette subscribers, indeed, seem to take an almost proprietary interest in the morning newspaper; they may praise or curse it, but they find it almost as necessary to their life style as breath itself. Few readers are indifferent to it. There is, of course, ample reason. No one need ever be ignorant of where the Gazette stands editorially. Its editorial page, the "soul of the newspaper," in the phrase of Mark F. Ethridge, one of the nation's most distinguished journalists, has never equivocated on an issue. In modern times, it has served as a kind of collective conscience, always reflecting the liberal and progressive approach that conflicts—violently, at times—with public sentiment.

So consistently has the Gazette editorialized on all issues that some of its critics have chosen to condemn it for presuming to be authoritative on everything. Never has the editorial page, in modern times, been accused of straddling the fence. That being the case, a remark not infrequently heard about the Gazette, and one usually uttered with resignation, is that "You can't live with it, and you can't live without it."

Of course, the other side of the coin is an almost passionate partisanship for the Gazette. Newcomers often express surprise at discovering its quality, and when they move on, not infrequently they have the Gazette sent to them. They share their devotion with thousands of old-times, who must have learned from their parents the expression, often heard and usually prefacing a request, that "I've been a subscriber to the Gazette for 40 years, and * * *" Sometimes, the "and" is replaced by "except" and they add, with equal pride in their independence, some period when they quit their subscriptions temporarily in outrage at some editorial position with which they disagreed.

The Gazette countenances dissent, even in its own ranks. When the newspaper was at its bitterest odds with former Governor Orval E. Faubus, a Gazette printer, identifying himself as such, made a television commercial in Faubus' behalf. Faubus is out of politics now, but the printer remains a member of the Gazette backshop staff.

"The Old Lady," a sobriquet first applied in scorn but assumed by the Gazette in pride, personifies the chastizing, scolding dowager seeking to guide and prod a recalcitrant following to do right, an image that the appearance of the paper itself, perhaps by association, seems to reflect. Physically, changes in the Gazette make-up come as slowly as they do inexorably, and a splashy dress is not to be found in The Old Lady's wardrobe.

In an age of emphasis on brevity and telegraphic style, when space is money and reading time a premium, the Gazette remains one of the few newspapers of the nation that does not stint on depth reporting, granting however many column inches are necessary to tell the full story. The advertising slogan, "You get more out of the Gazette because more goes into it," in terms of cold, hard lineage statistics alone, is not an idle boast.

John Netherland Heiskell, whose 76 years in journalism, 67 of them at the helm of the Arkansas Gazette, is a record unique in American newspapering, remains at age 97 the bedrock of the institution. Born at Rogersville, Tenn., November 2, 1872, he was one of the first of a new breed of journalists who were college trained for the career. Taking his degree from the University of Tennessee in 1893, he began it the day following his graduation by joining the staff of the Knoxville, Tenn., Tribune as a reporter. He served successively as city editor of the Knoxville Sentinel, reporter and city editor of the Commercial Appeal of Memphis and as a newsman for the Associated Press at Chicago, filing news reports for the Southern wire. From Chicago he became what would now be designated chief of bureau for the AP at Louisville, Ky., and in June 1902, joined with his father, brother and Allsopp in the purchase of the Gazette, of which he has been editor and president ever since.

Heiskell, whose years may have slowed his gait but have served only to quicken his wit and heighten his perception, not only brought innovation and technical advances to the Gazette, but long ago established its credo—a guideline he articulated in a superbly, and economically, worded statement on receiving an award from Freedom House in 1958, the year of the newspaper's greatest crisis.

The credo, since often quoted, and simply, "Every newspaper must come to judgment and accounting for the course that forms its image and its character. If it is to be more than a mechanical recorder of news; if it is to be a moral and intellectual institution rather than an industry or a property, it must fulfill the measure of its obligation, even though, in the words of St. Paul, it has to endure affliction. It must have a creed and a mission. It must have dedication. It must fight the good fight. Above all else it must keep the faith."

No member of the staff is more faithful than he. Heiskell, who had earned the right to a retirement of ease 30 years ago, comes to his office at the Gazette daily—when he is not traveling about the world, attending international conferences or other professional meetings. He presides over the daily editorial page staff conference, where he sets policy. He is a voracious reader of other newspapers, a keen collector of Arkansas material, an almost daily provider of news tips and suggestions. His sense of humor is an institution itself to Gazette staffers, and "JNH" stories are legion; several people collect them.

A widely-circulated but typical one concerned one of Heiskell's periodic medical checkups a few years back. His physician, after the usual examination, pronounced him in general good health, with all organs functioning properly. "In fact," said the doctor, "Your liver ought to be good for another 20 years."

"What," the 87-year-old editor replied, "am I going to do then?"

Adherence to "fighting the good fight" has brought Heiskell and the Gazette almost every journalism award available. For the newspaper's unwavering advocacy of compliance to school desegregation laws and edicts in 1957–58 against violent popular opposition, it, and Ashmore, the editor of its editorial page of the time, both received Pulitzer Prizes, an unprecedented recognition. Then followed for Heiskell the John Peter Zenger Award of the University of Arizona, the Lovejoy Fellowship of Colby College, the annual Freedom Award of Freedom House, a National School Bell Award and citations and medals from Syracuse University, Columbia University and the University of Missouri.

The Gazette itself was designated an historic site in journalism September 15, 1966, by Sigma Delta Chi, the national journalism society, which previously had made the Heiskell an honorary fellow.

THE YEAR THE GAZETTE WAS ESTABLISHED

Two things crossed my mind nearly simultaneously the other day during a vacant moment as I was gazing at nothing in particular out on Third Street. Two momentous events occurred during the 150-year life of the Gazette, whose birthday we are observing:

(1) The first steam-powered vessel to cross the Atlantic did so in 1819, the year of our founding; (2) One team of men has already landed on the moon in 1969, our 150th year, and the second team of moon explorers is at this moment on their way.

The two points in time connected by the Arkansas Gazette must surely contain the largest collection of marvels in man's history and pre-history.

Both the years 1819 and 1969 are parts of ages of expansion when ideas become too big for the frames containing them. An outward and upward thrust characterizes the years.

We have 1969 reported and brought up to date constantly—and instantly. While musing on the two years, I began to wonder what was going on in the world in 1819, when William E. Woodruff was installing his first printing press at Arkansas Post, and beginning to make up Volume I, Number 1, of one of America's longest-lived institutions.

In 1819, Europe was being shaken by war; despotism was being undermined in influential countries by the tide of liberty. A many sided revolution was under way, not to be stopped.

King George the Third still occupied the throne of England in 1819. Queen Victoria was born that year. It was the year in which industrialism and colonialism were expanding like steam into a new cylinder. There was a demand for parliamentary reform, and in an effort to slow the progress of popular government, 1819 saw passage of the "six acts" which forbade Englishmen from assembly in groups larger than 50.

In France, Louis the Eighteenth occupied the throne, from which Napoleon had just

recently been toppled, and the new monarch attempted to set up a parliamentary system based on that of the British. The dream of self-government was spreading.

In Prussia, Frederick William the Third fretted over an apparent "hatred of kings" and the "phantom called liberty." At the same time the Arkansas Gazette was being founded, Frederick William was passing police restrictions on students and the press.

Emperor Francis the First of Austria, under the influence of Metternich, suppressed freedom of thought and speech. Italy was longing for unity and representative government, and Greece was plotting the revolt which took place against Turkey in 1821. Alexander the First was on the throne of Russia, a country of enslaved serfs.

In 1819, the Republic of Columbia was formed with Simon Bolivar as president.

Ferdinand the Seventh was king of Spain, and during 1819 he agreed to the treaty by which Florida and West Florida became a possession of the United States.

James Monroe was president of the United States in 1819. It was a period of the formulation of the Monroe Doctrine, and a year later the Missouri Compromise was promulgated.

The steamship Savannah became the first such vessel to cross the Atlantic Ocean in 1819, although it must be admitted that she was also fully rigged with sail, and that the low-pressure steam engine supplied only about 90 horsepower. It was a ship of 250 tons, and made the journey to Liverpool in 30 days.

Alabama became a state in 1819. The Sandwich Islands, now Hawaii welcomed its first band of American Christian missionaries.

Robert Crittendon came to the Arkansas Territory as secretary the same year under appointment of President Monroe.

The population of the Arkansas territory was recorded as 14,273, living mostly along the streams and rivers of the seven existing counties, Lawrence, Phillips, Arkansas, Pulaski, Clark, Hempstead and Miller.

One hundred and fifty years is really a short time in history, but for us—a span of incredible progress.

KANSAS FARM BUREAU CITIZENSHIP SEMINAR

Mr. DOLE. Mr. President, the Kansas Farm Bureau Federation sponsored a citizenship seminar last summer for high school students. A highlight was a speech given at this seminar by Mrs. Francine Neubauer entitled "Once Across the Stage," which summarizes in a most effective way the travail endured by mankind in striving for and maintaining freedom from oppression. Mrs. Neubauer reminds her listeners that liberty does not come easily and that to maintain it requires constant vigilance by all who enjoy it.

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

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

ONCE ACROSS THE STAGE

(By Francine Neubauer)

Say it in French! Say it in English! Two words have the same meaning "Freedom" and "citizenship". Yet, these two words have been used, misused, tossed about and abused so much that we cannot help but wonder what their true meaning really is.

History tells us its real meaning—

When Christopher Columbus discovered America, little did he know that a land which appeared wild, dangerous and certainly uncivilized, would some day reach, and even surpass in reputation, wealth, and power a continent which at that time had everything in its grip, royalty, fame and power.

As the years and the centuries went by, two kinds of people, with a same background, but with an entirely different ideal confronted each other. On one hand, there were those satisfied with the Old World, its traditions, its selfishness, and cruelty, its total lack of concern for those held in misery and slavery without the hope of ever knowing a better tomorrow, and on the other, the people who found themselves unable to remain and accept a life where only the rich could survive, and who rebelled and came to this country, willing to accept any sacrifice and hard work to gain the freedom they were searching for rather than to die in servitude We call them the pioneers!

Truly, Europe cannot be blamed for everything. According to history, each nation in Europe was, according to its size and its fate, either a master or a slave for not everyone can conquer and rule. Among the small countries of Europe stood a gentle land, small and overrun by foreign powers, chained for centuries to other nations, and exposed to the most violent warfare ever known.

From Caesar to Hitler, the long suffering country of Belgium has had to submit to intermittent foreign occupation. They can never forget the battles that ravaged Flanders fields and raged through the hills and forests of the Ardennes. Curiously enough, among themselves, the Belgians differ widely—the Flemish fisherman is as different from the Walloon coal miner as the Brussels banker from a stevedore at Antwerp—yet, in a national crisis they act as one. For 19 centuries Belgium had to struggle with outside forces who tried to split up or control the country and finally gained her independence from the Dutch only in 1830.

That independence is as dear to them as the freedom we Americans know, and this is the reason why there is no doubt in the people's mind that to protect or regain this freedom they must fight at all cost. Should you ever see a foreign flag covering the Stars and Stripes in your homeland, you would know then a feeling which can be only described as the bitter taste of defeat.

May I turn back the pages of history and share with you this heart-breaking experience—the stage is all set, and you and I are the stars. A small country, Belgium, the date May 10, 1940—a beautiful spring morning . . .

It's a peaceful spring morning, the sun is shining, the birds are singing and your heart is young.

You look at the blue sky, and suddenly disbelief grips at your soul. This is not a cloud, and those are not birds. The horizon is filled with roaring planes and these puffs of smoke are shells and bombs . . . and you stand there motionless, a little girl yet, watching your father, tears running down his cheeks, repeating over and over again, "C'est la guerre," "We're at war." The shrill noise of the sirens tears the air. People begin to run and scream as you watch, paralyzed, the houses around you turn to ruins and then you, too, begin to run anywhere, anyplace, to hide until the awful threat is over . . . The days go by, the soldiers are fighting valiantly; a small army in a small country, against a well prepared aggressor; they suffer and they die, there is no escape, and ten days later over the radio the voice of the king, shaking and filled with sorrow tells you: "I have surrendered our country to the enemy to avoid unnecessary massacre of our troops; may God give us the strength."

That evening, huddled with your family behind the heavy draperies, you watch Hitler's army march down in triumph through the streets of *your city* and once again your father cries . . . "What did he fight for just 20 years ago." The streets are deserted for a conquered people are weeping behind closed doors and each enemy step is a step crushing your heart.

And a new feeling, a bitter feeling seeps into your heart—hate for the invaders—for one's love for one's country is not measured by its size but by the pride of its people—the *bitter taste of defeat is yours for a long time.*

Days, weeks go by, you adjust for there is no other choice, to the dictatorship, but you never accept it.

Hunger, misery, threats, torture are part of your people's life now, but because their soul is invincible as long as they believe, you and thousands of others begin to fight back, to avenge your country in many small ways. The principle is to get at the nerve center of the enemy, to destroy his confidence, to keep him worried and harassed. You are no longer a child, war made you grow up in a hurry.

Strangely enough, as you find yourself and your country robbed of its freedom, you become better acquainted with a feeling you often ignored because it was easier. The realization that you care a great deal for your people and what happens to them. Gone are the small, petty internal attitudes or ideas, now there is only one nation united because it is fighting the same enemy. The quiet, dull life some of the Belgians led before the invasion no longer exists. Now the meek find the courage to speak up, the old the desire to fight regardless of the danger, the rich share his wealth with the poor—the miracle of unity among a people in chains has begun. A wonderful organization "the underground comes to life, made of people in love with their country. There is no glamour, no recognition and they die silently *but not in vain.*

The rulers react to all your efforts by more threats, more punishment; one morning you go to school and your teacher is absent. What has she done: Deported to the slave camp for conspiracy against the III Reich. You pass by the rectory and a note on the door, signed by a German official, informs you that the priest is no longer there; his crime? Conspiracy against the enemy.

Persecution spreads out. One morning a German truck stops in front of your neighbor's house. They are taken away at gunpoint, despite their protests and their tears. You never see them again. Their crime? The worst of all: they are Hebrews. And suddenly, all over the city, thousands of yellow stars begin to bloom, the Star of David worn on a coat sleeve or a dress, and which brand the wearer as someone not entitled to any consideration or decent treatment and later on to be herded just like cattle in concentration camps. They walk around, silent but proud; martyrs, refusing to give up their citizenship and fighting back in a most powerful manner through their example.

At first you are horrified, then you begin to learn not to show your emotions for it does not help. Families are torn apart, all young men are to report for "volunteer work" and your mother says goodbye to her son and you to your brother. You again taste the bitter pain and the hate and you change, you become more independent, more defiant, and you cannot stand idle and let the oppressor destroy your soul. There are hundreds of young people who give more, they give their life and it is an endless, silent struggle between the oppressed and oppressor.

With the loss of your freedom come a thousand humiliations and frustrations. You watch the little children and the old people fight for the garbage some others luckier have discarded. You see them struggle over a piece of cloth, coal or wood, over a moldy crust of bread. You know a hundred times the angry disappointment of reaching the end of the long waiting line in the grocery store and be told "Sorry, there is no more."

You wonder how people can exist on one egg, one pint of milk, and one loaf of bread

a week, but they live on more than that—they live on hope.

After four long years, one summer day it is over, you are free. You forget your hate and your sorrow, but you never forget the value and the price of freedom.

The curtain falls on the spectacle of a nation screaming with joy, overwhelmed by the breathtaking awareness of regained freedom.

Act II. It's Christmas 1946. A ship sails away from the French shore carrying aboard a young woman filled with hope and good will to a new country and a new home. A panic seizes her because she suddenly realizes that this may be more of a challenge than she expected and while her heart is torn between two loves, the one she leaves behind and the one awaiting her, she tells herself that America is really what she believes it is, beautiful, rewarding to those who try hard, and above all, free.

Truly there have been many rewards for her. A new home, new friends, and above all the time when she, too, after four years, places her hand over her heart and says "I pledge allegiance to the flag of the United States of America." Believe me, she fully understood that this was a privilege, something to be earned and to be proud of. Truly, she just did not take, she gave in return the first 20 years of her life to become someone new. She also learned one thing—there is only one way to salute that flag, by standing right behind it, *united!* This is for her the happy ending of the second act.

Act III. I present to you now the American of today, with his heritage and a privilege acquired just by being born. After 20 years in this country, I marvel at its richness, its people and the life that is theirs. Most of all, I have become more aware of the important role America plays in the world. Twenty-five years ago, Europe looked at the United States in a protective, big-sister like manner. The American was then a symbol of excentricity, exuberance, youth and above all *wealth*. This picture was created by the papers, films and books presented to the European public. As a young nation the United States' views and ideas were different and more daring than those of the Old World. Do we not marvel now at the audacity of today's youth? It is part of his life for only years of experience bring on wisdom, patience and serenity.

Today, America is the leader in the world and to carry on this role implies heavy responsibilities because other nations are watching us, prompt to give advice or to criticize but seldom to take action.

As human beings we criticize, worship, build up or destroy something or someone every day. We complain forgetting the richness and greatness of this country, its prosperity and its role in the world. We have lost sight of its true gift, the freedom that is ours—yet the best things in life are not free, they must be guarded, not only through good will and appreciation, but through sacrifice if necessary.

There has been more wars, the Korean War, the war in Viet Nam, and we should worry because it seems it is always somebody else's war. Oh, I know, it is not easy to ask a mother to give her son, or a father to leave his family, but how would we feel if they were taken away at gunpoint and put to work against their country? It is only when we have lost a good thing that we realize its value. And to the people who protest, who defy the authorities, I would like to say "Don't you know that by your actions you are destroying the symbol for which America stands? The freedom everyone dreams of, needs and wants? For if we someday can find one good excuse why we should not fight for our freedom or our country, I hope we are ashamed of it." To avoid one's duty in any way is to make oneself available to the worst thing of all, "failure." Fifty years ago Congress voted to declare war on one country and the lives of Americans were abruptly changed. We are no longer on the sidelines and the words of a president are still ringing in our ears. "The world must be made safe for democracy."

Today we are still fighting and are trying to make a reality of these words. There is a terrible price to pay for peace, and as we watch with anguish and sorrow the American flag being burned by a foolish nation and our government harassed and humiliated wherever it is represented, we cannot help but wonder how short men's gratitude is and how much more we have to give.

The answer is there, simple, real and cold. As much as we are willing to give for we owe something to those who gave everything 50 years ago, 25 years ago, and this very day. We cannot avoid it unless we are failing and to avoid this failure and to keep our role requires the united effort of a whole nation. Each of us must contribute in small ways perhaps, to the completion and perfection of the picture. A citizen is a vital part of a nation if he or she does a good job. Granted! It is a rather obscure role. We do not receive daily thanks for being honest, for observing the law, welcoming a neighbor or forgiving one who hurts us, yet all these actions contribute to the betterment of our country.

Because for some of us the task is partly done, we must turn to the young people hoping that they, in time, will preserve, protect and very likely improve our policies and our life, for any human machinery can always stand some improvement. Yet, how can we be sure the new generation is prepared if we fail to teach them.

Education begins at home. From the moment a child is born he bears a responsibility and those who train him will either contribute to his success or his failure. To teach a child to accept a sacrifice, to put forth an effort to reach a goal, to study to acquire knowledge, to respect others and their life or their decisions, those are the essentials of citizenship.

A real citizen is a free man who willingly accepts a certain amount of control. For without control each man becomes his own government and his own judge, and this means chaos. The right to dissent is our privilege; to abuse that right is to seek self-destruction by undermining the root of this country, unity among its people.

There is no end to the third act for we are part of it now. There is one thing to remember, "We only walk once across the stage of our life. Let us be sure we play our part well."

Perhaps you have a question, "What is expected out of me? Speeches? Fights? Blood?" The answer is simple and real.

You represent "The Best" to the rest of the world, and to us the older generation. It is true that perhaps we forget to say thank you to you for the good things you are doing and for your genuine interest in your country and your life and at times, you must feel misunderstood or overlooked, yet, you are the future of America.

I am standing here before you, not to ask you to feel sorry for what happened years ago or even yesterday somewhere else, but to remind you that the turmoil in the world today is a cry for help. That tomorrow belongs to you, our new generation, and we hope you will join the ranks of those who care, and understand as matured men and women the responsibilities awaiting you.

I could not find a better way to end tonight's story than by reading a letter written in the summer of 1966 by one of the University of Kansas all time track stars, Cliff Cushman, an Air Force Captain at the time he was reported missing in action in Viet Nam since the fall of 1966.

The 43rd annual Kansas Relays were dedicated to him in recognition of his outstanding attitude not only in sports but in life.

Perhaps you will recall that in 1964, Cushman attempted to qualify for the Olympic Games at Rome. He hit a hurdle, sprawled on the track, and missed his goal.

And so he wrote this open letter to the youth of today:

"You watched me lie on the track in a heap of skinned elbows, bruised hips, torn knees, and injured pride, unsuccessful in my attempt to make the Olympic team for the second time. In a split second all the many years of training, pain, sweat, blisters and agony of running were simply wiped out. I tried! I would much rather fail knowing I had put forth an honest effort than never to have tried at all.

"Let me tell you something about yourselves. You are taller and heavier than any past generation in this country. You are spending more money, enjoying more cars than ever before, yet many of you are very unhappy. Some of you have never known the satisfaction of doing your best in sports, in class, the wonderful feeling of completing a job, any job, and looking back on it knowing that you have done your best, so:

"I dare you to not wilt under the comments of your so-called friends. I dare you to clean up your language. I dare you to honor your mother and father. I dare you to go to church without having to be compelled to go by your parents. I dare you to read a book that is not required in school. I dare you to look up at the stars, not down at the mud. There is plenty of room at the top, but no room for anyone to sit down.

"You may be surprised at what you can achieve with sincere effort. So get up, pick the cinders out of your wounds and take one more step.

"I dare you!

"CLIFF CUSHMAN."

My name does not matter, it will be forgotten within a few hours, but *one* must remain—"My name is America and my blood is made of 10,000 drops of others' blood. And, if at times I weep at the sight of my children, their strikes, their frustrations, and their anger, I then seek comfort into those who abide by my laws, at the cost of personal sacrifice, and then I know without a doubt, that I will remain forever the United States of America, for you see, my strength stems from my people's loyalty."

THE RULE OF LAW

Mr. PROXMIRE. Mr. President, as all of us in the Chamber are aware, this Nation was founded on the rule of law. Our Constitution and Bill of Rights attest to this fact. The rule of law gives our Nation a structure, a foundation, on which to stand. Without the rule of law, individuals would be set adrift, unable to protect themselves against injustice, unable to find recourse against deprivations.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in December of 1948, acknowledged the importance of the rule of law in its Preamble. The third paragraph of this Preamble stated:

> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

As is quite evident, the human rights of the citizens of the United States are protected in our Bill of Rights. No other nation in the world can match ours for the rights that we guarantee to our own people. This is not to imply that we have always measured up to our lofty rule of law. The deprivations and inhumanity

that our Negro population have endured throughout the years in this country attest to this discouraging fact. However, the insurance of our human rights are on the books. We need but to enforce them to the fullest extent to turn theory into practice.

But what about an international rule of law that would protect all mankind against injustice and the denial of the basic rights that we consider to be the birthright of all free men? Should not this Nation attempt to extend to others the same basic rights through the rule of law that we consider so integral to our understanding of human rights? I think the answer to these questions is "Yes."

Human rights should be protected by the rule of law not only on the national level, but on the international level. This is not to say that international laws should be established that would impinge on the sovereignty of the individual nations in carrying out the duties of government. But this is to say that human rights should be protected for all mankind by international law against the tyranny and oppression of totalitarian regimes. And, I might add, occasionally we may find the international rule of law on human rights applied to those nations that affirm democratic principles, but who may have "strayed from the path" in upholding these rights.

It is for these reasons that I again strongly urge the Senate to ratify the Human Rights Conventions on Political Rights for Women, on Forced Labor, and on Genocide. These conventions, which affirm many of the most basic human rights, would advance the day when all men could look to an international rule of law to protect themselves against injustice.

ARIZONA DAILY STAR JOINS FIGHT AGAINST SMUT

Mr. GOLDWATER. Mr. President, I am very much pleased to report that the Arizona Daily Star of Tucson has endorsed the efforts of those of us who are seeking to attack the problem of obscenity in the mails.

The Star has printed an in-depth editorial strongly supporting the enactment of new laws to control the dissemination of indecent materials in the mails and channels of interstate commerce, to which I invite the Senate's attention. I am certain that the participation of this major newspaper will enhance the movement against smut mail.

Mr. President, I ask unanimous consent that the editorial of November 18, 1969, entitled "U.S. Attack on Smut" be printed in the RECORD.

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

U.S. ATTACK ON SMUT

Sen. Barry Goldwater deserves the strongest support he can be given in his efforts to protect children from an ever-increasing outpouring of obscenity in the mails.

One hundred million Americans can't be wrong, and they are dissatisfied with existing postal laws against obscenity.

There has been an outcry from Tucson parents whose children receive filth through the mail they did not seek, and do not want.

The mail originates with 15 or 20 large firms who now have sales running into billions of dollars annually.

A bill Goldwater has introduced into the Senate, and a similar House bill, are aimed at protecting children and not stopping the flow of filthy pictures, movies, magazines and books to adults who want them.

The Arizona senator is convinced Congress has the constitutional power to enact a strong new law to restrict the distribution of material obscene to minors.

There are 35 million children under 18 in the U.S. Goldwater believes exposure to pornographic material is harmful to them.

Goldwater would force commercial dealers to take reasonable precautions to keep their trash out of the hands of children.

"What we could do," he says, "is put the smut merchant at his own risk on the question of age whenever he fails to have professional assurance that the addressee is an adult. Under my proposal the dealer in smut would be required to show he has taken all reasonable precautions to learn the age of the addressee."

Goldwater also would expand the scope of criminal provisions. The only person covered by the House bill seems to be the one who deposits the matter in the mail. The senator feels the producer of the obscene material might evade the penalties of the law by hiring an independent distributor to mail his product. Goldwater would apply criminal sanctions to persons producing pornography, knowing it will be sent through the mails.

The bill also protects adults who have said they don't want the offerings.

One of the outcries against publishing and mailing smut has been that the law might be twisted to interfere with freedom of the press. Readers may have noted that the Bible recently was the subject of a smut attack, apparently to draw publicity to an individual who is an enemy of restrictions on pornography. In most instances relating to any law, it is not so much the law itself but its application that counts. That idea stems back to Thomas Jefferson at least.

ELECTORAL REFORM

Mr. BAYH. Mr. President, I ask unanimous consent that the very thoughtful editorial written by Rufus Gosnell, president of the National Small Business Association, and published in the October–November 1969 edition of the Small Business Bulletin, be printed in the RECORD.

Mr. Gosnell correctly points out that the time to act on direct popular election is now.

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

ELECTORAL REFORM

(By Rufus W. Gosnell)

"It is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power."

So spoke Senator John F. Kennedy in a 1956 Senate debate on electoral college reform. He did not know then that four years later he would become President with 62 percent of the electoral vote but with only the slimmest popular vote margin, 50.08 percent. In 1912 Woodrow Wilson was elected President with 82 percent of the Electoral College vote but only 42 percent of the popular vote.

NSB has long supported efforts to abolish the winner-take-all system under which, as an American Bar Association report has pointed out, it is theoretically possible for a candidate with a popular majority in 11 large states and one small state to become President through the present system with only 25 percent of the national popular vote. In fact, 14 "minority" Presidents have assumed the office with less than half of the popular votes cast, and 3 of them actually received fewer votes than their major opponents.

On September 18 change came a long step closer when the House of Representatives by the overwhelming vote of 339 to 70—49 more than the two-thirds majority needed—approved what may become the 26th Amendment to the Constitution of the United States, providing for direct presidential elections.

The ball has been thrown to the Senate Judiciary Committee. After action by the whole Senate, then there must be ratification by 38 state legislatures, usually a time-consuming process, although the 21st Amendment repealing prohibition went through in 1933 in only ten months.

Stymied for years by public apathy and the inability of proponents of change to decide on what the change should be, electoral college reform was stimulated by the Supreme Court decisions of *Baker* v. *Carr* in Tennessee's districting case, and in 1963 against Georgia's county unit rule in state elections—a parallel winner-takes-all system. In 1964 the National Small Business Association's General Counsel John A. Gosnell met with a number of people, including Attorney General David P. Buckson of Delaware, who in 1966 brought a Supreme Court suit in behalf of his state against "each of the other States of the Union, and the District of Columbia" challenging constitutionality of the "state unit-vote system," although recognizing that "ultimate correction . . . may best be achieved by Constitutional Amendment."

NSB provided funds for research and printing of the brief, in whose drafting Mr. Gosnell was a major participant and officially "of counsel." Although the Supreme Court declined to hear the suit, the brief speeded the development of the new amendment in what one commentator called a "well reasoned plea (which) will stand out as a landmark in our Constitutional history."

Now there are signs that the NSB effort in the public interest has the kind of support which may carry the day. President Nixon is for the change. A Gallup poll shows that 81% of the people are in favor, with only 12% opposed. Senator Robert P. Griffin (R-Mich.) polled 4,000 state legislators from 27 mostly small states, which some have argued would oppose direct election of the President. Those replying support the popular vote constitutional amendment in 25 of the 27 states.

The next step is action by the Senate Judiciary Committee. NSB members can support our long efforts for justice to all voters by writing to their own Senators in terms of strong support of the direct election process, a change now strongly favored by President Nixon and his Administration.

URGENT NEED FOR ACTION ON MINE SAFETY

Mr. SCHWEIKER. Mr. President, coal mine health and safety legislation remains an urgent national priority. Congress has come far to meeting the national imperative given to it. But, Congress must now finish this task and send to the President a strong coal mine health and safety bill, a health and safety bill which will meet the needs of America's coal miners.

Today is a fitting day to discuss this question. For today, 1 year ago, occurred the tragedy of the Farmington, W. Va., mine disaster, where 78 men were killed. Seventy-six of those men remain entombed in the bowels of the earth under

a small community in the hills of northern West Virginia.

We of the Senate can be proud of the work we have done to date. We considered and passed unanimously a strong coal mine health and safety bill. So too, did the House. Now it remains for us to reconcile the differences which exist and to bring back for final passage a strong and effective bill, which we can and must do, and send to the President for his signature.

I know that to us a day or a week, or even a month, means little. For us here in the safety and the comfort of the Chamber the urgency of the situation does not seem so pressing. Yet the urgency is in fact dictated by the chilling reality that every day that passes without an effective health and safety regulation increases the possibility of other Farmingtons and increases the potential for death, for injury, and for disease in America's coal mines. Therefore, it is imperative and it is vital for the conferees now considering the bill to reconcile the differences and bring the finished product to us so that we may pass it and send it on to the President for its ultimate enactment.

THE DEPARTMENT OF AGRICULTURE STRIKES A BLOW AT THE GRAIN SORGHUM FARMERS

Mr. YARBOROUGH. Mr. President, I was shocked to learn of the Department of Agriculture's decision to call the reseal loans on the 1967 and 1968 crops of grain sorghum presently in commercial storage. This action, which would be effective on January 15, 1970, will deal a devastating blow to grain sorghum producers throughout the country. The result of this decision will be be to depress the prices of grain sorghum and put profits into the pockets of the processors and shippers at the farmers' expense.

The reseal loan program is an excellent example of what can be done for our Nation through sound supply management of agricultural products. The reseal program is designed specifically to insure the grain sorghum producers a sound and stable market during the years when production exceeds demand. Under this program, the farmer is allowed to store his excess production and his price-support loan is extended beyond its maturity date. This assures the farmer that the price for grain sorghum will not be driven down in years in which there is a bumper crop.

Mr. President, the reseal program is a sound and sensible approach to obtaining a healthy agriculture economy. Furthermore, it is a program that is working as evidenced by the general strengthening in grain sorghum prices during the past year.

Now, the good work of reseal programs is in danger of being wiped out by the Department of Agriculture's premature and ill-advised decision to call these reseal loans. If the Department of Agriculture goes through with its plan, it will cause approximately 13.1 million hundredweight of grain sorghum to be dumped into the market. Needless to say, this will cause grain sorghum prices to drop severely.

The Department of Agriculture attempts to justify this action on the grounds that it is necessary to protect the Japanese grain sorghum market. This, however, is only a smokescreen behind which to hide the real motive, which is to suppress farm prices.

Mr. President, since the 1930's our Government has actively attempted to find ways to assure our farmers of a fair profit for their labor. Some of our approaches to this important problem have succeeded and others have failed. By calling these reseal loans, the Department of Agriculture will be undoing a successful program and taking money out of the pockets of the farmers and putting it into the hands of the big processors and shippers. As the senior Senator from the major grain sorghum-producing State in the Nation, I call on Secretary Hardin to reverse this decision. If he does not recall it, the grain sorghum farmers face disaster. The order means a loss of millions of dollars to the grain sorghum growers.

PRESIDENT'S VIETNAM POLICY PRAISED BY POPE PAUL VI

Mr. GRIFFIN. Mr. President, the New York Times of November 17, 1969, contains an article that should be of interest to all Americans concerned about the tragic war in Vietnam.

The article relates that Pope Paul VI has commended President Nixon's announced plans for ending the war.

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

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

PONTIFF APPLAUDS NIXON ON VIETNAM—IMPLIES REPUDIATION OF CALLS FOR IMMEDIATE PULLOUT

(By Robert C. Doty)

ROME, November 17.—Pope Paul VI applauded today President Nixon's expressed resolve to end the Vietnam was by "a well mediated and responsible procedure" safeguarding the Vietnamese people's right to self-determination.

The Pontiff made what appeared to be an endorsement of the President's policy and an implied repudiation of the demands for immediate withdrawal by American demonstrators at an audience with five American governors.

The Pope said he had followed with great interest the "widespread manifestation" of desire in the United States for a speedy end to the Vietnam war, a "fervent wish" of his own. He noted with satisfaction that this was also the resolve "of your illustrious President."

RIGHT MODE IS STRESSED

He continued: "Nonetheless, we also understand that the right mode of ending the conflict demands, in the present circumstances, a well-mediated and responsible procedure, not only to avoid neglecting international obligations which honor and the necessity of not betraying the confidence of one's allies require should be fulfilled, but also in order that the cause and the ideal proposed to your fellow citizens, for which so many have made the sacrifice of their very lives, that is: helping a people which is weak and deserving of assistance to defend its right to self-determination and to the free promotion of its peaceful development—that this cause and this ideal should not be denied."

The five governors were James A. Rhodes of Ohio, Claude R. Kirk Jr. of Florida, Calvin I. Rampton of Utah, Frank L. Farrar of South Dakota and Frank Licht of Rhode Island. They were stopping here on their way back to the United States after a study mission in Israel.

The Pope also expressed to the governors his hope that the United States would "resist the temptation to furnish" developing countries with "armaments that menace life and security."

UNITED NATIONS DELEGATES DEBATE THE PRISONER-OF-WAR ISSUE

Mr. MONTOYA. Mr. President, while the peaceful settlement of disputes and enforcement of law and order is one of the dominant features of United Nations functions, still, one of the chief hopes of the success of the organization lies in the promotion of the common political, economic, and social interests of the members, including assistance in the realization of human rights and fundamental freedoms.

It is therefore reassuring to know that there is currently being debated in committee III, which deals with social, humanitarian, and cultural affairs, a number of violations of basic humanitarian rights and principles, including the prisoner-of-war issue.

With the emphatic statement delivered on November 11 by Mrs. Rita Hauser, U.S. Representative on the United Nations Human Rights Commission, before the United Nations Committee of the General Assembly, together with the statements by delegates from other nations, I think we are beginning to make it clear to Hanoi that their continued mistreatment of prisoners of war can only result in worldwide contempt for their atrocious actions.

On September 24 I addressed a letter to Ambassador Yost—see the September 25 and October 30 issues of the CONGRESSIONAL RECORD—calling for United Nations action in securing more humane treatment for prisoners of war. Therefore, I am greatly heartened and encouraged that the United States has now taken the lead in appealing to the United Nations to bring maximum pressure to bear on the North Vietnamese.

The statement by the U.S. Representative is reportedly one of the strongest denunciations of a Communist country the United States has delivered in the United Nations since the height of the cold war. Charging that Hanoi's treatment of POW's was "indeed chilling," Mrs. Hauser called on the U.N. committee—which includes all 126 member countries—to stand up and be counted on behalf of "minimum standards of human decency." Ambassador Hauser also asked that they "take note of" and "add their moral support to" a resolution on the proper treatment of war captives passed—114 to 0—in Istanbul, during September, by the International Committee of the Red Cross, following my request to Secretary Rogers that the POW matter be included on the committee's agenda at the Istanbul Conference—see September 17 issue of the CONGRESSIONAL RECORD.

Mr. President, I ask unanimous consent that Mrs. Hauser's November 11 re-

marks before the United Nations Committee be printed in the RECORD following the conclusion of my statement. I also ask unanimous consent that additional statements made during the course of the debate in Committee III also be printed in the RECORD. They include: A further statement by Ambassador Hauser made on November 12 in reply to assertions by Algeria, Cuba, and the U.S.S.R. that Americans captured by North Vietnam are not prisoners of war but "war criminals" to whom the provisions of the Geneva Convention do not apply; and excerpts from statements made by Representatives of the United Kingdom, Japan, the Netherlands, and Australia on November 12 and 14.

In the days that follow, additional statements will be made within the United Nations forums by delegates from other nations on the POW issue, and hopefully the matter will go before the General Assembly for further debate and eventual adoption of a resolution. I have also asked the Department of State to furnish me with copies of those statements as they become available. In the belief that we will all benefit from having access to the text of these speeches, particularly in light of deliberations currently going on within Congress on this important issue, I shall continue to place them in the RECORD as I receive them.

Mr. President, I should also like to congratulate publicly Ambassador Yost and the U.S. Mission to the United Nations, particularly Mrs. Hauser, for a most commendable and accurate U.S. presentation of the facts pertaining to the issue of treatment of war captives. I am confident that these expressions of U.S. concern, and equally those of other member nations, will have a meaningful effect in securing respect for basic humanitarian principles which are guiding forces in the lives of peoples everywhere, as well as action with respect to their violation, including North Vietnamese handling of prisoners of war and the continued violation of the Geneva Convention.

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

[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]

UNITED STATES MISSION TO THE UNITED NATIONS

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 Namibia 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 freedoms . . . *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 "Eeveryone 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, whch acceded to it in 1953, and North Vietnam, which acceded to it 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 frontlines. 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 take 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 deprived 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 para-

mount 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: PROTECTION OF PRISONERS OF WAR

(Adopted by the League of Red Cross Societies Istanbul, September 1969)

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.

(NOTE.—This resolution was adopted 114–0–7.)

STATEMENT BY MRS. RITA E. HAUSER

I excuse myself for taking the right of reply at this time. We have been honored here, all of us, by the presence of the Permanent Representative of Algeria who has chosen to reply to a humanitarian point in political terms.

I should like simply to refer to him, and I will be glad to give to him a copy, a note which was addressed to the Secretary General dated February 10, 1960 and circulated by the Secretariat at the request of 20 member countries to disseminate a report of the International Red Cross Committee on the internment camps in Algeria. Madam Chairman, the investigation of the ICRC in that matter came about in large part because of the representations my Government made, and the American Red Cross Society made, to the ICRC. We did so before Algeria had gained her independence. We did not judge the rights or wrongs of the conflict. We did not pick between friend and foe. We responded to a human demand, and in direct answer to evidence of torture and maltreatment of Algerians who were interned at that time.

Madam Chairman, the Algerian representative, as well as the Cuban Representative, have chosen to speak of Article 85 of the Geneva Convention and the reservation which was made by the Democratic Republic of Vietnam. It was a reservation made by almost all of the socialist countries. It was cited here several times today and very key words in it were simply ignored. The reservation reads "the Democratic Republic of Vietnam declares that prisoners of war prosecuted and convicted—I repeat prosecuted and convicted—for war crimes or for crimes against humanity in accordance with the principles laid down by the Nuremberg Court of Justice shall not benefit from the present convention". Madam Chairman, there have been no prosecutions and no convictions of any prisoners of war held by North Vietnam.

I might state, and I have done considerable research on the matter, that the official position of the Soviet Union explained at the time it enacted this reservation was that a prisoner is not deprived of any of the protections of the convention until after prosecution and final conviction with all rights of appeal.

I should like further to state Madam Chairman in response to the comments today and yesterday by the distinguished delegate of the Soviet Union concerning my Government's indifference to the political question of Vietnam in this form. Madam Chairman, by Government in 1964, before our troops were in Vietnam, and in 1966 after our troops were in Vietnam made several attempts to bring the matter of Vietnam before the Security Council.

The last attempt made by Ambassador Goldberg in 1966 was met with the following response from the Soviet Delegation and I quote: "The Soviet Delegation deems it necessary to state that it is opposed to the convening of the Security Council to discuss the question of Vietnam and to the inclusion of this question on the Council's agenda."

Thank you Madam Chairman.

[From a November 12, 1969 speech]

The Honorable PETER K. ARCHER, M.P., Representative of the United Kingdom. We noted, too, the distinguished delegate's remarks about the application of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War in North Vietnam and elsewhere. We hope that, whatever the political merits of the tragic conflicts which are now taking place in various regions, questions which, happily, are not for this Committee to debate, Governments, including of course the authorities in North Vietnam, will regard it as their responsibility to ensure that those individuals who are caught up in these situations are not subjected to suffering which can be avoided. Political conflicts necessarily result in personal tragedies. But it does not follow that the victims should be abandoned without some attempt to spare them such additional privations as can be avoided by a little sympathy.

[From a November 14, 1969 speech]

Mrs. Ai Kume, president, Women's Bar Association, Japan. Madam Chairman: Another question was voiced concerning the violation of human rights in the course of our debate. It is the question of affording humane treatment for those whose fundamental human rights are in jeopardy as a result of armed conflict. We also believe that any single human being, even a war criminal tried and convicted is fully entitled to humane treatment and that the cruel and atrocious treatment of criminals is forbidden by the constitutions of all the civilized countries. We are fully aware that human nature is of such a character that it is most difficult to adhere to humane thoughts and conduct in the circumstances where hostile activities are conducted. We are also fully aware, however, that it is precisely in those circumstances that humane thoughts and conduct are most valuable and most keenly required.

From these humanitarian points of view, my delegation wishes to join to the voice of conscience of previous speakers who expressed great concern over the endangered fundamental rights in the Middle East, and appeals to all states, all parties and all the individuals concerned to protect, to respect and to promote, to the fullest extent possible, basic individual human rights for the benefit of all the peoples in the area.

From the same humanitarian point of view, my delegation shares the grave concern expressed by the distinguished delegate of the United States of America over the suffering of prisoners of war in Vietnam and of their families and endorses, for that matter, the views of the Secretary-General expressed on October 30th. He said "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."

[From a November 14, 1969 speech]

Mrs. J. Schim Van Der Loeff-Mackaay, Netherlands Women Association. I finally want to express at this moment the positive interest my delegation has in the question of prisoners of war as brought forward by the United States delegation. I can inform you that my delegation will revert to this question when the Committee will discuss the item of Human Rights in Armed Conflicts.

[From a November 14, 1969 speech]

Miss Ruth L. Dobson, alternate representative of Australia. My delegation would wish in the time available to make some observations concerning the matter of the prisoners of war in North Vietnam. In doing so we are not concerning ourselves on this occasion with the complexities of the Vietnam situation; we are solely concerned with an instance of the violation of the human rights of these prisoners.

Suffering is the hallmark of all wars. But considerations of humanity dictate that unnecessary suffering should be avoided. Suffering may reach an intensity beyond which no individual should be permitted to experience. This is the message of the 1949 Geneva Conventions relative to the Treatment of Prisoners of War; it places an affirmative obligation on the parties to a conflict to respect minimum humane standards concerning the treatment of prisoners of war. It applies to all prisoners of war in both North and South Vietnam irrespective of their nationality or their allegiance.

The attitude of my government, along with other governments, is a firm commitment to the observance of the Geneva Conventions. We believe that North Vietnam has nothing to lose by applying these minimum standards of humane treatment to the prisoners of war which it detains. On the other hand, North Vietnam has much to gain, in terms of the international respect to which it would be entitled, if it were to fulfill the international obligations which it accepted when it ratified the 1949 Convention. As to the precise nature of the legal obligation which North Vietnam has accepted in this matter, my delegation has nothing further to add to the statement by the distinguished representative of the United States when she exercised her right of reply in this Committee on the 12th November.

THE MEDICAL SCHOOL EMERGENCY AID BILL

Mr. CASE. Mr. President, I am glad to join in cosponsoring S. 3150, introduced by the Senator from New York (Mr. JAVITS), providing a $100 million program of emergency financial assistance for the Nation's medical and dental schools.

It has become increasingly clear that medical schools across the country face a severe fiscal crisis. Federal cutbacks in health research plus increased costs of research caused by inflation have

strained the financial resources of these schools to the point where a number face the distinct possibility of having to close their doors.

The loss of faculty and trained medical researchers, and the consequent dismantling of health research teams, occurs at a time when the need for improving and upgrading health care was never greater.

Just a few months ago the President, in a special message to Congress, warned of a "massive crisis" in health care within the next 2 or 3 years. With the demand for health services far exceeding the capacity of our existing health system, I believe the crisis is already upon us.

Congress has enacted several far-reaching programs to increase the supply of doctors, nurses, and allied health workers and has committed millions of dollars to building our capability to attack fatal and debilitating diseases—heart disease, cancer, mental illness, and many others. Much of this research is done by our medical schools. For the Federal Government to cut back on the commitment we have made in these areas would be extremely shortsighted.

The situation is especially critical in New Jersey, where we have two growing medical schools—the Rutgers Medical School, in New Brunswick, and the New Jersey College of Medicine and Dentistry, in Newark. Both are new and emerging schools and are faced with the problems of building new facilities, attracting high quality faculty, and building research teams.

The Newark school is located in the heart of a ghetto area and, in addition to the traditional task of training new doctors and dentists, has deeply involved itself in the life of the community. To meet the health needs of the area's 125,000 residents, the school has assumed responsibility for the city hospital and is developing family health care clinics, preventive medicine screening programs and other projects designed to reach the whole community. Any cutback of Federal support will inevitably disrupt and delay these important programs.

The bill I am cosponsoring would authorize $100 million for grants to be made by the Secretary of Health, Education, and Welfare to medical and dental schools which are in financial distress and which have affirmatively responded to national health needs. Because it is an emergency measure, the authorization is for 1 year.

While the need to control inflation may well require the curtailment of some Federal programs, I believe the cuts that are necessary should be made in low priority programs, not in programs vitally affecting the health and welfare of our people. Certainly Federal support of our medical colleges is an investment in the health of our people. I hope the Senate will give prompt consideration to this emergency measure.

ARTICLE ON "PREVENTICARE" BY FORMER VICE PRESIDENT HUBERT HUMPHREY IN FAMILY HEALTH MAGAZINE

Mr. WILLIAMS of New Jersey. Mr. President, there is increasing ferment over the deplorable state of illness and disability among millions of our fellow citizens in this, the richest Nation in the world.

To meet this problem, former Vice President Hubert Humphrey has pointed the way toward a bold program which would achieve both humanitarian and economy goals. In an article in the October 1969 issue of a new nationwide magazine, Family Health, he urges preventing disease before it occurs, mass screening to determine if it has occurred, and prompt treatment before disease gains a serious hold.

He notes that only 8 percent of the Nation's health expenditures go into preventive medicine. This was a major finding of a report of December 30, 1966, of a Subcommittee on Health of the Elderly of the Special Committee on Aging on which I served and whose work I am privileged to continue as chairman.

"Give a solid trial," the former Vice President urges, to the "preventicare" adult health protection legislation, S. 16, 91st Congress, which I have introduced.

His sentiment is, I believe, shared by an increasing number of health leaders and laymen throughout the country.

One index of belief in the proverbial "ounce of prevention" is the increasing support given to the American Health Foundation, a nonprofit research and education group dedicated to preventive medicine.

"Too little—too late has written too many epitaphs," Vice President Humphrey notes.

His article is, I believe, a significant contribution toward progress in reducing the tragedy of avoidable disease.

Family Health will, I am sure, strike a responsive chord not only among its 1 million lay and medical readers, but in an ever-widening orbit of health influence. Its publisher is Mr. Maxwell Geffen; its editor is Mr. William H. White; the successful team which founded Medical World News and made it a great medium of professional communication.

I ask unanimous consent that the text of former Vice President Humphrey's article be printed in the RECORD.

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

A SIX-POINT PLAN FOR PREVENTIVE MEDICINE

(By Hubert H. Humphrey)

The United States spends $60 billion each year for health. A Senate committee hearing several years ago found that 92 percent of that vast health expenditure was directed toward the *treatment* of disease and disability. Only 8 percent found its way into *preventive* medicine.

We must give greater priority to getting a head start on disease. As it stands, the thrust of our vast medical-educational system is geared to treating disease *after* it has taken hold—sometimes, long after.

Dr. Robert H. Ebert, dean of Harvard Medical School, urges us to think ahead. "The highest priority should go to disease prevention and to early detection and treatment of disease," he asserts. I agree with him one hundred percent. It's time we got started.

The solution to the problem of providing an early warning system in the health field for all of our citizens cannot be found overnight. It must be a comprehensive effort of all sectors—government, medical, and private—striking at the economic, psychological, and professional roots of the problem.

We have the facilities, the wealth, and the know-how. At its best, our massive health enterprise includes the finest quality medicine in the world. Unfortunately at its worst, there are enormous gaps. And nowhere are the gaps more obvious than in what we know about preventing disease and what we actually do about it.

Where do we begin? The real task begins in a concentrated assault on the deteriorating environment in which illness multiplies. The air is polluted in many of our cities; the slums and ghettos are fertile fields for disease. Ten to twelve percent of America's 50 million school-age youngsters suffer from moderate to severe emotional disorders requiring treatment; very few are getting it. And there's not nearly enough prenatal and postnatal care. The list of targets for a preventive medicine program that works for everyone is almost limitless.

We *can* set up our early warning system, and much of it is up to the individual citizen. Right now professional medical organizations and voluntary health agencies are cautioning all of us. We're urged to watch our diets, to exercise more, to wear seat belts, to have chest X rays. But how often are we indifferent to these appeals? *You* must lead the way.

I would like to offer six proposals to start us on a program of preventing disease instead of just trying to cure it. The program's success depends on all the healing arts and laymen; on federal, state, and local governments; on the public information media; on private and public insurance. These six points are a start.

(1) Reallocate our federal health budget. Without scrimping on curative and restorative medicine, let's add to our investment in preventive medicine. We must zero in on protecting the most vulnerable group in American society—impoverished families in urban slums and rural poverty areas. Let's assure thorough care for the vast number of untended pregnant women most susceptible to genetic or environmental harm.

(2) Mount a coordinated public and private attack against environmental pollutants and other hazards. If we enforce the law, we can clean up the air and lower the decibels of noise. Better planning will reduce inadequate traffic systems.

(3) Expand and modernize laymen's health education on every age level. We have the latest technology to communicate the practical findings of health—from dental care to nutrition science.

(4) Carry out a bold experiment in "Preventicare." Give a solid trial to the imaginative proposal by New Jersey's Senator Harrison Williams, Jr., for regional screening centers. This proposal would utilize the latest technology for automated and semiautomated testing. It would make it easy for the patient to get reliable, economical, comprehensive tests. Test results could be fed into a computer programmed to pick out abnormal results that indicate disease. This would enable the physician to apply his most advanced knowledge in interpreting computer printouts of test results and in treating patients.

(5) Expand the nation's pool of skilled professional and auxiliary health manpower. Streamline to assure better usage of their respective skills and facilities. Provide funds for hospitals and clinics to modernize their obsolete plant and equipment. Increase the number of medical and paramedical graduates. Apply engineering systems to prevent wastage of time, talent, buildings, and equipment.

(6) Establish sounder financing of the costs of preventive (and other) medicine. Foster group prepayment plans which encourage patients to come in for regular examinations. Broaden diagnostic services under private in-

surance plans. Urge the Congress to tackle the problem of skyrocketing health costs.

Health is too precious to squander. "Too little, too late" has written too many epitaphs. We must end the national disgrace of avoidable disease and disability. To end it, we must have a beginning. I urge all of you to take that first step—and promptly.

THE PEACE MARCH

Mr. GURNEY. Mr. President, the peace march on Washington has come and gone. Comment on it seems to center around the fact that it was mainly peaceful and that its big size should make some sort of impression upon the President and his Vietnam policy.

First, it should be pointed out that its peaceful aspects were akin to an unexploded blockbuster, and that it was loaded with potential disaster. Scores of store windows were broken, some looting took place. There were two serious confrontations between the authorities and the so-called kids.

From this viewpoint, I would say that it was the extremely thorough preparation for the affair and the able and patient handling of it by the police and Army that prevented very serious outbreaks of violence in the Nation's Capitol.

The advocates of "peace at any price" never face up to the consequences of their policy. They dismiss out of hand the inevitable blood bath in Vietnam and the certain murder of all anti-Communist elements in the South Vietnamese society which would result from unilateral withdrawal.

They also ignore what would happen to the cause of freedom for small nations elsewhere in the world.

Joseph Alsop discusses this aspect of Vietnam in an excellent column published in the Washington Post of November 18.

Mr. Alsop also makes the point that the United States and especially its youth could learn much from the example of gallant little Israel.

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

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

SALUTE TO NIXON BY GOLDA MEIR MAKES "KID" MARCH HEARTACHE

It was heartbreaking, somehow, to see "the kids" in Washington, and then to learn of the latest, least expected support for President Nixon's Vietnamese policy.

That mother in Israel, Golda Meir, seems to have walked, in sensible, arch-supporting shoes, straight out of one of the heroic epochs of the Bible story. But as Prime Minister of a small, infinitely brave and viciously beleaguered nation, Golda Meir must be alert to all that passes in the present.

She heard and studied President Nixon's remarkable Vietnam speech. Whereupon quite spontaneously, without solicitation, to the vast surprise of the White House, Mrs. Meir sat down and sent the President a message of warm congratulation and strong moral support.

Among other things, she saluted the President for "encouraging and strengthening small nations the world over, striving to maintain their independent existence, who look to that great democracy, the United States of America." The highest Israeli sources state, without hesitation, that this was an indirect but emphatic reference to an obvious danger that Mrs. Meir now fears.

The fact is that Israel's peril will be much increased by the worldwide repercussions of the kind of American defeat that "the kids" clamored for here in Washington. It is very strange indeed, therefore, that this purposely significant message to the President should have received no attention to date, despite its high origin and easy public availability.

This reporter learned of Mrs. Meir's message by sheerest accident over the weekend, days after its White House release, and just after escaping from a huge sidewalk eddy of "the kids." It was heartbreaking, simply because it so sharply pointed out the contrast between Mrs. Meir and the people she leads and the new breed of Americans those "kids" represent.

The word is put in quotations because it is time to protest the degrading sentimentality, the mush-headed permissiveness that lies behind this novel usage. In the Second World War, silly people used to call our troops "American boys" in the same manner. Yet they were not boys; they were American men, bravely fighting for their country, thank God and them, as men are sometimes called upon to do.

Today, it is far worse. A bearded, unwashed, 25-year-old Trotskyite is not a "kid." Neither is a lank-haired 24-year-old harridan of the same persuasion. Male and female storm troopers of new left, perhaps; but "kids," no! And if you collect the facts about the brutality some of these alleged kids have actually resorted to, in the current New Left assault upon academic freedom, for instance, storm trooper seems a quite justifiable appellation.

Here, to be sure, we are speaking of a small though very influential minority. Idealism, ignorance and innocence, wallowing self-pity and simple fashion no doubt animated the great majority of the young people who marched in Washington at the weekend. But even the most empty-headed 18-year-olds were not "kids," they were at least proto-adults, with a duty to begin facing the world and the facts in a fully adult manner.

It is this refusal to face the world and the facts as adult Americans that mainly characterizes "the kids." It is also this refusal, one supposes, that their admirers have in mind when they call them "kids." And it is this refusal, once again, which sets these young Americans so far apart from the most beardless boy, from the most barely nubile girl among Mrs. Meir's people.

A kindly Providence has never called upon the American people to show the heroism, the hardihood, the unfailing will and resolution of Mrs. Meir's people. The Civil War, over a hundred years ago, was the nearest we ever came to a comparable test and in the hard cold harbor-time, Abraham Lincoln and Ulysses S. Grant were among the few Americans who had not begun to lose heart.

The truth is that we Americans, because of our great good fortune, have always tended to forget the basic lesson that history is a harsh, remorseless process, in which few nations get a second chance. That is the lesson that has been cruelly rubbed in upon Mrs. Meir and her people, by over two millienia of dire experience with history's harshness.

To the convinced pacifists, fighting for your country is always wrong—even if the end result is to condemn men like Noam Chomsky to the fate of Yuri Daniel and Alexander Solzhenitsyn. And this would surely be the end result, and for independent-minded Americans of every kind.

But unless the storm-trooper doings of the New Left minority provoke even worse reactions on the right, we can still count upon escaping that fate, providing we learn just a little from Mrs. Meir and her people.

THE AUTOMOBILE AND THE NITRATE PROBLEM

Mr. NELSON. Mr. President, at a California conference on environment, Dr. Barry Commoner, noted ecologist of Washington University, St. Louis, Mo., pointed out some of the pressing problems arising from excess concentrations of nitrogen in our environment. Automobiles, he asserted, aggravate the nitrate problem.

In addition, it should be stated that methods used by the automotive industry to control other pollutants tend to increase the rate of nitrogen oxide emission. Thus the nitrate problem is even further aggravated.

I ask unanimous consent that an article on this subject be printed in the RECORD.

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

ECOLOGIST SEES UNITED STATES ON SUICIDAL COURSE

(By Gladwin Hill)

LOS ANGELES, November 18.—A scientist warned today that the United States was "approaching the point of no return" in its disruption of nature's chemical balances and had only about one generation in which to reverse its "suicidal course."

Dr. Barry Commoner, director of the Center for the Biology of Natural Systems at Washington University in St. Louis, cited California's destruction of the natural nitrogen cycle, bacterial problems in New York Harbor, the contaminated rivers of Illinois and conditions in Texas' cotton belt as symptoms of the potentially fatal "violence" done to the dependence of man on nature.

Dr. Commoner addressed a two-day conference on environmental problems at the Ambassador Hotel organized by Gov. Ronald Reagan.

Some prominent conservationists have complained that the roster of 1,000 invited participants, most of whom paid $65 each, was heavily weighted with representatives of industry, agriculture and other contributors to environmental deterioration.

The conservationists inferred that the assemblage was designed to give the Republican Governor "conservation credentials" for his re-election campaign next year.

MANY CHALLENGES MADE

However, 100 college students and other environmental activists punctuated the conference's open-forum sessions with many challenges and proposals. And Alfred Heller, president of the California Tomorrow conservation organization, commented:

"I think it's wonderful—the conference is full of Republicans, so we have a better chance to spread our message than at previous conferences, where it was liberal Democrats talking to liberal Democrats."

A student caucus, in a formal commentary on the conference, said the group "supports in principle the positive ecological position articulated by Governor Reagan."

"However," the statement added, "we must have a clarification on priorities before giving unqualified endorsement. These critical ecological goals cannot be accomplished in conjunction with the economic growth described in the keynote address."

Dr. Commoner said: "The agricultural wealth of California's Central Valley has been gained at a cost that does not appear on the farmers' balance sheets—the general pollution of the state's huge underground water reserves with nitrate."

This pollution comes from chemical fertilizers.

Excess nitrogen in drinking water can

cause the serious infant disease of methemoglobinemia, Dr. Commoner said, although there were no reports of its widespread occurrence.

NITROGEN RAINFALL

Excess nitrogen is polluting San Francisco Bay, he continued, and had even shown up in the natural rainfall in the Central Valley, the Midwestern corn belt and in Texas, while in Illinois "every major river is overburdened with fertilizer drainage."

New York Harbor, he said, exemplified "another, more ominous possibility" linked with excess nitrogen.

"In New York Harbor, in the period 1948–68," he said, "there has been a 10 to 20-fold increase in the bacterial count despite a marked improvement in the sewage treatment facilities that drain into the bay.

"The possibility exists that the bacteria, entering the water from sewage or the soil, are now able to grow in the enriched waters of the bay."

Throughout the country, Dr. Commoner said, the nitrate problem is being aggravated by automobiles—one of whose major fume emissions is nitrogen compounds.

"Auto-induced nitrogen oxides amount to more than one-third of the nitrogen contained in the fertilizer currently employed on the farms of the United States," he said. "Cars are responsible for an appreciable part of the pollution of surface waters with nitrate."

TOWARD A NEW AMERICAN COALITION

Mr. BAYH. Mr. President, last night in New York City, the National Urban League held its annual Equal Opportunity Day Dinner. The recipient of the 1969 Equal Opportunity Day Award was the former Chief Justice of the United States, Hon. Earl Warren. The award was given in recognition of his leadership in guiding the court through a 16-year period of activity unprecedented in its history. Under Earl Warren the court responsibly and sensitively addressed itself to areas of deep human concern, and confronted in an unusual number of cases one overriding problem—the rights of the individual.

Urban League Director Whitney Young delivered the closing speech of the evening. His subject, "Toward a New American Coalition," was, in my opinion, both timely and well conceived. Mr. Young called for "a coalition that transcends narrow hate and exploitation, a coalition of the decent, the just, the good in our society." He called also, for a coalition of builders versus destroyers; of decency versus hate; of unity versus division; of courage versus cowardice; of hope versus despair.

This is the kind of spirit and sense of historic purpose that must be stressed continuously if we are to find effective solutions to critical problems, particularly problems of basic human relations. Our alternatives are, as Whitney Young stated, to "either work together to build an open society or go down the drain of history frozen by hate and injustice."

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

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

TOWARD A NEW AMERICAN COALITION

(Address by Whitney M. Young, Jr.)

We are fast approaching the 200th anniversary of the founding of our nation. The great Frederick Douglass, born in slavery after white Americans got their independence, saw the American Revolution as an earth-shaking event.

It was, he wrote, "the advent of a nation based upon human brotherhood and the self-evident truths of liberty and equality." He saw the mission of America as nothing less than "the redemption of the world from the bondage of the ages."

But in the twilight of his life, in 1894, he looked back over the ashes of that promise, over the betrayals of the Post-Reconstruction period that replaced legal slavery with only the faintest shadows of freedom. He appealed to the nation to reaffirm the principles of the American Revolution.

"Put away your prejudice," he wrote. "Banish the idea that one class must rule over another. Recognize the fact that the rights of the humblest citizens are as worthy of protection as are those of the highest and your problem will be solved. . . . Based upon the eternal principles of truth, justice and humanity, with no class having cause for complaint or grievance, your republic will stand and flourish forever."

Douglass was calling for a new coalition—a coalition that would unite decent men of all races, a coalition that would move beyond racism to equality, beyond inhumanity to justice.

But Douglass' plea fell on deaf ears. The nation refused to listen to reason. Instead, it burrowed further into the evil night of repression and violence. Black citizens were still denied their rights and forced into a system of peonage and brutality.

A short two years after his call for justice, the United States Supreme Court gave legality to the doctrine of white supremacy, in the case of Plessy versus Ferguson, and legitimized the reign of terror that was to follow. It did this through the device of approving the "separate but equal" doctrine that institutionalized the informal system of segregation that oppressed black Americans.

It is testimony to the vigor and flexibility of American institutions that the same Court—58 years later—ruled that evil doctrine unconstitutional and thus provided the moral leadership for the nation in its struggle to recover its soul. And that decision was made by the Court led by our honoree tonight—Earl Warren.

In 1896 the Court had followed, by a generation, the politician's abandonment of black people. In 1954 the Court led public opinion and timid politicians to a new realization of their moral obligations.

It was their failure to implement the moral vision of the Court that has led us to a new phase in relations among the races today—what threatens to be a new Post-Reconstruction period in which political expedience and backlash replace the dreams of equality held by decent men of all races.

There are signs that the gains of recent years may be rolled back, and there are signs that the period of repression that so disfigured the closing decades of the last century will be repeated in the middle years of this one.

Then, as now, the frustration of the least successful white Americans, along with those newly arrived into the ranks of the middle classes, has been transferred to black Americans through institutional resistance, secret organizations, and more subtle expressions of racism—all that we generously term "backlash."

Then, as now, the nation has refused to make that economic revolution that would bring prosperity to all its citizens. So a land of affluence sets white and black workers competing for scarce jobs when logic shows there should be enough for all. So businesses and unions alike sometimes see black people as a threat rather than an opportunity for more and better consumers and workers.

Once again, foreign adventures and military demands lead the nation to change its priorities, and ask black citizens to wait and pray for better days in the future.

Once again, fear, guilt and ignorance lead society to injustice and panic. Rumors of rebellion take the place of reason and common sense. Otherwise normal middle class Americans arm themselves waiting for their nightmares of black revolt to come true—all the while hastening the day of that revolt by screaming for repressive measures to contain legitimate demands for justice.

Then, as now, the fevered imaginations of people suffering from the disease of racism led to generalizations about all blacks from the acts of the least representative. And the shortcomings of white men who hold racist views are accepted or dealt with sympathetically while blacks embittered by a lifetime of injustice who use similar language are condemned.

While no final conclusion can be drawn at this point, we cannot help but wonder whether the election of 1968 has its historical parallel with the election of 1876, in which the North lost interest in securing equally for blacks and pursued a "Southern strategy" of mollifying the South by abandoning the black man.

Santayana wrote: "Those who cannot remember the past are condemned to repeat it," and I fear that our young country is so busy looking ahead to the future that it will not heed the lessons of the past, and so, repeat the pain and agony of the last century.

The unfinished Reconstruction looms from our past and casts a long shadow to the present. The barbarism that followed it turned the dream of equality into a nightmare of terror.

The sophisticated, button-down, mid-twentieth century America won't return to the period of lynching bees and legally sanctioned separation. But the forces of society that wish to keep black people down, or, in the current phrase, from "moving too fast," have at their disposal the economic, political and institutional power to recreate the bitterness of the past with devastating effect.

So long as national power and the national will continue to be directed at ends other than the assurance of full equality, the ghettos will become festering, running sores of bitterness and resentment. The gap between the races will become greater. Oppression will increase. And the gathering storm of outrage and tensions will burst upon the land.

In these crucial first days of what appears to be the new Post-Reconstruction period, the Urban League has a vitally important role.

Our agency was a child of the first period of repression. The Urban League came into being in 1910 because dedicated white and black citizens were concerned with opening new opportunities for black people who pursued freedom's dream by emigrating from the terror of the rural South to the hostile cities of the North.

In a sense, the Urban League was a fulfillment of Douglass' call for a new interracial coalition. It is to the Urban League movement that America owes much of its most advanced social innovations. We conceived of an employment service before state programs; we pioneered in housing, recreation, migrant assistance, crime prevention, and a host of other welfare programs years before the development of the welfare state.

Our goal was to continue the positive process of reconstruction—to continue through a coalition of dedicated professional men and women what the nation had wrongfully abandoned. We were among the few voices crying in the wilderness of racism in those days, and now, amid the increasing evidence that the nation is turning its back on reason and self-interest once more, we remain true to our vision of a just and open society.

Last year, the Urban League launched a

new effort to realize its ideals of justice, a new effort to change the way the institutions of our society work to brutalize the poor and the black.

We called it our "New Thrust" and I am happy to report to you this evening that our "New Thrust" is successfully enabling black people and other minorities in the ghettos and poverty pockets of our nation—the real "forgotten Americans"—to develop the power to exercise the control over their lives that is the heritage of free men.

Our On-The-Job Training Programs have trained and upgraded over 45,000 disadvantaged citizens. These programs have the highest retention rate in the nation—at the lowest cost. Some $400 million was pumped into the black community through the new wages of people who were placed in jobs by the Urban League last year.

Our Street Academies have revolutionized American education by placing dropouts and push-outs into the top colleges in the country—young people whom the schools said were "uneducable." And our black student program has harnessed the energies of the brightest and most militant young people and directed them towards working for their brothers still locked into the ghettos.

Our Summer Fellowship and Black Executive Exchange Programs have brought industry and black colleges together by strengthening the resources of the nation's sorely neglected black colleges and building bridges of empathy and knowledge.

We've helped the adjustment of black veterans to civilian life through our Veterans Affairs Program. Over 18,000 veterans have been assisted to better jobs and schooling as we try to obtain for them the freedoms at home that they've been asked to shed blood for abroad.

Our Labor Education Advancement Program (LEAP) has helped change attitudes among unionists and has opened apprenticeship positions for black youth. At the same time we've helped 100 black contractors overcome barriers to secure major contracts.

Our Operation Equality has become a major factor in opening up housing opportunities for minority families. And this year we are launching an Urban League Housing Foundation that will help black communities to build and manage new housing and supply the social services needed by the community.

Our New Thrust activities in over 80 cities have resulted in a host of new programs that will unleash the neglected potential of the black ghettos.

Urban Leagues have set up Welfare Rights Centers in Newark; Leadership Training for Development Corporations in Boston; Economic Development Programs in counties in the South's Black Belt and in several Northern cities; a program to reduce police-community friction in Pittsburgh; youth programs in Rochester; black Chambers of Commerce in Anderson; and a host of other action programs designed to unify and strengthen the black community.

And dozens of other Urban League programs, programs far too numerous to mention here, are making a broad impact upon the lives of millions of black and minority citizens, and through them, upon the total society, as well.

But in spite of the enormity of our involvement, we are barely meeting the enormous needs of our people and the goals we have set for ourselves. We must continue to expand our Leagues wherever communities have need of them—and by our 60th Anniversary next year, we should number 100 Urban Leagues. We are looking very deeply at our own performance, for we realize that systems and institutional changes, to be effective, must begin at home. We intend to improve our performance in our present programs, and also to respond creatively to new needs and new challenges.

But if we are to be truly effective, we must change the climate of our times—a climate that threatens to become more oppressive, more removed from the needs and interests of all the people. The cloud of racism and backlash still hangs heavy, obscuring the moral vision of the American people and threatening the attempt to build an open society.

Unless a new grouping of concerned citizens arises in the seventies, we may approach another era of nightmare and hate. Americans again may become divided by caste and class, and bigotry may again triumph over decency.

I call tonight for a New American Coalition—a coalition that transcends narrow hate and exploitation, a coalition of the decent, the just, the good in our society.

I call for a coalition of builders versus destroyers; of decency versus hate; of unity versus division; of courage versus cowardice; of hope versus despair. I call for a coalition of active doers versus passive apathy and of dreamers versus the pinched, fear-ridden haters.

If we must have separation and division in this country, let it be on this basis—the good versus the bad.

The foundations of such a New American Coalition must be laid by black people who insist on their equal place in America and by concerned white people who will join us in working toward the goal of an open, democratic society based on equality for all.

Black people have a responsibility to persist in their demands for justice. Again, in the words of Frederick Douglass, black people "are bound by every element of manhood to keep their grievances before the people and make every organized protest against the wrongs inflicted upon them. Liberty given is never so precious as liberty sought for and fought for. Men will not care much for a people who do not care for themselves."

Douglass' counsel is well-taken, and it demands that black people continue to organize and unify the black community and make every non-violent effort to win that equality so long denied.

And our white allies must enlist in this coalition. They must remove the barriers to black achievement and educate their fellow-whites from the deadened of racism. They must demand, no less than their black brothers, the vast economic and social programs that will end poverty in America and unite all our citizens under the banner of progress and justice.

I know that many white citizens feel they are working towards such ends. But to all to many of them, I must say what an old Baptist minister used to tell people who spoke so well—"I can't hear what you say because you do speaks too loud."

Our New American Coalition can only succeed if white Americans match their good intentions and lavish rhetoric with deeds—deeds that will be loud in their impact on making this the open and just society that the revolutionists of two centuries ago believed they were founding, and the American dreams and ideals that black people have clung to and believed in through four centuries of slavery and adversity.

I believe in the need for such a coalition because we—all of us, black and white—need each other.

There is a story about a group of porcupines who came together one very cold night in an open field. The only way they could survive the terrible cold was to huddle close together and keep each other warm. But if you've ever gotten too close to a porcupine, you know that that creates some problems. And so it did. Many of them were hurt by the sharp quills of their brothers, and some left the group to avoid such injury. The next morning those that had left were found frozen to death. The others suffered, but helped each other survive.

We will either work together in a New American Coalition to build an open society—a hard, difficult task that will mean occasional pinpricks and annoyances—or we will all go down the drain of history—frozen by hate and injustice.

In the words of Gordon Parks:

"What I want.

"What I am.

"What you force me to be is what you are. For I am you, staring back from a mirror of poverty and despair, of revolt and freedom. Look at me and know that to destroy me is to destroy yourself. You are weary of long hot summers. I am tired of the long hungered winters. We are not so far apart as it might seem. There is something about both of us that goes deeper than blood or black and white. It is our common search for a better life, a better world. I march now over the same ground you once marched. I fight for the same things you fought for. My children's needs are the same as your children's. I too am America. America is me. It gave me the only life I know—so I must share in its survival. Look at me. Listen to me. Try to understand my struggle against your racism. There is yet a chance for us to live in peace beneath these restless skies."

A EULOGY OF LEWIS P. ROSEN

Mr. FONG. Mr. President, it is with a deeply saddened heart that I rise to eulogize Mr. Lewis P. Rosen, movie pioneer in Hawaii and California. "Lew" Rosen's passing in Honolulu last Saturday, at the age of 74, is mourned by the hosts of admirers and friends who knew this kind and courtly man. I count myself among those very fortunate to have been closely associated with him for many years.

"Lew" Rosen was born in Chicago on February 12, 1895. He moved to California in 1918 and 2 years later became a partner in West Coast Theaters.

He went to Hawaii in 1932. The following year he and his partner, Adolph Ramis, organized the Royal Amusement Co., which in 1954 leased its theater operations to the Royal Theater Co., Ltd.

In 1935 he built the King Theater in downtown Honolulu, and the same year brought the first series of stage shows and movies to Hawaii.

He served as executive vice president of Royal Amusements until 1958 when he became president of Royal Theaters, Ltd.

In 1956 and 1964 he built two more theaters in Honolulu.

He and his wife, Rosella, had lived in Honolulu more than half of each year since 1945. In 1966 when they celebrated their 50th wedding anniversary, they became residents of the Waialae-Kahala section of Honolulu.

During the 1940s and 1950s, Lew Rosen formed a movie production unit partnership with producer Nat Holt. Among his films was one in which Art Linkletter was given his first starring role in a movie.

In 1958 Royal Theaters formed a production partnership with Shintoho Studios of Japan to make pictures in Japan for distribution in the Far East and Hawaii.

In 1965, he and his son, Herman, became sole owners of Royal Theaters, Ltd.

Active in community affairs, he was one of the original officers and directors of the Variety Club, a national organiza-

tion of persons in show business. He was one of the organizers of the Variety Club school for children with learning disabilities, and helped found one of the Variety Club's first boys clubs in Los Angeles.

Lew Rosen was one of the early supporters of Temple Emanu-El in Honolulu, and a member of the Waikiki Free Masons Lodge, Aloha Shrine, Al-Malika Shrine, and the Friars Club.

The thousands who knew Lew Rosen will long remember him for his impeccable attire, his smiling face, and his gentle and always courteous manners.

To his business friends, Lew was considerate, honest, and helpful. He was a builder of Hawaii. Despite his busy schedule as a business executive, he was unfailingly polite to all with whom he came in contact. He was always a booster, never a knocker. In my long association with him as a valued, cherished friend and business associate, I have never heard him belittle or disparage anyone. He always had a kind word for others, especially for those in need of encouragement.

His civic participation and philanthropies to youth, church, and other community groups will remain a shining testament to his generosity and concern for his fellow man.

Among the tributes paid to his memory, Eddie Sherman, entertainment columnist for the Honolulu Advertiser, wrote:

Lew Rosen's passing has saddened the thousands who knew him. This pioneer showman was a gentleman to the core, with courtly manners of yesteryear. He always seemed to have time for everyone, from those in high places to the average workingman. I could write a book about Lew, but can explain him in one sentence: he was one of the kindest human beings I've ever met in my life. His passing is a great loss.

Ellyn and I extend our heartfelt sympathy and aloha to his beloved wife, Rosella, his sons, Herman and William Rosen, and to his three grandchildren. Hawaii is indeed poorer and sadder for having lost a person of such admirable qualities as Lew Rosen.

DRUG AND ALCOHOL USE BY TEENAGERS

Mr. SYMINGTON. Mr. President, we are all deeply concerned about the problems facing our Nation as a result of the unwise use of drugs and alcohol. All too often our young people "experiment for kicks" without realizing the possibility of later tragic personal consequence.

An editorial entitled "More Young Lives Snuffed Out," published in the St. Louis Globe Democrat of November 11, cites three deaths as examples which "underscore the dangers of teenagers using drugs and alcohol" and urges education in the schools in order to reach those who do not get training in the home.

I ask unanimous consent that this constructive editorial on a subject of concern to us all be printed in the RECORD.

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

MORE YOUNG LIVES SNUFFED OUT

An 18-year-old youth and a 17-year-old companion are dead, apparently from drug overdoses. A 21-year-old college student died from head injuries after he was allegedly beaten and "stomped" by an 18-year-old who had been attending a beer party.

These latest tragedies involving high school-age boys again underscore the dangers of teenagers using drugs and alcohol.

It seems apparent that many in the younger generation still are not aware of the dangers in taking drugs and drinking. And it is further obvious that too many parents of teen-agers don't have the faintest idea where their children are or what they are doing.

The primary responsibility for teaching children the reasons why drugs and alcohol shouldn't be taken belongs to parents. Too many parents have failed to do this job.

It would be helpful if all schools would intensify their anti-drug and anti-alcohol instruction in an attempt to reach students who apparently are getting little or no information about the dangers involved from using either drugs or alcohol.

The toll of young lives snuffed out from using drugs and liquor is mounting. It is time the community faced up to this serious problem and took steps to prevent more such useless deaths.

AMBASSADOR AND MRS. CHERNOFF MAKE FRIENDS IN JAPAN

Mr. MUNDT. Mr. President, having just this morning been to the White House to witness, along with two distinguished South Dakota citizens, Mr. and Mrs. Fred Christopherson, of Sioux Falls, the ceremonies in which U.S. Commissioner General Ambassador Howard Chernoff, in charge of the Osaka Exhibition at the forthcoming Japanese World Fair, unveiled for President Nixon and Prime Minister Sato of Japan, I think it appropriate that I place in the CONGRESSIONAL RECORD an interesting news item published in a recent issue of the Sioux Falls Daily Argus Leader, of which Mr. Chernoff was at one time a part owner and publisher. Basically this piece is a reprint from the Senriyama Times of Japan.

I especially call attention to the extent to which Ambassador Chernoff and his wife have tried to win friends and influence people. They began where all good and efficient foreign service officers should begin, namely—by studying to learn the language of their host country—Japan. They followed up on this important step by becoming good neighbors of the Japanese living in Toyonaka, a city of 350,000, in which they are the only Americans. Beyond this, they have made successful efforts to become the trusted friends of the officials and authorities now in charge of the destiny of this lusty and rapidly developing country.

I take this means of saluting and praising the great American service of Ambassador and Mrs. Chernoff and of expressing the hope that a large number of American citizens in 1970 will take the opportunity to visit our American exhibit in Japan. I ask unanimous consent that the article be printed in the RECORD.

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

LANGUAGE STUDY PLEASES OSAKA NEIGHBORS

Despite 10 months of Japanese language study, U.S. Ambassador and Mrs. Howard L. Chernoff find it difficult and time consuming to communicate in Japan.

"But it is rewarding and our neighbors and new friends are so complimented that we did prepare prior to coming and that we try," the ambassador wrote to F. C. Christopherson, contributing editor of the Argus-Leader.

Their efforts in personal diplomacy drew editorial comment (reprinted below) from the Senriyama Times, a newspaper published in an Osaka suburb.

Chernoff is commissioner general of the U.S. Pavilion now under construction at Expo '70, the Japanese World Exposition in Osaka.

Ambassador and Mrs. Chernoff are the only Americans living in Toyonaka, a city of 350,000 and a suburb of Osaka. Senri New Town is a new section of Toyonaka. Osaka has a population of 5.5 million persons.

The Chernoffs took 10 months of Japanese study for one hour daily with a tutor before going to Osaka. Mrs. Chernoff still has a tutor, but the ambassador has been compelled to give up the lessons because of lack of time.

Between 1955 and 1963, Chernoff was associate publisher of the Argus-Leader. He joined the U.S. Information Agency as executive assistant to the director in 1965. He was later given the assignment to direct the U.S. exhibition at Osaka and was appointed to the personal rank of ambassador last May 7th by President Richard Nixon.

Mr. Howard L. Chernoff, Ambassador of the United States to the Japan World Exposition. His "Life and Opinion."

Ambassador Chernoff arrived in Japan about five weeks ago to assume the position as the Commissioner General of the U.S. Pavilion at the Expo. Although many foreigners live in the Kobe areas, Ambassador Chernoff and Mrs. Chernoff chose to live in Toyonaka in order to get to know how the Japanese people are really living. The purpose of living in the Japanese neighborhood is to show the Japanese people how Americans live, and to tell the Americans how the Japanese live, Ambassador said.

Typical American characteristics, frankness and cheerfulness, seemed to come through his personality while he talked.

Mrs. Chernoff goes shopping to the market in front of Toyonaka station where she can manage to communicate in Japanese, Ambassador said. Ambassador Chernoff and his wife associate and communicate with their neighbors in the "little Japanese" they know, he said. It looks like that Ambassador Chernoff and his wife are getting used to their life in Japan and enjoying it.

Regarding the Senri New Town, Ambassador said that the environment seems quite nice, but he regrets the lack of communication among the people who live in the high-rise buildings. He says that the same thing can be said about the people who live in apartment building complexes in the United States.

"Those who live in the big cities are too busy doing things for themselves, playing Pachinko, watching TV and so on. They don't have time to talk to their neighbors," Ambassador said.

Ambassador Chernoff is now an official of the United States government, but he has a long career in the newspaper, radio and television business. Whether or not owing to his background, Ambassador seems especially observant. It will be very interesting to find out how Ambassador sees his life in Japan. I hope that we will have more opportunities to hear his opinions about the Japanese people's lives.

SENATOR McINTYRE SUPPORTS A STRONG SUBMARINE FLEET AND CONTINUED OPERATION OF PORTSMOUTH, N.H., NAVAL SHIPYARD

Mr. BYRD of West Virginia. Mr. President, on November 11 the distinguished junior Senator from New Hampshire (Mr. McINTYRE) and his lovely lady participated in the launching ceremonies for the new U.S.S. *Sand Lance*, a nuclear-powered submarine, at the Portsmouth, N.H., Naval Shipyard.

Mrs. McIntyre was the sponsor of this magnificent ship, and her husband delivered the principal address, and it was an excellent one. I was proud to serve as Mrs. McIntyre's official escort.

In his address, Senator McINTYRE paid tribute to the technological achievements of the Portsmouth Shipyard, its administration, and the craftsmen and technicians who worked on the *Sand Lance*.

But, beyond that, the Senator spelled out the crucial importance of a submarine fleet in protecting our Nation from any future enemy aggression.

Because his message was of particular significance in these times, I ask unanimous consent that it be printed in the RECORD.

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

REMARKS BY SENATOR THOMAS J. McINTYRE AT LAUNCHING OF U.S.S. "SAND LANCE," PORTSMOUTH NAVAL SHIPYARD, NOVEMBER 11, 1969

This is an exciting day for the McIntyre family. Mrs. McIntyre has the honor of being sponsor of this magnificent submarine; my daughter, Martha, is serving as maid of honor; and most importantly, I have the rare opportunity of doing the talking. We are, needless to say, thrilled to be participants in this event, and we especially welcome the chance to make it a family affair.

In just a few moments Mrs. McIntyre will lay bottle to hull, and hopefully *Sand Lance* will slide gracefully down the ways into these New Hampshire waters. I say hopefully because not every launching in the 4,000 year history of such ceremonies has gone off with military precision.

In 1943, for instance, Mrs. Franklin D. Roosevelt, sponsor of the aircraft carrier, *Yorktown*, abruptly interrupted the opening remarks of the master of ceremonies to take a desperate—but accurate—swing at the ship's bow as it prematurely slid down the building-ways, earning the *Yorktown* the nickname "Eager Ship". While I commend Mrs. Roosevelt for her quick thinking and superb agility, I note with dismay that the keynote speaker on that occasion—the then Assistant Secretary of the Navy—was unable to give his speech. In the fear that such a fate may await me, I will make my remarks brief, trusting that my wife and daughter will rise to the occasion should the *Sand Lance* decide to jump its 11:42 a.m. launch time.

I'm doubly honored to be participating in this event because it is taking place here at the Portsmouth Naval Shipyard. The first and only government shipyard dedicated exclusively to submarine engineering, it has recorded an impressive list of technological achievements unsurpassed by any other Yard in the Nation.

Among them: the first submarine built in a U.S. Naval Shipyard, 1917; the greatest number of submarines ever constructed in a single year—31—in 1944; and the first government nuclear submarine ever built was a product of this yard in 1958.

These are just a few of the numerous achievements that have earned this installation a reputation for excellence. And I commend the skilled craftsmen and technicians who have toiled over the many ships built here during the past 169 years, among them the namesake of the one we are to launch today—the U.S.S. *Sand Lance* (SS–381).

Perhaps some of you gathered here today worked on the very ship. Her keel was laid in March, 1943, and she first touched water in June of the following year.

The first *Sand Lance* served with distinction during World War II. She was awarded the Presidential Unit Citation for heroism on her first war patrol, and during her service to our country won five battle stars.

In a few minutes a second and greater *Sand Lance* will ride the waves for the first time, in what I am sure will be a thrilling sight. Yet this particular launch has a certain sadness to it, for this *Sand Lance* may have the dubious distinction of being the last submarine ever built at this Yard . . . *if* a Government order to close it in 1973 is carried out.

I am hopeful that this will not happen, not only because of the obvious economic benefits this installation affords this area, but—more importantly—because of the role of submarines in our country's future.

From what I have learned, as a member of the Armed Services Committee, there is little doubt in my mind that the nuclear submarine will play a dominant—if not *the*—dominant role in protecting our Nation from enemy aggression.

I believe very strongly that our most effective, least vulnerable deterrent to enemy attack is not our land-based ICBM System, not our long-range bombers, but our nuclear submarines.

The advantages of under-water strength are many. Nuclear subs can cruise 400 miles a day, anywhere, anytime. They are faster than most surface ships. They can remain submerged for months at a time. They can be navigated so that each missile is always trained on target. And they cannot be detected except by another nuclear sub.

In addition, land-based missiles are restricted in their latitude of launch, whereas nuclear missile subs can fire from any ocean, thus requiring a potential enemy to spread its defense over 360 degrees.

Then there is the time factor. In the event of a missile attack, the proximity of our cruising subs to the attacker would give us precious minutes for the President to come to the awesome decisions he must make. Our subs would be thousands of miles nearer the enemy than our land-based missiles and much more capable of quick and effective retaliation.

This is not to imply that I advocate doing away with our land-based missile systems or with long-range bombers. What I *do* believe is that we need a deterrent mix, and no such mix can be of maximum effectiveness if it does not include a strong nuclear submarine force.

Indeed, in my opinion, we get more deterrent per dollar with submarines than we get in any other system.

The Soviet Union has been quick to grasp this realization. They are turning out submarines at such a rate they could surpass us in number of nuclear submarines by 1970. Indeed, Russian shipyard facilities are so advanced that it is estimated they can turn out one submarine a month.

Of course, quantity in itself should not be the overriding factor in determining our underwater defense system—we must also concentrate on increasing the capabilities of existing submarines while at the same time remaining within the fiscal restraints facing the Navy.

For instance, the Navy plans to convert 31 of our 41 Polaris submarines to Poseidon class subs. Indeed, such a conversion may take place in this very shipyard next month because the U.S.S. *Rayburn's* home-port does not have the facilities available for such a project.

Looking even further into the future, we are studying development of an advanced undersea strategic system, the Undersea Long-Range Missile System, which could eventually supplant our Poseidon submarines by the 1980's.

Armed with several longer-range ballistic missiles, these submarines of the future could be on-target leaving port and would be even less vulnerable to attack.

This is what lies ahead, and we are planning for it *now*. The Senate Armed Services Committee has recognized this need and recently increased the budget for nuclear attack submarine spending. As a member of the Committee, I supported this increase without reservation.

In a year of reduction in Defense spending, I believe the spending hike for submarines is most encouraging, and it makes today's occasion even more significant and personally rewarding.

And now, in closing, I want to congratulate you, Captain Kern, your very able administrative staff, and the loyal and dedicated workers of this great and venerable shipyard, and to wish the future crews of this powerful fighting ship calm seas and snug harbors.

And I want to say once again—as emphatically as I can say it—that the future security of our Nation rests in very large measure on the future of our underwater fighting ships . . . and that the Portsmouth Naval Shipyard *must* remain in operation to *insure* that future.

LADY ELLIOT OF HARWOOD SPEAKS UP FOR NATO

Mr. MUNDT. Mr. President, it is my pleasure to invite to the attention of Congress and the country an informative and interesting address delivered in the British House of Lords recently by Baroness Elliot of Harwood. I ask unanimous consent that the entire address by Lady Elliot be printed in the RECORD at the conclusion of my remarks. Her address was made available to me as it appeared in the October 30 issue of Hansard, the printed report of debates in the British Parliament.

I am sure that most Members of our Congress who have attended the annual meetings of the NATO Parliamentarians' Conference over the past decade or more are personally acquainted with Lady Elliot. She is an active, valued, and regular participant in these annual conferences.

For the past 5 or 6 years it has been my high honor and privilege to serve as chairman of the NATO Parliamentary Committee on Education, Information, and Cultural Affairs, and Lady Elliot has been a most active and influential member of my committee which she, herself, served as chairman before she voluntarily retired from that position and nominated me to succeed her.

I am especially pleased and impressed by the emphasis which Lady Elliot in her address in the House of Lords placed upon the Seminar at the College of Europe in Bruges, Belgium, last August, under the imprimatur and direction of our NATO committee. This was the first time in the free world that an interna-

tional training seminar has been conducted on public administration so that participants from the career services of the free world could enjoy "learning together," as Lady Elliot so appropriately put in in her address to the House of Lords, as they met for 6 weeks to to learn to do better and more efficiently the tasks of public service which they in their responsible positions as career public servants are going to do anyway.

Mr. President, the NATO free world Seminar on Public Administration in Bruges last year was a complete success. At its recent meeting in Brussels, the NATO Parliamentarians Conference voted unanimously to continue these seminars, and it is planned to hold the second one next August in Bruges, again under the direction of the College of Europe and its illustrous rector, Henry Brugmans. Last year's seminar received a most helpful grant in the amount of $15,000 from the Ford Foundation to help defray the expenses of this initial seminar, the rest of its expenses being defrayed by a NATO appropriation. It is to be hoped that both the Ford Foundation and NATO will again, in 1970, cooperate in the financing of next year's seminar, in which we hope to expand the usefulness and inspiration of these annual free world institutes to a limited number of career public servants engaged in administrative work in the developing countries of Africa and/or other areas of the non-NATO world.

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

Baroness ELLIOTT of Harwood. My Lords, I am sure it would be your Lordships' wish that I should congratulate the noble Lord, Lord Gore-Booth, most sincerely on his quite fascinating and brilliant maiden speech. He comes to us following a most distinguished career in the Foreign Office and the Commonwealth Office, and also as the Head of the British Information Services in the United States for, I think, four years. He also has great experience of India, where he did work of the utmost importance. I am sure I am right in saying that no Head of either the Commonwealth or the Foreign Offices was more popular than he. To-day, he has completely justified the words of the noble Lord, Lord Chalfont, about the most distinguished people who are our diplomats throughout the whole Diplomatic Service. Certainly I believe that no one could have made a more fascinating and interesting speech than that which we have heard from the noble Lord, Lord Gore-Booth, this afternoon.

But he has two other qualifications for coming to this House, which I have discovered because I was kindly briefed by someone before his speech to-day. The noble Lord has been President of the Sherlock Holmes Society. This must have struck a chord of affection and interest in many of your Lordships' minds. He also enjoys that which must be quite original in this House, anyway among the many clubs to which many of your Lordships belong: he belongs to one called "The Baker Street Irregulars". Surely this must put him in a class quite apart from any of us here in this House. Let us hope that we shall hear him many times on the subjects on which he is a great expert. I should like to hear him, too, on subjects on which perhaps he may be an expert, though the fact has not appeared in his career so far, because I am sure that no one could have been more interesting than he in the speech he made to us to-day.

My Lords, this debate is of great interest, but I want to deal with just two subjects which appear in the gracious Speech. The noble Lord, Lord Chalfont, said that he supported wholeheartedly—indeed, it is remarked in the gracious Speech—the importance of the NATO Alliance and what it means for the West in the way of security. I have just returned from a conference of the North Atlantic Assembly held in Brussels two weeks ago. I should like to say a few words about this as it is most pertinent to a debate on the subject of Defence and Foreign Affairs. In Brussels we had delegates from 14 out of the 15 NATO countries, and all were members of their respective parliaments, either Upper House or Lower House. This Assembly, which in earlier years was known as the NATO Parliamentarians' Conference, is a remarkable gathering of politicians linked by their membership of NATO, determined to study defence and disarmament but able to discuss international relations on a wide front.

This is the only organisation meeting on European soil which brings to Europe representatives from the North American continent. Neither the Council of Europe, nor the W.E.U., nor the O.E.C.D. bring Senators and Congressmen from the United States and Canada to take part in discussions on European affairs. I believe this to be a matter of the greatest importance. It is no exaggeration to say that the defence of the Western Free World depends on the enormous contribution that the American forces make in the Alliance. The noble Lord, Lord Gore-Booth, has just spoken about this. If, through a change of policy, the United States Administration were to pull out of the Alliance, the Alliance would lose a great part of its value.

There would still be the co-operation of the other 14 nations. That in itself is most remarkable, when one looks back over our lifetime to the wars we have fought. The fact that one can see and take part in an Assembly in which politicians from Germany, France, Belgium, Holland, all the Scandinavian countries, Italy, Turkey, the United States and Canada and, before the breakdown of democracy there, Greece, all discussing together round a table the defence of the Free World gives one hope for the future. The defection of Greece, the country where democracy was invented, is sad, but let us hope that wise people will persuade the colonels that in the interests of their country *vis-a-vis* the other nations the restoration of democratic Government is essential. But except for Greece, the 14 nations discussed many subjects in which all our interests are involved: East/West relations; military matters, including the need to pursue disarmament as much as the need to have all our forces integrated under General Goodpastor, the American General, and the other NATO commanders.

Politically, there was a feeling that the advent of a new Chancellor and Government in Germany gave us opportunities to try to resolve some of the East-West problems, which will again appear; and we may have an opportunity of a new approach and a new policy. Although the French Government still carries on the same policy towards NATO as did de Gaulle and his Government, some of the French delegates, who are not Gaullists there, were anxious to encourage the new Government to cooperate in the Council and be fully aware of the Council's policies. I need hardly say that the fate of Czechoslovakia was ever present in everyone's mind, and the need to preserve the peace in areas under the Alliance brought all the politicians from all those countries very closely together.

In the Cultural Affairs and Education Committee, of which I was a member, we had a report of the first successful seminar at the College of Europe in Bruges for the discussion of administration between civil servants from ten NATO countries, learning together something of the importance of understanding each other's civil administration. As we all know, we have made many studies of military integration, which is very important indeed, but this is the first time that a study by civil servants of civil cooperation between the countries has taken place. Thanks to a grant from the Ford Foundation and a small grant from NATO, this first conference took place. It seemed to me to be breaking new ground; and hearing the report, which I did, of what took place there in the space of a fortnight—and it was the first experiment that had been tried in this—I felt something of importance was being started. I hope that our Government will give encouragement to this effort, because I believe that it might be of great value in the formation and working out of policies among our NATO friends.

We also took the opportunity of discussing with some young workers and students the problems of student unrest. This problem is world-wide, as we know, and interesting papers were brought before us for us to study. I felt very strongly that one of the things shown by this discussion between these very distinguished senators, congressmen and Parliamentarians from all these countries, talking to these young men of many nationalities about their problems, was that, first of all, they were of an age at which for them NATO had always existed. There was nothing new about it; it was just another alliance among many other alliances that they had always accepted. They did not realise, as we more aged Parliamentarians realise, that what the NATO Alliance really represents in the world to-day is the greatest step of any that has been taken in the last twenty years. I also felt that there was a lack of understanding in the young of the policies that we were trying to pursue. There was a failure of communication with the age group with whom we were talking, or who were talking to us—because we allowed them free range to talk to us—and the lines of communication were really not good. I will not say they were blocked; they were not; but they were not good and we were not speaking the same language as they were speaking. It seemed to me most important that we should, somehow or other, try to bring the young people of Europe to an understanding of the importance of the NATO Alliance in any way that we possibly can.

This leads me to ask the Government whether they will urge the recognition of the North Atlantic Assembly as an official body like the Council of Europe or W.E.U., able to speak to the NATO Council and give their recommendations for discussion and advice. To-day the North Atlantic Assembly is 15 years old, and it is still an unofficial body. If it became an official body it would strengthen the Alliance through the Parliamentarians as well as through the military men. I would urge the Government to examine this possibility, as I think it would not require a very great alteration in the view they take of the North Atlantic Assembly.

My other comment on the gracious Speech must be on the United Nations and our policies there. I should like to congratulate the noble Baroness, Lady Gaitskell, and to thank her very much indeed for her splendid work in New York. It is an extremely interesting assignment to be a delegate, as I myself know, having been for three years a delegate at three General Assemblies. It is also extremely frustrating and, at times, irritating to a great degree. Year after year the same resolutions appear, and one would often think, looking at the agenda papers, that nothing ever changed. Nevertheless, it does; and things are done. And although often one gets despairing about the United Nations it is the one and only place where people can talk and discuss, and where things do happen very often, and very often of great importance.

There is only one subject that I want to

mention to-day, and that is the Middle East and the Israel-Arab problem. The noble Lord, Lord Gore-Booth, has just made a very wise analysis of the position of the Four Powers in the Security Council, and the question of the Israel and Arab problem. I should like just to add my own thoughts on this matter. Israel is a State recognised by the United Nations and by nearly all the nations, with, of course, the exception of the Arab States. I believe that even some of these would be prepared to accept the fact of Israel, given the help of European nations and the United States. By "help" I do not mean military help; I mean by world opinion simply stating the obvious, that Israel is there and will remain there for all time.

Israel has said that negotiations with Arab States would enable both sides to talk peace, instead of carrying on war, whether guerrilla war or otherwise. I should like to ask: Cannot our Government use all its influence direct to bring about a meeting between Israel and the Arabs? Instead, they support resolutions on this question which are sometimes tolerable and sometimes intolerable. The other day at the United Nations a resolution was put forward accusing the Israelis of responsibility for burning down the mosque of Al Aksa. There is no evidence at all that any Israeli would have been so foolish as to burn down any mosque. When I was in Israel after the Six-Day War I visited many mosques, one in Hebron, on a day reserved for Moslems, and the Israeli guard would not allow me to go and see it without the permission of the Moslem in charge on that day. One of the interesting results of the Israeli administration is the way in which all the Holy Places, whether Moslem, Christian, or Jewish, are carefully looked after and freely accessible to those who want to visit them. Surely in the interests of peace our delegate at the United Nations should have abstained in a vote which, at its simplest, is a case which we would consider *sub judice,* since the trial of a person is taking place at the moment and the question of who committed this tragic act is unknown. In my opinion, it is most unlikely that it would have had anything to do with the Israeli Government. For us to vote for so biased a resolution is, in my opinion, wrong, and I must say so here.

Foreign affairs are never static; changes come every day. I think that to-day we have the opportunity of a new Government in Germany, and a comparatively new Government in France. I have hopes that their policies may lead to a détente in East/West relations, and also to a change in the policies towards us in relation to the E.E.C. I also hope—and I am encouraged by what I have heard in this debate—that a new look may come into Europe, and that we shall not lose the opportunity of seeing that that new look leads us in further steps towards world peace.

THE DARK MILITARY SIDE OF THE ROCKEFELLER REPORT

Mr. CHURCH. Mr. President, the long-awaited Rockefeller report on Latin America generates two wholly different impressions. Its proposals for adjustments in trade and economic aid are fresh, creative, and promising. At the same time, however, the report advances a remarkably stale view of the military security needs of Latin America. Ignoring plentiful evidence that the chief political trend in Latin America is toward militaristic nationalism, the report stresses development of U.S. military aid programs to strengthen Latin American governments against Communist subversion.

In a recent Washington Post column, Stephen S. Rosenfeld commented most perceptively on the anomalies in the Rockefeller military aid recommendations. I ask unanimous consent that his column be printed in the RECORD.

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

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

THE MILITARY SIDE OF ROCKY'S REPORT

(By Stephen S. Rosenfeld)

Nelson Rockefeller in effect gave the President two reports on Latin America; they were released this week. One centered on the hemisphere's economic requirements and on how the United States should cooperate in fulfilling them. The other concerned what Rockefeller believes to be ever-expanding menace of Castroism, and the measures needed to meet that. So divergent in perception and policy implications are these two elements—the one heading toward economic growth in peaceful circumstances and the other heading toward vigilance and possible military confrontation—that it is hard to see how they can coexist in a single statement. Yet there they are.

To be sure, this kind of double vision is not new. Since the World War II period, when Axis penetration of the hemisphere was feared, Washington has divided its efforts between supporting Latin military establishments and helping Latin political communities. More recently, as John Plank of Brookings has written: "One strand of policy has run from the era of the 'good neighbor' and the inter-American system . . . The other strand, which is not really compatible with the former one, derives from our conception of Latin America as an active theater in the cold war, one of the battlegrounds on which we engage those whom we have identified as our mortal enemies, the Communists."

Thus in the 1940s and later, our military policy was directed at preparing the Latin military for a mission of hemispheric defense. In this period, the United States opened up the Inter-American Defense College and Defense Board, the military assistance programs, sales of destroyers and submarines, and so on. The rationale for organizing the Latin military to repel a conventional foreign invasion has long since evaporated, but these programs limp on. Many Latinists believe the programs contribute heavily to Washington's militaristic reputation in the hemisphere.

In the 1960s, chiefly because of fear of Cuba, the rationale (though not always the substance) of American military policy was shifted from hemispheric defense to "internal security." Subversion, supported by or oriented toward Castro, was defined as the main enemy. The official view was that the Latin military constituted a "shield against insurgency"; behind that shield, the process of development—understood as a disruptive one—would go on.

This is Governor Rockefeller's view still "All the American nations are a tempting target for Communist subversion," his report says. "In fact, it is plainly evident that such subversion is a reality today with alarming potential . . . of growing intensity." Predicting more Castros, he declares: "A Castro on the mainland, supported militarily and economically by the Communist world, would present the gravest kind of threat to the security of the Western Hemisphere and pose an extremely difficult problem for the U.S."

This diagnosis led Rockefeller to recommend major increases in military programs, both on the hemispheric-defense and internal-security levels. Urban terrorism, an activity so far defying control, is his special concern. Against the claim that some Latin military men serve a conservative status quo, he argues that there is "a new type of military man . . . coming to the fore and often becoming a major force for constructive social change." Is not the military anti-democratic? Rockefeller believes that few Latin countries have the sufficiently advanced economic and social systems required to support a consistently democratic system." Anyway, "the common heritage of respect for human dignity is evidenced in different ways in different nations."

As might be expected, many academics and liberals and U.S. legislators question Rockefeller's judgments in the military sphere. Politically the most important questions, however, come from the Nixon administration.

The State Department's Latin chief, Charles A. Meyer, said last July that "Communist insurgencies are currently at a relatively low ebb." Che Guevara's Bolivian fiasco "made the Cuban regime more cautious about initiating new areas of insurgency," he said. Meanwhile, Latin counter-insurgency capabilities have improved, and the appeal of Cuban-style revolutions has declined.

William E. Lang, deputy to Assistant Secretary of Defense G. Warren Nutter, scanned the hemisphere last May, found no insurgencies of consequence anywhere, and reported that "we have not seen external evidence of Cuban support for insurgency in Latin America for some months . . . 12 to 18 months." Nutter, who cannot easily be accused of an indisposition to detect a Red peril, backed up his deputy.

President Nixon, in his Latin address Oct. 31, barely touched on the threat of communism or subversion, saying just that the export of revolution could not be condoned and "a nation like Cuba which seeks to practice it can hardly expect to share in the benefits of this inter-American community."

In sum, the Nixon administration, to judge by the public record, is taking a rather calm approach to the vital question of whether Latin America needs to be more heavily militarized for a crucial crunch ahead. The official Washington consensus, to say nothing of the liberal-academic-congressional consensus, is that Latin governments do not face a serious subversive challenge, Governor Rockefeller so far has failed to make a convincing case for strengthening military programs and catering to military regimes. President Nixon would make a gratuitous and costly error if he accepted Rockefeller's military advice.

SALT—REACHING PEACEFUL PARITY

Mr. PROXMIRE. Mr. President, millions of Americans are now vitally concerned and openly debate the relative merit of our military weapons systems. The era of unchallenged military spending is ending. This is all to the good. But military spending all over the world races ahead; and unless positive actions are taken, such as arms-control agreements and a Soviet-United States detente in the arms race, this growth will continue to burden and depress us while reducing our security.

With the hope and best wishes of peaceable men everywhere, United States and Russian negotiators this week meet in Helsinki. They are coming to the Finnish capital to start talks on the most vital and sensitive disarmament issue ever negotiated. The object of the Strategic Arms Limitation Talks—SALT—is to find a way for both sides to agree on a plan that will limit, and perhaps some day reduce their vast nuclear arsenals. Until now the two superpowers have not touched upon the most fundamental nuclear threat: their own armories. This

time the common stake in getting off the nuclear escalator is vastly large. The two powers possess something close to military parity. Each, as Secretary Rogers said last week, "could effectively destroy the other regardless of which struck first." Both nations are distracted by severe foreign problems—Russia with China and Eastern Europe, the United States with Vietnam. Both may be losing their taste for continuing the arms race. We have reached the critical point where we must talk before it is too late.

In the escalation of the arms race, our general policy has been to react to our estimates of what the Soviet Union's intentions would be. If we continue in this pattern, without agreement, there is nothing we can do to contain this inevitable spiraling arms race. It is imperative that the United States take the initiative. Neither the United States nor the Soviet Union has offered to suspend the development and testing of new weapons during the talks; and the precarious technological balance that helped to make the negotiations possible in the first place cannot be expected to last indefinitely.

This country has more than 1,000 land-based intercontinental missiles. It has 650 nuclear armed strategic Air Force bombers. It has 41 Polaris submarines with 656 submarine-launched ballistic missiles. With 16 missiles each and with each missile soon to be armed with three to 10 warheads, our submarine fleet alone could destroy the world.

In addition to this, we have tactical nuclear weapons in place in various spots throughout the world.

Medium-range bombers and missile sites encircle the frontiers of our potential enemies.

From public sources it is known that the United States has more than 6,500 nuclear warheads.

We have a military budget, including related space and AEC military requirements, of almost $80 billion. There are 3.4 million men and women under arms; 1,300,000 civilians work for the Defense Department. And 100,000 companies, employing 3.8 million civilians, fill defense orders.

The military and civilian personnel not only work at home, but also, many are stationed at the 429 major and 2,972 minor bases scattered throughout 30 countries of the world.

These are the military credentials we bring to the arms talks at Helsinki.

An international research team financed by the Swedish Government published recently a bleak analysis of what was described as a runaway arms race.

It found that the world was spending more for military purposes now than its total production of goods and services at the start of the century, that arms outlays were doubling every 15 years and that efforts to control them were marginal if not illusory so far.

The study illustrates the point that since the 1963 treaty prohibiting nuclear tests in the atmosphere or under water, that nuclear testing had been stepped up. The report warns that time was short for the current talks on limiting strategic weapons because United States progress on the development of multiple warheads would reach "a point of no return" in 3 to 6 months.

Mr. President, I would like to call to the attention of my colleagues the article written by John Hess for the New York Times on this subject, entitled "World Study Finds Runaway Arms Race, With Outlays Soaring."

In conclusion, I would like to say that "imperative" is a small word to use to emphasize the importance of the SALT talks and the need for United States initiative to bring a halt to the arms race. I strongly endorse the importance of a Soviet Union-United States mutual suspension on the development and testing of new weapons during the SALT talks. Our best defense is peace. And we must make every attempt to bring peace to the world to give credence to our national dialog and to leave not only dreams for our children—but ominous as it may sound, a world of our children.

Mr. President, I ask unanimous consent that the article by John Hess be printed in the RECORD, and I also ask that an encouraging, optimistic column on the Helsinki talks, written by Tom Wicker, also published in this morning's Times, be printed in the RECORD.

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

[From the New York Times, Nov. 20, 1969]

WORLD STUDY FINDS RUNAWAY ARMS RACE, WITH OUTLAYS SOARING

(By John L. Hess)

PARIS, November 19.—An international research team financed by the Swedish Government published today a bleak analysis of what was described as a runaway arms race.

It found that the world was spending more for military purposes now than its total production of goods and services at the start of the century, that arms outlays were doubling every 15 years and that efforts to control them were marginal if not illusory so far.

The study demonstrated, for example, that nuclear testing had been stepped up since the 1963 treaty prohibiting nuclear tests in the atmosphere or under water.

The report warned that time was short for the current talks on limiting strategic weapons because United States progress on the development of multiple warheads would reach "a point of no return" in three to six months.

The authors of the report believe that once that is achieved, the Soviet Union will be unwilling to halt development of comparable weapons and counterweapons. Such weapons they hold, cannot become reliable from a military viewpoint without testing, including the explosion of the hydrogen warheads.

BRITON HEADED TEAM

A sharp rise in military spending set in about 1965 and seems likely to continue; at present rates, arms outlays in the early years of the next century will exceed present world production of goods and services.

Not only is spending on arms rising faster than total production of goods and services, the gap is wider for the poor countries than the rich.

The study was sponsored by the Stockholm International Peace Research Institute, of which Gunnar Myrdal, the Swedish economist, is chairman, and Robert Neild, a British economist and editor, is director. Another British economist, Frank Blackaby, headed the team that assembled the 440 pages of data comprising what is to be an annual yearbook on armaments and disarmament.

The work is a scholarly compendium of the world's troubles—120 armed conflicts since World War II—an analysis of armaments and the arms trade, and a history of the effort to control them. It is not optimistic.

Allowing a wide margin of error for data concerning the Communist countries, the team found that the world spent $159.3-billion for military purposes last year, using official Communist exchange rates, or $173.4-billion at rates adjusted for real buying power.

The United States spent $79.3-billion of this, the Soviet Union $39.8-billion (at the adjusted rate) and Communist China—a hazardous estimate—$7-billion.

From 1949 through 1968, the study found, world military spending rose at an average rate of 5.9 per cent a year, after allowing for inflation. But the rate in the last three years averaged 8.9 per cent—an acceleration of 50 per cent.

SHARPEST RISE IN MIDEAST

The acceleration was far from even around the world. The sharpest rise came in the Middle East—19.9 per cent annually over the last three years. It was notable that both the victor and the vanquished in the lightning war of June, 1967, have sharply increased arms spending.

With an assist from the Vietnam war, the United States provided the largest portion of the increase. Its long-term trend was an annual rise of 7.7 per cent; the recent trend was 12 per cent. With a lag of a year or two, the Soviet Union and its allies followed this stepup—but the allies of the United States in Europe did not, except for Portugal, engaged in colonial wars, and Greece.

The increases work like compound interest, so that both the United States and the Soviet Union show cumulative gains of about 40 per cent since 1965, now accounting together for 70 per cent of the world total. The share of the poor countries is small but is rising faster than average.

The study confirmed that arms were swallowing a sharply rising share of world income. Before World War I and between the two World Wars, it estimated, the military spent 3 to 3.5 per cent of the world's resources; since then the share has risen to 7 to 8 per cent.

The change for the United States was more dramatic: from 1.5 per cent of the national product in 1913 to 2.5 per cent in the thirties and 10 per cent in the postwar period.

THE 7.5 PCT. RISE IN POORER LANDS

In the so-called developing countries arms spending has been rising at a rate of 7.5 per cent, as against a world average of 6 per cent, while output for both groups has been rising at no better than 5 per cent.

Put another way, world production is found to have multiplied about five times in the last 50 years, while arms spending has multiplied about 10 times.

On the other hand, the study reports that armed manpower has not increased significantly. The Paradox is explained by the enormous rise in the cost of weapons: the technological arms race.

Among the large Western powers, at least, it was found, the cost of military research far outshadows that of civilian research. For the United States, $62.20 of each $100 of military procurement is assigned to research and development, but they take only $7.50 of each $100 of manufacturing output.

Smaller countries can hardly compete. To the extent that they try, they find that they must market their weapons abroad to remain competitive, but the United States and the Soviet Union dominate exports.

In the race to supply the third world with weapons, the report concluded, the Soviet Union has caught up with the United States, owing largely to aid to the Arab countries. This estimate excluded shipments to North and South Vietnam.

The study represents the testimony of Robert S. McNamara, former Secretary of Defense, on how United States spending was sharply increased on an erroneous estimate of a Soviet buildup, and follows that with testimony by the present Secretary, Melvin R. Laird, on a new Soviet threat.

The authors, limiting themselves to nuclear tests reported by the Atomic Energy Commission for the United States and by a Swedish defense agency for the Soviet Union produce the following comparison of the average annual rate of testing before and after the ban:

	U.S.	U.S.S.R.	World
Before	24.4	12.8	39.6
After	32.0	9.2	46.2

The study cites evidence that many unreported tests have been conducted by the United States and the Soviet Union, and possibly by Britain and France. Most of the tests, reported or otherwise, have, of course, been underground, but the authors observe that the power and military value of underground testing have been far greater than had been expected.

[From the New York Times, Nov. 20, 1969]

IN THE NATION: A GOOD START IN HELSINKI

(By Tom Wicker)

WASHINGTON, November 19.—Since it took so long to get strategic arms limitations talks under way, it may be a hopeful sign that reports from Helsinki suggest a cordial beginning. Neither Soviets nor Americans yielded to propaganda temptations in their opening statements, both sides seemed to be addressing themselves to the same general objectives, and Mr. Nixon's message used the reassuring word "sufficiency" instead of "superiority" to describe the kind of nuclear arsenal he had in mind.

Opening-day goodwill does not, of course, guarantee long-range results, but in this case it seems particularly important. The military-minded, and hawk circles generally, in Moscow apparently fear that the talks are simply an American fishing expedition for intelligence data; while high military reluctance in Washington caused American negotiators to arrive in Helsinki without any specific proposals.

AVOIDING STALEMATE

Thus, it is extremely important just to get things going in an atmosphere of reason and goodwill. Once both sides become convinced—if they ever do—that the other genuinely wants an agreement, its scope and details should not be impossibly difficult. Taking counsel either of political fears and technical complexities, on the other hand, can produce nothing but stalemate and a continuing arms spiral.

That is why the use of the word "sufficiency" was important. "Sufficiency" is what both sides now appear to have in their nuclear strike capacities. That is to say, neither can launch a nuclear strike at the other with any hope of so completely destroying the other's retaliatory capacity that it will not be able to deliver a devastating return strike.

ELIMINATING NUMBERS GAME

If that is in fact the case, if neither side can attack the other with reasonable impunity, then each has a sufficiency of nuclear weapons to guarantee its national security, to the extent that it can be guaranteed. And this would be the case even if one or the other claimed more missiles, more warheads or more nuclear-armed submarines—as in fact the United States does claim.

If some general understanding can be established that there is nuclear sufficiency on both sides, a difficult numbers question can be eliminated from the arms limitation problem. The Soviet Union would hardly negotiate second place for itself, in numbers of weapons or total firepower, nor would the United States give up first place; but if it is established that first and second place don't really exist, that enough is enough and there is a sufficiency on both sides, then at the least a freeze on the existing nuclear balance becomes possible.

That much is crucial because the more the two sides go on with the nuclear arms race, either developing new and more awful weapons like MIRV, or tinkering with control and delivery and warning systems, the more it becomes likely that at some point one side or the other will score either an offensive or a defensive breakthrough. The danger in that is not just that a power that did so might launch a strike while it had the opportunity to do so; but also that both powers would be in constant fear of just such a breakthrough by the other, and would redouble their own spending, research and deployment—an endless cycle.

Moreover, it is hard to believe that any ultimate reduction in levels of armaments could be achieved before a period transpired in which both sides maintained, by agreement, an existing balance, during which not only the good faith of each but the best methods of policing and verifying the arrangement could be tested.

THE COST ADVANTAGE

From that kind of an achievement, it would become possible at least to have discussions, on the basis of proven intentions, about mutual nuclear arms reductions. And another advantage of an initial nuclear arms freeze is that both sides could save substantial sums each needs for domestic purposes—in the estimate of Jerome Wiesner, about $100 billion apiece in the next five years.

Of course there would be risk but if the aim is to eliminate risk, neither an arms limitation agreement nor a continuing arms race will achieve it. And as Gen. James Gavin has observed: "We're extremely venturesome in war and we ought to be as venturesome in peace. The rewards are greater."

RELIGIOUS PERSECUTION IN THE SOVIET UNION

Mr. GURNEY. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled, "Israeli Knesset Appeals to World's Parliament To Help Soviet Jews Emigrate," published in the New York Times of November 20, 1969. The article details the latest manifestation of religious persecution in the Soviet Union's long and infamous history of persecution of its Jewish citizens.

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

[From the New York Times, Nov. 20, 1969]

ISRAELI KNESSET APPEALS TO WORLD'S PARLIAMENTS TO HELP SOVIET JEWS EMIGRATE

(By James Feeron)

JERUSALEM, November 19.—Israel's Knesset called today on parliaments around the world to "employ the full weight of their influence" in assisting Soviet Jews to emigrate to Israel.

In a move confirming a major change in Israeli policy toward the Soviet Union, the Knesset (parliament) indicated that persuasion would be replaced by pressure in seeking free emigration for Soviet Jews.

Premier Golda Meir, in a major address opening the seventh Knesset, said a 50-year campaign by the Kremlin to silence Jewish voices in the Soviet Union had failed.

Moscow should have the courage to realize this failure, Mrs. Meir said, "and allow every Jew who wants to leave the country to come here to us."

Mrs. Meir followed the disclosure earlier this month of the names of 18 Georgian Jews who wanted to leave with a new list of Soviet Jews whose requests to come to Israel also had been turned down.

The publicity surrounding the earlier announcement had indicated a dramatic break in the long years of secret negotiations with the Soviet Union to open the doors for as many of the nation's 3 million Jews who wanted to come to Israel.

In her speech to a packed Knesset chamber, Mrs. Meir indicated that the days of "quiet talks and quiet diplomacy" were over.

She said "we shall see to it that every person possessed of a conscience, Jew and non-Jew, everybody to whom freedom is dear, will surely raise his voice for the freedom of others as well."

Isser Harel, former head of Israel's Secret Service and a new member of Parliament suggested during the general debate that disquiet among Soviet Jews might eventually "become a malady that could spread to other elements in the Soviet Union."

"When that day comes," he continued, "and when the Kremlin's concern over the stability of its internal regime outweighs Russia's interests abroad, they'll want to get rid of their Jews and they'll want to get rid of them fast."

Taken with Mrs. Meir's speech, the implication was that Israel, possibly with the help of other governments, would be seeking to generate the internal pressure that might lead to a change in Soviet policy barring free emigration for all citizens.

There are Israeli officials who are aware of the risk entailed in the new Israeli policy. Some have expressed concern over possible recriminations against Soviet Jews who have given their names to the publicity coming from Jerusalem.

CENSORSHIP BARS DETAILS

Censorship in Israel has long prevented references to immigration of Soviet Jews to Israel and even today bars speculation on the hearing this may now have on Israel's decision to apply public pressure on Moscow.

Mr. Harel's comment on Soviet interests abroad was an apparent allusion to Moscow's ties with Arab governments, whose leaders oppose any form of Jewish immigration to Israel. Arab leaders are convinced that Israel is basically expansionist and that large immigration will justify greater expansion.

Israeli immigration officials expect 30,000 to 40,000 newcomers this year, most of them arriving with skills from affluent countries.

In speaking of Soviet Jews the 71-year-old Mrs. Meir, herself a Russian-born Jew, said masses of young Soviet Jews had undergone an "awakening" as a result of the 1967 Israeli victory over the Arab states.

HOLIDAY RALLIES NOTED

She said no one could explain "in terms of cold reason" how young Jews in the Soviet Union, many of whose parents had tasted prison life or experienced years in Siberian work camps, now gathered by the tens of thousands around synagogues on Simhat Torah. This is a joyous holiday that marks the completion of the annual round of reading of the Torah, the Jewish holy scriptures.

Soviet Jews have become more courageous, Mrs. Meir said, and are now declaring "that their homeland is the state of Israel."

The Premier then read off the names of those Soviet Jews who had written abroad in what she described as an attempt to publicize their inability to obtain exit visas. The hometowns of the writers included Moscow, Kiev, Riga, and Leningrad.

She read an open letter to Premier Aleksei N. Kosygin from Tina Brodetskaya, a 34-year-old Moscow woman, who was seeking to join relatives in Israel. The woman wrote that her desire to emigrate stemmed from Zionist feelings and not from hostility to the Soviet Union.

PRESIDENT NIXON'S TRADE MESSAGE TO CONGRESS

Mr. JAVITS. Mr. President, the President and the administration are to be commended for the proposed trade program forwarded to the Congress earlier this week. This program, which must be regarded as a holding action, is significant in that it again commits the United States to pursue a policy of freer world trade—despite the considerable protectionist pressures which are growing in our land.

We in the Congress should support the statesmanship of the President as shown by this message and give him the authority he requests to make modest reductions in U.S. tariffs. I would grant the President such authority, however, through June 30, 1972, rather than through June 30, 1973, since more comprehensive action in the trade field should be enacted before then. The last tariff cuts of the Kennedy round negotiations will have become effective on January 1, 1972, and the administration and the legislative branch should regard this as the target date to enact new, major legislation in the trade field.

At this time, the Joint Economic Committee of the Congress, of which I am the ranking Senate minority member, is preparing a comprehensive series of trade hearings, and these hearings should dovetail nicely with the Commission on World Trade, which the President has indicated he will appoint to examine the entire range of our trade policies. The Commission's Report should be available before the Joint Economic Committee issues its report. Because of this timetable, I would recommend that the President's authority to effect tariff reductions be extended only through fiscal 1972.

The President's proposals of aid for industries affected by imports—adjustment assistance—are indeed welcome. In my opinion, one of the major flaws in the implementation of the Trade Expansion Act of 1962 was the extremely difficult criteria which had to be met if trade adjustment assistance were to be granted. The liberalization of the criteria is welcome and needed.

Liberalization of escape-clause provisions is also to be welcomed so long as such liberalization is part of the philosophy which recognizes—as the President's does—that "any reduction in our imports produced by U.S. restrictions not accepted by our trading partners would invite foreign reaction against our own exports—all quite legally" and that the "need to restore our trade surplus heightens the need for further movement toward freer trade."

In my opinion, the President's request of the Congress for a clear statement "with regard to nontariff barriers to assist in our efforts to obtain reciprocal lowering of nontariff barriers," is an important call for cooperation. We should meet the President's request. In this regard, the President's proposal to eliminate the American selling price as a step toward eliminating the proliferating nontariff barriers to trade is most commendable—all of us in the Congress know of the difficulty in putting forward this very needed proposal.

Finally, it is my hope that Western Europe and Japan, too, will take such an important step down the road of freer trade—that such freer trade in agricultural and industrial products indeed will lead us "in growing and shared prosperity toward a world both open and just"—and that such an open world is unattainable if reciprocity is not forthcoming.

OIL INDUSTRY MULTIFACETED

Mr. PROXMIRE. Mr. President, we recognize that the oil industry as an industry is not composed of only major oil companies, although they are the most often heard from.

I have repeatedly spoken of the difference between the struggling independent oilman and the major oil companies which enjoy phenomenal profits. The April 1969 newsletter of the First National City Bank of New York indicated that of the largest 2,250 manufacturing concerns surveyed the 99 oil companies had 25 percent of the group's total profits. That should give you one indication of the disparity between the small oilman who has to scrape and skimp to raise the funds to drill one well and the major oil companies who can afford to put up almost $1 billion just for the right to drill for oil in Alaska.

Another group has recently taken heart and raised its voice, saying to the American public and Congress:

> Don't lump us together with the major companies. We don't benefit from all the federal subsidies enjoyed by the major oil companies, yet we are part of the "oil industry."

This group is called the Oil Marketers' Committee. These are the small businessmen who market the oil to the public. Although they exist at the will of the major oil companies, they, too, have finally had enough. They have shown the courage of their convictions and published an advertisement in the Washington Post.

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

Mr. President, it is quite clear from the advertisement that the only ones who really benefit from all these Federal subsidies to the oil industry are the major oil companies, the ones who need the gigantic subsidies the least.

The time has come. Congress and the President must take action. If subsidies are necessary to insure a healthy oil industry, let us give these subsidies honestly. Let them pass through the same budgetary process that school lunch subsidies pass through. This will enable Congress and the public to see exactly who is getting what and how much. No longer would the major oil companies be able to skim off the cream of these Federal subsidies and leave the dregs to the independent oilmen under the guise of giving incentives to the oil industry.

The oil industry is not composed only of the major oil companies. We must recognize that and take action accordingly.

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

OIL MARKETERS SAY: MAYBE THE PUBLIC IS RIGHT ABOUT OIL IMPORT QUOTAS AND DEPLETION ALLOWANCES

We want to make it clear to our government leaders and the American public that no single group speaks for the entire oil industry.

For example, this committee of marketers questions seriously whether the oil producers and major oil companies have applied any of their consumer subsidized gains to consumer needs and benefits.

As oil marketers, we believe—

1. The present Oil Import Quota system has the effect of subsidizing producers and major oil companies at up to 3c per gallon.

2. The elimination of artificial quotas would (a) result in lower consumer prices; (b) enable marketers to underwrite the costs of the improvement of customers' oil consuming equipment; (c) enable marketers to afford the training of industry personnel to insure the highest standards of customer service; (d) provide the wherewithal for oil marketers to work constructively to achieve clean air for our communities.

3. Depletion allowances, foreign tax credits and tax favors for intangible drilling expenses may well be of illusory benefit to the American consumer who pays the bill.

This committee is being formed to provide a voice for the marketing segment of the oil industry, the many thousands of companies and individuals whose very existence depends on their ability to serve the public well. It seems most clear that neither oil marketers nor the consumers we serve derive any benefit from artificial import barriers or from oil-gas producer tax favors.

If you are interested in helping us examine all these factors—and in spreading the word about just what policies would be in the best public interest, we would welcome your support.

OIL MARKETERS' COMMITTEE,
JOHN FITZGERALD,
Secretary-Treasurer.

AIR POLLUTION RESEARCH IN COAL GIVEN CONGRESSIONAL APPROVAL

Mr. RANDOLPH. Mr. President, Senate and House conferees agreed today to authorize $45 million for federally sponsored research into ways of cutting down on air pollution from fuels combustion and automobile emissions.

The level of research spending for the 1970 fiscal year should be considerably above the administration request of $18.7 million.

Air pollution standards are now being established by State and local agencies under the Air Quality Act of 1967. Without the control technologies to be developed as a result of the authorized research, it will be difficult, if not impossible, to implement all of these standards.

Pollution standards for 57 metropolitan areas containing 97 million people will be completed by the summer of 1970.

The successful completion of the air poliution research is of direct interest to West Virginia because of its position as the Nation's leading coal producer. Much of our coal is of high sulfur content which cannot meet the antipollution requirements of such cities as New York and St. Louis without the technology these research funds should produce.

If we are to meet our national energy requirements, increased use of coal and

oil in the years ahead will mean more sulfur dioxide in the atmosphere unless we develop this vital control technology. With this propect in view, the best that can be hoped from existing technology is to maintain the status quo. Consequently, the need for more research and the funds to carry it out are obvious and critical.

AMERICAN DESERTERS IN SWEDEN

Mr. THURMOND. Mr. President, last Sunday's Parade magazine contained an article entitled "American Deserters in Sweden." The article was nothing but blatant propaganda to encourage desertion in the U.S. Army and even mutiny within the ranks. After a few sob sister examples of the problems that faced deserters—problems no greater than those faced by many loyal Americans—the article makes a pitch at the end for the so-called American Deserters Committee. The whole thrust of the article builds up to this laudatory account of the work of this group.

The views of this group are not even hidden in the article. The article says:

> Originally its battle cry was "desert now" but with the emergence of these dissident groups, ADC now encourages its sympathizers to stay and cause mutiny from within. Among the ADC hard-core, there is constant talk of someday returning to the United States for the "Revolution." Says ADC's Rod Huth: "We see our stay in Sweden as a temporary thing. We are still very much involved in the U.S. and we are already planning for our return. When . . . I can't say; but we shall return."

Mr. President, articles such as these do a disservice to the American cause, and create further desertion, and lend respectability for those who are defying the laws of the United States.

Sweden is supposed to be a friend of the United States, but she does a bad turn to us in refusing to extradite these disloyal Americans. Sweden's policy of refusing to extradite deserters is part and parcel of her hostility toward us in our attempts to defend the West, including Sweden, against Communist aggression. Sweden has continuously aided and abetted both Hanoi and the Vietcong. We have done nothing about this policy except to recall the Ambassador last January.

If our State Department had imagination and courage, it would take steps to induce Sweden to adopt a civilized policy to support the common effort.

The Swedes say that this is a humanitarian policy; I see nothing humanitarian about it. It is not humanitarian to encourage citizens to be disloyal to their country and to break the laws of their country. Such a policy breaks down the civilized order among nations and encourages anarchy and confusion when we are faced with a common enemy.

I call upon the State Department to take stronger measures and to use every diplomatic means at our command, including the use of whatever sanctions may be necessary, to force Sweden to adopt a policy for the common good. We do not have to dictate Sweden's foreign policy, but there is no reason why Sweden cannot cooperate with our foreign policy when it is for the common good. We must not allow the nations of the world to think that they can defy the United States without any remonstrance or countermeasures on our part.

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

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

AMERICAN DESERTERS IN SWEDEN

(By George Michaelson)

STOCKHOLM, SWEDEN.—Terry Whitmore, a lanky 22-year-old from Memphis, Tenn., sat in his small apartment in suburban Stockholm and slowly recalled the sad events that brought him here:

"Three years ago, shortly after my graduation from high school," he began, "I enlisted in the Marines. The training was rough but it made me into a gung-ho fighter; wasn't nothing could hold me back from Charlie—you know, the Viet Cong. Well, when I got to Vietnam, out in the bush, I saw the hatred in the people's eyes, and they were telling us 'Go Home, Yankee.'

"I thought of leaving, but how could I? Hell, I was fighting for my life. Seven months I spent like that. Then, one afternoon, my squad got ambushed. Everyone hit the ground except me and another guy: we got out. I knew I couldn't leave them there, 'cause some of them were badly wounded. I went back in and dragged them out, and when I got the last guy out, I was hit by a mortar.

"I was paralyzed with leg and chest wounds and sent to a hospital at Camranh Bay where President Johnson came visiting and decorated me with a Purple Heart. Then I was flown to an Army hospital in Japan, and they tried to teach me to walk again. I didn't want to. They told me I had to try. They said, 'Of course, you'll never have to go back to Nam.' Well, I forced myself to walk and when I was almost recuperated I got my orders to go back to Nam.

"So I split. There was no way I was going back to Nam. I hid for a couple of months with a Japanese family, and then someone from a Japanese antiwar group told me I could be free in Sweden, and they'd send me there through Russia. Hell, I was scared—I didn't want to go through any Communist country—but I was tired of hiding. I wanted only to forget it all, to start again from scratch. So I went."

Lance Corporal Whitmore, now going to language school, has been in Sweden for a year and a half—one of about 350 American deserters who, since early 1967, have come to this neutral, non-NATO country. Lured by the promise of "humanitarian asylum," they continue to trickle in every day from Vietnam, the United States, and especially Germany.

They come by air and by thumb, sometimes with forged leave papers, and often with only a few dollars or deutsche marks in their pockets. They come from all branches of the service, some fresh draftees still in boot camp, a few career officers. And they come for all sorts of reasons, most frequently because they don't want to serve in the Vietnam war.

VISIBLE AND VOCAL

Who are these men? What is life like for them in Sweden? Do they regret their choice? And why should they—a mere handful—receive attention?

The answer to this last question is that, few as they are, the deserters in Sweden are simply the most visible and vocal of those who each year desert the armed forces. According to Pentagon sources, 39,234 Army men deserted in 1968. (Desertion is generally defined as unauthorized absence of more than 30 days with intent to stay away permanently.) The current desertion rate is put at 29.1 men per 1000, compared to a 22.5 per 1000 peak year in the Korean War.

About 90 percent of the men return and face various penalties, the maximum being five years' hard labor and dishonorable discharge. Those who do not return burrow underground in Vietnam, the United States and German, or surface in the 'safe" countries—France, Canada, and, safest of all, Sweden.

CRITICIZE U.S. POLICY

Ever since the escalation of the Vietnam war in 1965, the Swedes have been outspoken critics of American policy. As early as 1966, a Swedish national poll indicated that 83 percent of the population favored American withdrawal. Moreover, the Swedes recognize North Vietnam, the Viet Cong have a delegation in Stockholm, and the new Swedish Premier, Olof Palme, has openly criticized the U.S. involvement; in fact, in February, 1968, he marched with North Vietnam's Ambassador to Moscow in an anti-war demonstration in Stockholm.

All of this has so displeased the U.S. government that, in January, 1969, we withdrew our ambassador from Sweden and as yet have not replaced him. The Swedes, wary of further alienating the U.S., have therefore not granted the deserters political asylum which, in effect, would say they are political refugees. Rather, the Swedish government has created the new category—humanitarian asylum.

In keeping with this policy, the deserters, shortly after they arrive, are given residence and work permits, and are placed on social welfare (about $125 monthly). Then they may choose between going to Swedish language school (for which they are paid an additional $35 monthly), going to a job-training center, or seeking employment on their own.

NO BED OF ROSES

But life in exile is no bed of roses for these men—far from it. There is a feeling of unreality, of not belonging; some are at loose ends, unable to decide what to do with their lives. The Swedish government is well aware of the situation and to help them make the difficult adjustments has provided a full-time social worker. She is Mrs. Kristina Nystrom, an energetic young woman who lived for three years in Princeton N.J.

Says Kristina: "I've been working at this job almost a year and have seen about 200 boys. I help them any way I can—with housing, jobs, hospital care, even psychiatric counseling if they need it. Most of them, I find, are sincere about making a new start in Sweden. Of course, there are some who get caught up with drugs, or, because they have so little money, they steal. But even they may be able to make it here, if we can somehow get them stabilized."

Working along with Kristina is Rev. Thomas Hayes, an Episcopal priest from New York. He was sent to Stockholm in March, 1969, by an American anti-war group—Clergy and Laymen Concerned about Vietnam—for the purpose of counseling deserters on their personal and political problems. Says Hayes: "They have problems because nothing in their experience prepared them for this. They're tough guys, mostly from the patriotic working-class and lower-middle-class neighborhoods, and they never thought the day would come when they would be in exile. So here they are in technocratic Sweden, most of them with only a high-school education and no knowledge of Swedish, and where do they begin? And how finally should they interpret what they have done—what does it mean?"

HAVE OWN PAPER

One group that has been particularly eager to interpret the deserter movement is the American Deserters Committee. Today's

cover photo was taken at their office. The man is Robert Hand, Jr., 23, of Atlantic City, N.J., a newly arrived veterans of Vietnam combat who sought help in getting a place to live. He has a brother who has been serving in Vietnam.

ADC is the only organization composed solely of deserters, and espouses an extreme activist position. It claims some 60 members, though the active nucleus is probably no more than a dozen. Supported by Sewish and American contributions, and the sale of its near-monthly newspaper, *The Second Front Review*, it has since February, 1968, waged a private war against the military: it prepares tapes for distribution to Radio Hanoi, organizes anti-war demonstrations in Sweden, and puts out a special newspaper for distribution to American troops.

SEEK PRIVACY

ADC has links with other deserter groups in Canada and France, as well as with dissident groups within the military—such as the American Serviceman's Union. Originally its battle cry was "Desert Now," but with the emergence of these dissident groups, ADC now encourages its sympathizers to stay and cause mutiny from within. Among the ADC hard core, there is constant talk of someday returning to the United States for the "Revolution." Says ADC's Rod Huth: "We see our stay in Sweden as a temporary thing. We are still very much involved in the U.S. and we are already planning for our return. When . . . I can't say; but we shall return."

Most of the deserters, however, have no such plans. Thrust into the political limelight, they want only to escape into privacy, to forget. They know that back in the States they are commonly regarded as cowards, and back in the military they are often called traitors.

"Let them call me what they want," says ex-Army E–2, Walter Jakymiw. "Thats their business. Me, I know it's been a hell of a lot harder coming here than staying with the Army."

Jakymiw went on to explain that, all in all, he is satisfied with Sweden. He is going to language school, lives in a comfortable apartment in suburban Stockholm, and has a Swedish girl-friend. He is determined to make it—house, car, family—just as he once was determined to make it in Lansing, Mich. "Sure I miss Lansing," he says. "I had it pretty good there. And I wish the whole thing hadn't happened, but it has, and I got to get used to it. I'm just damned grateful that the Swedes have been so helpful."

Apart from governmental assistance, a number of Swedes have opened their homes, their factories and businesses, and their pocketbooks to the deserters. One wealthy Swede even went so far as to donate 45 acres of farmland, where about ten deserters and girlfriends now live communally.

But the warmest welcome for the new deserter comes from the deserter community itself. Here, in long evening bull-sessions, he unburdens himself. Of his guilts: "Sometimes I feel bad about what I've done; like how the hell are my folks going to take it?" Of his self-justifications: "Really though, I just did what so many other guys in military are thinking of doing." Of his fears: "This place is rich and all that, but it seems so foreign, and what am I going to wind up doing here?"

MISSES FAMILY

Usually by the end of a year the deserter is settled into exile. [In seven years, if he chooses, he can become a Swedish citizen.] He picks up where he left off in America—as a mechanic, a student, a computer operator. And he tries to re-establish contact with his parents. "That's the one thing a guy needs—the understanding of his family," explains Rev. Hayes.

But understanding or not, the ex-GI's can't go home again. And so they try to forget—the hamburgers, the hot-rods, the girls, and everything and anything America once meant to them. But some cannot forget and they go back (about 25 have so far), while others wait it out, hoping for an amnesty as was given to several defectors in the Korean war.

Most, however, prefer not to think about the future. They have doffed their uniforms, and with it, their thoughts of returning to America.

THE AIRLINE AND THE AGENT—ADDRESS BY NAJEEB E. HALABY

Mr. CRANSTON. Mr. President, none who travel as extensively from one side of the continent to the others, as do the west coast Members of Congress, appreciate more conclusively the continuing efforts made over the years by the distinguished senior Senator from Washington (Mr. MAGNUSON) in creating a closer and closer bond between airlines and travel agents.

It was with great pleasure and interest therefore, Mr. President, to read a speech recently delivered in Tokyo, Japan, by Mr. Najeeb E. Halaby, president of Pan American World Airways, on the occasion of the American Society of Travel Agents' international convention.

Quite properly, Mr. President, Jeeb Halaby points out that Senator MAGNUSON, in his capacity as chairman of the Committee on Commerce, has a "marvelous grasp of the whole world" in the matter of travel. "He stands four square on that point, as I'm sure all of us do, too. And he's working also to fly up the airports and the airways that tend to restrict us stateside."

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

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

THE AIRLINE AND THE AGENT: PARTNERSHIP FOR PROGRESS AND PROFIT

(By Najeeb E. Halaby)

An airline president should talk about partnership with you. Certainly we feel a partnership in progress and profit and pride and professionalism. We find our strength in your strength.

The 747 is going to move us into the spacious age, and the fact that it's going to be a few weeks late in its first flights across the Atlantic is not really significant. In fact, it's proof of the tradition of aircraft and engine manufacturing and government certification that they must be nearly perfect before they'll be allowed to carry passengers. So the time to perfect the engine for the airplane also gives us time—additional time—to prepare the services and support that you all are so anxious about and we're so eager to do as perfectly as we can.

Senator Magnuson with his marvelous grasp of the whole world said the right words this morning when he came out for freedom of travel. He stands four square on that point, and I'm sure all of us do too. And he's also working to free up the airports and the airways that tend to restrict us stateside.

Each of us is entitled to his vision of the future of tourism. I thought this morning there was a certain massiveness or massism, you might call it; this magnetic automation of the travel agents and the assembly lines and the back-to-back charters frighten me a little bit, because my vision is that, while, we are going to move into the mass travel market, we must have something for the individual traveler and shipper as well as for the individual travel agent.

And so very briefly I want to suggest that we have a better bulk fare in prospect, and that it be an individual fare, in its application not just a mass fare.

I hear a lot about dialogue and certainly being here today is a form of dialogue. Being with you on the Great Circle Express the other day was a very intensive dialogue, I might say. In fact, the aisles were filled with dialogue on that Pan Am Flight 801 from New York to Fairbanks to Tokyo. That flight also shows what competition will do for you and to you perhaps—a shorter flight and lower fare.

Finally, I'd like to talk a little bit in my prepared remarks about our search for higher quality of personal service. I think it's something that we both share. We're not proud in Pan Am of the last six or eight months of service, beset as it has been for us by three labor disputes, and beset as the whole industry will be in the coming months by additional labor disruptions. We're also having lots of problems in costs, just as your distinguished treasurer was pointing out the ones that you have that were not predicted.

In fact, we operated the first six months in the red. I notice even TWA was in the red, but I'm sure with that vast domestic network that they share with Northwest and others they'll get back in the black, and I'm sure Charley Tillinghast will tell you how to do it. We're all searching for profits that we will share with you. Two or three years of labor peace will help a great deal, but much more important is this attitude and this desire to serve on the part of your professional colleagues and mine. And I hope that we will never lose sight of that. In fact, in the world's most experienced airline, we are going to have a much better personal attitude of service in the coming months and years.

PROMISE OF 747

We in the airlines arrive here at a time of great promise for the future of the air transportation industry. The eve of the space jet age is symbolized by the 747. We arrive here, too, at a time of great paradox for the airlines and the entire travel industry. Before I turn to the promise of the Pan Am 747 and the TWA 747 and the JAL 747, let me explain the paradox.

Consider, if you will, the fact that the travel agents and the airlines are selling their portable product to make more than a quarter billion people air travelers, a quarter billion a year the world over. And consider that this figure will probably triple by 1980 and quadruple to a billion in the late '80's. Yet, while our sales ascend into the stratosphere, earnings for most of us have been down in the depths.

That's the paradox, but the paradox is eclipsed by the promise. Growth has not really hurt us. On the contrary we built a demand for our product that portends an exciting future. The demand can go up the moment the 747 arrives, and that's only weeks away, and it will accelerate again with the inevitable introduction of the supersonic, later in the '70's, not to mention space transportation in the '90's.

But that growth depends on a periodic thrust of new energy and imagination. And that's, I think, one of the great challenges ahead. Meanwhile, as the trade papers say, a vast network of travel agencies has grown up around the world, a network that today consists of 17,000 IATA approved locations employing 115,000 men and women, a remarkable development, especially when you consider that it could have easily been otherwise.

The airline industry in the formative years after the Second World War well might have tried to set up dealerships or a network of owned or franchised outlets, like the gasoline industry or the automobile companies. Instead, IATA and we fostered a worldwide community of independent travel agencies. They

are relatively unfettered and able to keep faith with each customer by calling on any principal. It is an extensive, various, and let me stress, able and increasingly stable network. In the United States and elsewhere, the rate of travel agency bankruptcies has been lower than general business failures, which you may view as one of those positive-negative statistics.

DEVELOP PLEASURE MARKET

Thank heavens, however, the airlines went the agency rather than the dealership route. International travel, as a result, has become a healthy $20 billion plus enterprise in a very short time. More importantly, it has served the peoples of all the nations well. It has become the largest single item in international trade. And what we then have, in sum, is a vibrant, living partnership that has enabled Pan Am, for example, to derive more than 70 per cent of its passenger revenues from the pleasure and personal travel market and less than 30 per cent from the comparatively static business travel field.

But what can we do to make our intertwined lives better? I'd like to get into a number of things: fares, commissions. Someone asked, what are these convention delegates interested in. I think I asked the question. And every time I asked it the commissions came first, I believe.

What can we do to make these lives better? I think our different interests become responsibilities. Some of them on our part as an agents' airline; some on your part as an airlines' agent. One chief responsibility, borne by the airline, is continued dedication to the development of the pleasure travel market. Purely reflexive maneuvering and marauding designed to pirate traffic from other carriers will not advance agency sales or the total transportation industry.

On the other hand, deeper penetration and a faster conversion of the non-flier to experienced air traveler will benefit us all. The international airlines compete and cooperate toward this goal. A few days ago in San Francisco, for example, a new IATA study group, appointed by the passenger agency committee, made up of high level marketing officials, began sifting ideas on improved airline-agent sales relationships. Their aim is to explore the cutting of red tape and simplification of procedures. They seek new approaches to develop the pleasure travel market and to define it, ways of compensating agents for development of new business, professionalism of travel agents, and adequate compensation for tour operators.

Such systems as PANAMAC have accelerated your working days and multiplied your productivity. And you may be wondering why we hoard these marvelous reservation machines. I'll tell you this: we want you to have as soon as possible the advantages and economies of electronic reservation sets in your own offices. We do feel, however, that they should be taken through a couple of further development hurdles before turning them over to you. That is, they should be able to quote fares and write tickets which is not as far off as you might think. Our airline participates in all these industry committees working on the problem. Countless man hours are being applied through long nights, and we're beginning to see light as our airline computer analyst informs us that the progamming problems have yielded to reason. By 1971 or '72, we're confident that carriers will possess the ability to quote tariffs and write tickets electronically. And you should enjoy the use of the same wizardry shortly thereafter.

NEED COLLECTIVE EFFORT

May I swing the telescope around for a look at the travel agent's responsibility to the airline. It can be said quickly in two words: greater professionalism. The bright future of the industry may never come about if we disregard the importance of being earnest about our business, the importance of being nothing less than excellent at it. There are no 90-day wonders in this struggle, as many of you have found. It takes hard work daily on-the-job study to make the grade and to make a profit to boot.

Collective efforts by agents to upgrade the field are extremely valuable. In Britain, there is the Institute of Travel Agents; in Australia, there is the Australian Institute of Travel, and in the United States, of course, there are the superb educational efforts of ASTA itself, as well as the Institute of Certified Travel Agents. Pan Am stands ready to assist agents in the formation of similar bodies in other parts of the world, to lend technical and instructional aid to such endeavors. It may be that carrier conferences should take into consideration the number of employees who are certified travel counsellors before appointing new agencies. And perhaps airlines should restrict their advertising of tours to those cleared, bonded, and actually operating to ASTA's high standards.

We would like your definitive guidance on this score. You have a set form of dialogue with the ATC carriers today. Your Air Committee Chairman regretfully reports extremely slow progress. Perhaps IATA, as an organization, should do more than it is doing in this area, and we are open to your advice.

IATA, being a world organization, has a very real problem in this regard. To be fair and just, it would have to conduct dialogue with ASTA and the other travel agency organizations in the U.S., and then with the similar organizations in South America. Britain, France, Germany, Italy, and down the line. To substitute for this impossible task the airlines felt the travel agency industry should form a worldwide representative body.

ASTA, as you will recall, had the same creative instincts, and there emerged the Universal Federation of Travel Agency Associations, the agents' United Nations headquarters, so to speak, and it's located in Brussels. We hear that all may not be in perfect order for this group to represent you in communications with the designated IATA official, the Assistant Director-General of Traffic, Don Reynolds.

If this is so, then surely this should be a matter of urgent attention on the travel agency responsibility side of our ledger. If we, as members of IATA, are not listening closely enough to what UFTAA says and acting where we can in response to it, then we must change our ways, and if necessary set up a more intensive and effective system of communications, perhaps on a more regional than global scale.

TWO PART DIALOGUE

Perhaps the most important thing I have to say on this is that IATA is only an association of members. You can't persuade the association to do what you want unless you persuade the members. Once you've proved to one member that something is essential to the success of our partnership, then it is the responsibility of that member to carry your views as persuasively as he can to the next conference or meeting. If that meeting is to deal with important matters of commissions or fares, then its membership should not be greatly increased. And some security must be thrown into its negotiations or it will never be able to continue to reach the required unanimity.

Unhesitatingly, I commit our airline actively to continue to seek your views on all subjects affecting our joint welfare and to fight for whatever you persuade us is right until it's accomplished. We hire 300 agency sales reps to maintain monthly, weekly, sometimes daily contact with travel agents. They ask some of you to serve on advisory boards, in most of our sales districts, with our sales managers. This summer they have been engaged again in a close study of our total relationship with you. Ten days ago, I sat in on one of these meetings with all of our North American agency sales reps, as they crystallized their proposals and planned their sales and service campaign for the coming winter and for 1970. I might say I leraned enough to make a number of changes in this speech, as well.

This is, I think, a truly effective person-to-person action type of dialogue, and it is certainly essential to our partnership, no matter what other form of communication we set up. If it's not working, then you must let us know; let me know, if you will, because if your persuasive powers don't work on one eager and willing member of the association, they will hardly work with the association en masse.

A sincere exchange of views should steer us toward an improved commission structure. That may sound funny coming from the representative of a company that has always paid the highest commissions permissible to the airline industry and in total the most commissions of any entity, but an upward adjustment has long been of concern to us. We favor any legitimate device that will enable and encourage you to find more new travelers of all types, recreational, religious, educational, family, personal, social and categories yet to be invented.

The international airlines, especially today, can't afford to raise commissions paid on existing business, but they can't afford also to shun the question of a greater incentive for market building. How do we distinguish between new and existing business? How do we spot the fresh, never been flown face amid all the passengers streaming through our departure gates? Well, we know that he and many like him or her have a common fancy. They buy package tours on their first or second flights.

INCENTIVE FOR AGENT

This telltale shopping habit accounts for the three percent override currently deducted by travel agencies on the sale of packaged tours. Trying to find an acceptable formula that would further reward your most creative efforts, we at Pan Am have thus far focused on the override, and we have proposed several times to IATA that it be increased.

The extra amount would go to the tour producer, but there would be nothing to keep him from passing a portion or all of it along to the retail agent. Sad to say, the idea remains just that, for a strong minority of the airlines are still in opposition. It's time for a bonus that will make you and us happy.

Pan Am has met with ASTA officials on several occasions to air this important topic. Our sales people have touched on it in a number of speeches before inviting alternate methods of attack on the commission problem. We have not had anything very helpful to date, frankly. Perhaps you here in Tokyo can tell us what would be satisfactory and gain acceptance among our colleagues.

In connection with the subject of paying the highest level of commission in the airline industry, I can tell those of you who haven't heard that you should now deduct 11 per cent commission on all tour sales between the Mainland and Hawaii, Alaska, Puerto Rico, the Virgin Islands, Guam and American Samoa.

We will welcome you and your clients on those flights through Pago. Frequently, there are seats available, and we are expanding the hotel there, doing our bit, you might say, for the Interior Department. As for the honeymoon flights, many of our Japanese friends have experienced the ecstasy of Guam and Saipan and the islands in that area, and that is going to be a program of great concentration for us in Pan Am in the coming months.

I guess that the opportunity given by this recent improvement to these points, these

11 per cent points, which by the way, are retroactive to September 1, is not yet up to what we think of as international standards in commissions. At least ATC hasn't quite followed it.

Frankly, as a newcomer to the airline industry, I was amazed to learn of the discrepancy between the domestic commissions and the international commissions. As a completely fresh mind on the subject, it seemed awfully odd, particularly for a carrier that's both domestic and international, to charge a very low commission on domestic flights and a much more adequate commission on international flights. The fact that I didn't understand it, of course, is not significant, but I can assure you that when we get domestic rights, there won't be any such discrepancy.

Our crusade for amateur air travelers leads us also to puzzle about fares all the time. But our specific perplexity relates to our promotional premises. Are we in fact winning enough new passengers with old style special tariffs? Is it possible that even the bulk fares which seemed so bold to us at the beginning of this year may not be bold enough for the audacious 747 age?

FARES TO FILL 747

We've come to believe at Pan Am that a different kind of fare will be needed before long. What we are seeking and what we think IATA should be seeking is a low rate to attract fill up traffic for the empty seats which we all anticipate in the early days of the giant airplanes. We need to boost those seat factors particularly on certain runs to a profitable level, and a sufficiently-hedged low rate it should be, or otherwise much of the present traffic would sink to the new price level, diluting our absent earnings and your commission payments.

The bulk fare which I must defend will move us toward the goal. However, we've had misgivings about the grouping requirements and the 14- to 21-day restriction. A far more potent selling tool would be an individual fare with no groupings or no time restriction, or maybe a greatly liberalized maximum stay. We might succeed in confirming such a fare to the pleasure travel market by requiring ticketing deadlines well in advance of departure, and no refunds, or very limited refunds, such as we do in our charter rates.

Why not give this first time rider we all seek a clear-cut individual fare of good value? If we can devise a proper tariff, we may begin to restore schedule service to its full role in the mass transit field. We may begin to move the charters back to the limited markets that they were meant to service. It would also enable us to advance our basic fare philosophy after looking at those Mainland-Hawaii shares of the market of our beloved friends who have become substitutional carriers rather than supplemental carriers.

Why not give the first-time rider a clear-cut individual fare of good value? We may begin to move the charters, as I said, back to the supplemental area. Now I think this kind of appeal to individuality appeals to you as well. After all, most of you are individuals, and you wouldn't be in this business if you didn't love to work with each other and with people, and I believe that we should have as a basic fare philosophy a fairness to our basic customer, the individual traveler.

In no event should we allow a pattern to develop on the major trade routes of the world similar to that which has sprung up within Europe, where, as an example, nonscheduled services between Germany and Spain are pulling five times as many passengers as scheduled flights. There is practically no scheduled service left for the nonconformist who wants to fly out on short notice, or the defiant one who aspires to pick and choose his own time of departure and return. The market has gone over to a few tour operators and charter airlines to the exclusion of the broad network of retail travel agencies. And ths sort of thing could happen across the Atlantic or the Pacific if it goes on unchecked as at present.

LOOKING AHEAD

Some say these services were supposed to supplement us. As I said before, I'm afraid they're beginning to supplant us, and in my judgment that would be a poor service, a disservice to the public if it ever came to pass; a fast flight to nowhere for you, and for us, and most importantly the general public.

Well, it's popular in our business to look ahead, and I can say that we believe by 1975 there should be at least 3.8 million Americans flying the North Atlantic, an increase of 125 percent from '68. From the U.S. to the Caribbean and South America, we estimate over six million Americans, up 100 percent. From the U.S. Mainland to Hawaii, the number of airlines alone is staggering.

We'll find out about competition and how glorious it is in the coming year there. I'm afraid we're going to find that as each of these carriers makes less money on the route, he may not serve it quite as well as when he started out. Certainly he won't be able to keep the fares as low as they have been for very long with that proliferation of airlines, even if the number should reach a million six hundred thousand in five years. That figure probably came from some optimist, but it's going to be limited in my judgment by the number of beds and number of lanes on those highways more than it is by the number of airlines serving Hawaii.

And I guess we see that the market from the U.S. to the Far East should show about a half a million increase by '75, roughly 150 percent more than last year, and we hope the most growing market of all. And by the way, I haven't cranked in the pulsating force of the ASTA convention in that figure, and certainly your being here and feeling the hospitality and productivity of our brothers and sisters in Japan will be a generative force.

We mustn't overlook two of the largest demographics, the under-30 generation, that ready-to-go-aren't-afraid-to-fly bunch and the over-21 women. All women aren't over 21, are they? My two daughters, aged 13 and 18, are already over 21, but that's only because they live in this affluent society of ours. I guess one of the exciting things I discovered, not only on Pan Am 801, where there were some very attractive ladies, but all around this convention, is that the ladies in this business are not only very active but very numerous.

In culling over the ASTA roster of travel agents, did you know that 642 ASTA agencies in the United States are headed by women? Good, good. We ran a recent mailing to several million travel prospects across the nation, pushing the travel agent as a professional. The trouble was we had an all-male cast of agents. We heard from the ladies, and boy, did we hear from the ladies! And that's when we resolved to count through the ASTA roster, or, at least, I suggested that the culprit do the counting one hundred times.

NEED FOR CHANGE

Some 47 per cent of Pan Am's passengers are women. And there is a good degree of momentum behind that figure, and we're going to rely on you expert women travel agents for suggestions on how to continue that momentum. Really, more and more, woman-to-woman discussion is going to reduce that anxiety that has always been a brake on the growth of our business.

I have to tell you a funny additional mistake on our part. The other day, when the inaugural flight came over from New York via the Great Circle, the bus had a big sign on it, and since the bus left at the last minute, it arrived when the passengers did, no one noticed until too late that it said, "Welcome Inaugural Fright." That delay in the 747 is going to give us some time to get over its inaugural fright.

In closing, I think we're all relieved to be over that grim travel tax experience of last year. I think we're all working, as the Senator and the Secretary suggested, on the Discover America, Visit U.S.A., and other kinds of efforts, and I know we're all behind Lang Washburn in the efforts that he will be describing later to you. Certainly we are all in favor of entering into this mass tourism field. But let's not forget the individual traveler and the individual agent.

I think you'll find that this great bird of the '70's, the 747, is going to be very exciting. Some of you have already seen it. There is more head room, more tail room, more elbow room, more speed, nearly an hour faster from New York to Tokyo. This is going to be a great airplane, and it's going to give you a sense of atmosphere, and ambience that will make the quality of travel better. And I guess all of us who are putting this $20-million-a-copy airplane into service this winter and next summer think we're going into a new and better quality of transportation.

This bird is big and it's beautiful, but I think she's more than that. And as one of your colleagues said: "If her introduction, possibly the most significant air travel event in 45 years, can be met half-way on all sides in an atmosphere of harmony and mutual objectiveness, then there is a good possibility for a happier future for all the people whose lives are devoted to the creation and delivery of travel pleasure."

Jack Reid of Cleveland said that, and I am sure we can all join in the sentiment.

Our partnership is long and well established. However, the contract between us is not rigid. If we need to change, we want to change with you; we want to step up to better ways of doing things. Training, professionalism, candor, security—all of these things that your president talked of a few minutes ago are very much in our minds in the airlines.

It means sustaining higher levels of traffic, protecting our investments in tomorrow, pinpointing potential markets, tapping them with the right kind of fares and promotion and service, and it means keeping ourselves fit and able to run the faster professional course. We must have the dollar strength, too. Your compensation must match your effort. Finally, we have to set aside more time to really talk over our future and to make certain that it comes up as bright as a brand new 747.

Thank you, Sayonara.

RESEAL LOANS ON GRAIN SORGHUM

Mr. HUGHES. Mr. President, the distinguished senior Senator from Texas (Mr. YARBOROUGH) has called attention to the shocking decision of the Department of Agriculture to call the reseal loans on the 1967 and 1968 crops of grain sorghum presently in commercial storage.

He has graphically pointed out the disastrous impact which this action, effective January 15, 1970, will have on grain sorghum producers throughout the country.

While grain sorghum is not a major item in Iowa's agricultural production, all of us from farm country should be concerned by this kind of ill-advised Government action which manipulates the agricultural economy at the farmers' expense.

Moreover, we from the corn-producing

States are well aware that the same kind of action can be taken with regard to reseal loans on corn, thus forcing down the price of that commodity as well. Similar action was taken by the USDA in May of this year for 1967–68 crop reseal corn in commercial storage.

Mr. President, I am deeply disturbed by the lack of concern of this administration toward the already hard-pressed American farmer. I heartily second the action of the senior Senator from Texas in calling on Secretary Hardin to reverse this unfair decision.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

SUPREME COURT OF THE UNITED STATES

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the Supreme Court nomination on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the nomination.

The bill clerk read the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The Senate, in executive session, resumed the consideration of the nomination.

Mr. BYRD of West Virginia. 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. McCLELLAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. McCLELLAN. Mr. President, I support the nomination of Clement F. Haynsworth, Jr., to be Associate Justice of the U.S. Supreme Court. He is well qualified by education, experience, and honesty to fill this high position with credit and distinction.

His colleagues on the bench have expressed their complete and unshaken confidence in both his integrity and ability. It is also significant to note that the American Bar Association committee which interviewed many lawyers and judges associated and acquainted with Judge Haynsworth reports that:

> As far as integrity is concerned, it is the unvarying, unequivocal, and emphatic view of each judge and lawyer interviewed, that Judge Haynsworth is beyond any reservation a man of impeccable integrity.

In addition to this high praise, the nominee brings with him a record of more than 12 years on the Federal bench, a record which is open for all to scrutinize. This nominee, unlike some others who have come before us, has had extensive judicial experience. He has demonstrated a balanced judicial temperament and has written or participated in hundreds of decisions that also reflect a balanced philosophy. So, we are not faced with the task of trying to fathom that philosophy from some intangible source but, rather, we have the opportunity to assess correctly the record before us.

An objective observer has characterized that record as one "of a disciplined attempt to apply the law as he understands it, rather than yield to his own policy preferences." On that premise, I think the President would be hard pressed to find a man who comes better equipped and recommended for the high post of Supreme Court Justice. And, it is sad, very sad indeed, that Judge Haynsworth has been subjected to such severe and unwarranted attack by his opposition.

Judge Haynsworth's critics have combed his personal and judicial record with a tinted magnifying glass and, it would appear, have yet to come up with anything more than the specious charge that he has displayed an "appearance of impropriety." Mr. President, that, in substance, is the only charge his accusers have been able to lodge against him. Now, let us look at the record.

Judge Haynsworth was an honor graduate of Furman University, a school founded by his great-great-grandfather. He received his LL.B. degree from Harvard Law School in 1936, and joined the firm of Haynsworth & Haynsworth which was founded by his grandfather. He served during World War II as a naval intelligence officer. Following the war, Clement Haynsworth returned to the practice of law until 1957, when he was appointed to the U.S. Court of Appeals for the Fourth Circuit. In 1964, he became chief judge of that court and a member of the Judicial Conference of the United States.

During his tenure on the bench, Judge Haynsworth's record reflects a keenly balanced judicial approach, unmarred by either liberal bursts of "activism" or by undue judicial restraint. He has applied the law fairly, equitably, and justly—qualities sorely needed on the U.S. Supreme Court.

The task of passing upon a nominee for the Supreme Court is not one to be lightly taken. Today, more than ever, it is a responsibility of the gravest magnitude. The Court's tendency in recent years to act as an innovator and usurper of legislative powers has contributed markedly to the pervading atmosphere of suspicion and distrust that is present in our country today.

Confusion and frustration prevail as a result of several recent Supreme Court decisions. Vagueness and uncertainty have replaced stability in our laws. As a consequence, confidence in the Supreme Court has been greatly impaired, and respect for that high tribunal has seriously diminished.

Yes, Mr. President, the opponents of Judge Haynsworth are correct when they say that confidence in and respect for the Court are at such a low ebb that they need to be restored. But, Mr. President, what has caused the present lack of confidence in and respect for the Court? The answer is, the Court itself—because of its disregard for and strained interpretations of the Constitution and its usurpation of the legislative functions of Congress.

Certainly, Judge Haynsworth cannot be blamed for the low state of esteem and confidence that the public has for the Supreme Court today. Those who make the charge against him with respect to his philosophy are rather insisting that someone of the philosophy that has prevailed in the Court, and of which the public apparently disapproves, should be appointed, not someone like Judge Haynsworth. In other words, you will not restore confidence in a Court in which confidence has been lost by nominating to that Court others of like philosophy of the present Court, or of some members of the present Court, whose pursuit of such philosophy has brought the Court into its present state of disapproval by the public.

Defeating the confirmation of nominees like Judge Haynsworth certainly is not calculated to restore but rather to destroy further the confidence of the people in this High Tribunal. Respect for the Court will not be enhanced by the rejection of this nomination. On the contrary, refusal to confirm Judge Haynsworth can well increase the acknowledged suspicion and distrust that now exist. I am convinced that his confirmation would help to prevent further deterioration of public esteem and confidence in the Court.

Judge Haynsworth's detractors have listed a number of "charges" which they insist should disqualify him. Boiled down to reality, these "charges" are nothing more than a desperate effort to cast the nominee in the role of one who has shown an "appearance of impropriety." The truth is that the nominee has two disqualifying attributes in the eyes of his principal opposition: One, he is from the South; and two, he is not completely subservient to modern liberalism.

That either of these should be the basis of opposition to a nominee is deplorable; that they should prompt the vilification that this man has suffered is most regrettable. Moreover, it exposes and confirms the striking weakness of the so-called case against Judge Haynsworth.

Since the day he was nominated, Clement Haynsworth has been subjected to intense criticism. No sooner was the name announced than he was being characterized as antilabor, a segregationist, and far too conservative. That, Mr. President, has been claimed by the same people who have heretofore contended that one should not consider the philosophy of a nominee, that the only thing one should consider is whether he is professionally qualified and of good character. Now the situation is reversed and they say, "We have to take into account the philosophy in this instance; it would not do to overlook it."

So we see that it depends on the nominee, and sometimes I think the section of the country from which the nominee comes, as to whether philosophy is important or whether it should be disregarded.

Mr. President, I have the greatest respect and admiration for the role that the Supreme Court, as an institution, is

designed to play under our form of government. To function properly, it should have the confidence and respect of the people. Its members should not only be qualified professionally, but they should also be above reproach in personal reputation. The Senate's role to advise and consent to nominations for the Court is designed to insure, to the greatest extent possible, the integrity of the institution. Therefore, great weight should be given to the President's nominee. Unless there are compelling reasons for rejection, the President's selection should be confirmed.

Judge Haynsworth is charged by his accusers with participating in cases in which he should have disqualified himself. One of these was the *Darlington Manufacturing Co.* v. *National Labor Relations Board*, 325 F. 2d 682. Deering Milliken Corp. was a party to that action in which the court ruled, by a divided vote, against the contentions of the NLRB and the Textile Workers Union of America. At the time of that ruling, Judge Haynsworth had a one-seventh interest in Carolina Vend-A-Matic which had some vending machines placed in the Deering Milliken plant as a result of competitive bidding, This was not done by favor, not by dispensation, but by competitive enterprise; not as a favor, but after having won the competition.

Mr. President, this dead horse—the Deering Milliken case—should be buried once and for all. This whole matter—this charge—was thoroughly investigated 6 years ago, and the conclusion was reached that not only should Judge Haynsworth have participated in the case, but that it was his duty to do so. That is the position taken and testified to by one of the Nation's experts in this field.

In late 1963, the Textile Workers Union of America, on the basis of an anonymous telephone call—this is how weak it was to begin with—forwarded an allegation to Judge Sobeloff, the chief judge of the fourth circuit, charging improper inducements to Judge Haynsworth by the Deering Milliken Corp., whereupon Judge Haynsworth—himself—asked for a full-scale investigation by both the judges on the circuit court of appeals and by the Department of Justice.

Thereafter, on February 6, 1964, when the investigations had been completed, the union that had made the charge withdrew its complaint and apologized. The court of appeals judges, after their independent investigation, concluded that there was "no warrant whatever" for the charge; and Attorney General Robert F. Kennedy gave further vindication when he expressed his "complete confidence" in Judge Haynsworth.

It is too bad that that has to be resurrected.

That the opposition should now try to resurrect that ghost, Mr. President, clearly confirms the lack of substance to the so-called case against Judge Haynsworth. The attempt to resurrect this false charge in the course of this confirmation consideration smacks of double jeopardy—something that both liberals and conservatives profess to abhor and which is prohibited by the Federal Constitution.

Farrow v. *Grace Lines, Inc.*, 381 F. 2d 380 (1967), is cited as another case in which Judge Haynsworth should not have participated. At the time this case was before the court, he owned 300 shares of stock in W. R. Grace & Co., which in turn owned 53 subsidiaries, one of which was Grace Lines, Inc., one of the litigants in the case. The court of appeals affirmed the jury's verdict in favor of the plaintiff in the amount of $50. The plaintiff had sought to recover $30,000. So minuscule was Judge Haynsworth's holdings in W. R. Grace & Co., that it has been estimated that even had the higher amount—the full $30,000—been awarded it would have reduced the value of his holdings by less than 50 cents.

Mr. President, 50 cents in relation to $30,000, or in relation to the 300 shares of stock held by Judge Haynsworth, hardly can be called substantial. It is ridiculous in the extreme to assert or contend that this amount represents a "substantial interest" by Judge Haynsworth in the litigation or that it presents even the slightest "appearance of impropriety."

Mr. President, it would be plainly disruptive of the judicial process if judges were required to disqualify themselves in instances such as these. Judges do not live in a vacuum; they do not abide apart from the rest of the world; they eat and work like the rest of us; and, if they are economically able, they make investments. Efforts to require disqualification for interest in cases where a judge holds stock, not in a party litigant itself, but in a corporation which has some sort of dealings with the party litigant, have been uniformly rebuffed by the courts. Clearly, Judge Haynsworth had a duty to participate in these cases.

A thorough review of Judge Haynsworth's record leads me to the conclusion that there was only one instance of even the suggestion of indiscretion, and I am convinced that it was not only harmless, but that it was an unwitting action. I refer to the case of *Brunswick Corp.* v. *Long*, 392 F. 2d 337.

This case involved competing claims to the repossession of used bowling alley equipment. On November 10, 1967, a panel of the fourth circuit consisting of Judges Haynsworth, Winter, and Jones heard oral argument and then voted unanimously to affirm the judgment of the lower court in favor of Brunswick, and the opinion was assigned to Judge Winter for preparation.

Forty days later, on December 20, 1967, Judge Haynsworth's stockbroker, who handled all of his finances, placed for him an order for the purchase of 1,000 shares of stock in Brunswick Corp. at $16 per share. This order was the 45th account for whom the stockbroker had purchased Brunswick stock over a period of 2 years. A week later, the order was executed, and at about the same time, Judge Winter circulated the opinion he had prepared in accordance with the unanimous decision of the panel on November 10, 1967. Judge Haynsworth concurred in the opinion on January 3, 1968, and the decision was released on February 2, 1968, without substantive change. Petitions for rehearing and a petition for certiorari to the Supreme Court of the United States were subsequently denied.

Judge Haynsworth purchased this stock not on his own initiative but at the instance and on the advice of his stockbroker who had recommended similar purchases to 44 other persons before the decision in the Brunswick case was released. The case had actually been decided on November 10, 1967, 40 days before the stock purchase was recommended and probably 47 to 50 days before the transaction was consummated. There obviously was no inside information that prompted the purchase. The Judge's holdings of 1,000 shares out of about 18½ million shares of stock outstanding by the Brunswick Corp. cannot by any legitimate standard be found to be substantial.

Moreover, had the plaintiff in the Brunswick case 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. It has been estimated that the total pecuniary effect of such a decision—that is, had plaintiff recovered every dollar he had claimed—on Judge Haynsworth's interest in Brunswick would have been less than $5—an amount not substantial or sufficient to influence a most honorable and distinguished judge on the circuit court of appeals.

If a justice of the peace in most any rural section of this State were presented with such an offer or opportunity, I think it would constitute an insult. In fact, this amount is so infinitesimal that it is inadequate to sustain a charge of undue influence, conflict of interest, or impropriety against any magistrate in the land who bears a reputation of honor and integrity compared to that of Judge Haynsworth. And, it seems to me, that only a prejudiced accuser would make such a charge.

I do not believe there is a man in this body, however he may vote when the roll is called, who thinks Judge Haynsworth was influenced in that case by his possible profit of less than $5 or in any other of these instances.

I questioned Judge Haynsworth closely about this matter during the hearings. It was brought out that he relies on the advice and counsel of his longtime friend and stockbroker about investments of this nature. It was also brought out that he had funds to invest only because he had recently sold some stock that were not proving profitable just before the Brunswick stock was recommended to him.

Obviously, Judge Haynsworth did not have the Brunswick stock in mind when the case was decided 40 days before the stock purchase was recommended to him. Not even his opposition makes that claim. The stock was owned by him when the motion for rehearing came up, and I questioned him about this. He testified that certiorari had already been denied by the Supreme Court and that there was no question

in the minds of the other judges as to whether rehearing should be granted. Moreover, Judge Haynsworth stated that if there had been any question he "would have granted a new hearing and brought in three new judges if anyone had the slightest doubt about it." Mr. President, I believe that statement, and I am satisfied that Judge Haynsworth's actions in this matter were both inadvertent and harmless. They cast no reflection whatsoever on his character and integrity.

This is the man, bear in mind, who made the statement that if there had been any question about it, he would have granted a new hearing and brought in three new judges if anyone had the slightest doubt about it.

This is the man the American Bar Association says, after having interviewed many lawyers and justices acquainted with Judge Haynsworth, they found "So far as his integrity is concerned, it is the unvarying, unequivocal, and emphatic view of each judge and lawyer interviewed that Judge Haynsworth is beyond any reservation a man of impeccable integrity."

If they found that to be true among the people who know him, the judges he worked with and the lawyers who practiced before him, why cannot the Senate believe it, too? Why not?

While on the matter of Judge Haynsworth's stock transactions, I think it appropriate to note that following the union charge that he should not have sat on the Darlington case, Judge Haynsworth immediately sold his stock in Carolina Vend-A-Matic so that the same unfounded suspicions would not again arise.

Incidentally, this stock was exchanged for stock in another corporation, and then the latter was sold for $437,000. During the hearings, it was noted that had Judge Haynsworth held that stock, it would now be worth more than $1½ million.

Mr. President, I think it is noteworthy that, notwithstanding the relentless and desperate effort that has been made, only one instance worthy of even a hint of mild criticism has been found in the record of this nominee, and plain candor and simple justice compel the finding that it was inadvertent and harmless. The accusers have tried in vain to find something—anything—to despoil this man's character and reputation. His record has withstood intensive examination and prejudicial scrutiny. His name is now before this body unblemished.

And, finally, Mr. President, some who unsuccessfully supported the confirmation of Abe Fortas are now contending that the Haynsworth controversy closely parallels the case that was made against Fortas. Nothing could be further from fact.

Only in two instances here has it been shown that Judge Haynsworth could possibly have profited. One was for less than 50 cents and the other for less than $5. It is ridiculous to compare the Fortas and Haynsworth cases. Even if we could find there was anything wrong in Judge Haynsworth's actions that brought about such a result, it bears no comparison with the Fortas case.

Fortas, while on the Court, enriched himself as a part-time lecturer at a fee of $15,000 to conduct a seminar of 2 hours a day, 1 day each week for a period of 9 weeks. He also accepted a very substantial lifetime annual retainer of $20,000 from a charitable foundation controlled by the family of an individual who was later convicted of a felony.

Mr. President, I think it is significant to note that not only was it $20,000 for life but the contract also provided for $20,000 a year to his widow during her lifetime.

How can we compare anything in the record of Judge Haynsworth, whatever he may be accused of on the basis of the record? There can be no comparison. I think the American public should know that this is a smear, when we undertake to make such a comparison of a man already sitting on the Supreme Court making a contract with a foundation which is under questionable management, whose principal manager was thereafter convicted of a felony. Taking $20,000 a year as a fee in cash as a retainer and a contract to provide for his lifetime the same amount each year, and then $20,000 to go to his widow in the event of his death, and making a comparison like that is a smear. It is a smear. It cannot be anything less.

Although Abe Fortas finally returned the initial fee of $20,000—but he made the contract after he was on the Supreme Court—after holding it for some 11 months, he did not do so until public exposure had occurred, or was imminent, and until a time subsequent to the individual's conviction.

That is the man who was the trustee of a foundation, whose principal manager was convicted of a felony and after whose conviction Abe Fortas decided, when exposure was imminent, that maybe he had better try to wash his skirts clean, and he returned the money. There is not one opponent of the nomination of Judge Haynsworth in this body who can make any comparison out of that against a man such as Judge Haynsworth, when those who know him—everyone who was interrogated regarding him by the American Bar Association—have said he is of impeccable character.

Are we going to make a comparison here and vote against the nomination merely by trying to relate it to a man who was on the Supreme Court and engaged in the actions I have just related, which have been taken from the record of the hearings in that confirmation proceeding?

Mr. President, there are quite a few supporters of Fortas who are now opposing Judge Haynsworth. All one has to do is take the CONGRESSIONAL RECORD and look at the vote on cloture. A number of those who were defending Fortas, with a record like that, come here and say, "Well, we are going to compare these records. We are going to vote against this man," when there is actually nothing against him.

That the Fortas supporters who are now opposing Judge Haynsworth would undertake to make such a comparison, again clearly demonstrates their desperation and difficulty in finding any sound basis for their charges against Judge Haynsworth.

If they have something against him, talk about it, get the record. Let us see it. But do not snare him by comparing him to Fortas.

Mr. President, those who are seeking to defeat this appointment have had much to say about "appearances." But, any implication, real or imaginary, of impropriety on the part of Judge Haynsworth that can possibly be deduced from "appearance" is completely and irrevocably refuted by the truth and facts recorded in the Senate Judiciary Committee hearings.

Mr. President, this nominee is of the highest integrity and, by every legitimate standard, possesses all the requisite qualifications to serve on the highest Court in our land. He is worthy of confirmation.

Mr. President, I want to reinforce what the American Bar Association report said as to his honor and integrity, and what I said about the lawyers who were interrogated by them, by making note here of the 16 past presidents of the American Bar Association who have endorsed the nomination of this man.

Let me read the names of those 16 past president: Harold J. Gallagher, Cody Fowler, Robert G. Storey, Loyd Wright, E. Smythe Gambrell, David F. Maxwell, Charles S. Rhyne, Ross L. Malone, John D. Randall, Whitney North Seymour, John C. Satterfield, Sylvester C. Smith, Jr., Lewis F. Powell, Jr., Edward W. Kuhn, Orison S. Marden, and Earl F. Morris.

Mr. President, they know what this record contains. Do you think, Mr. President, they would stultify themselves? Do you think, Mr. President, they would cast an aspersion upon a court that they love and to which they are dedicated by recommending that this body confirm the nomination of Judge Haynsworth if they did not believe in his integrity and his capacity to serve honorably? I do not believe they would—not 16 of them.

Mr. President, we could talk about this much longer; but if we are not going to decide it upon the record, upon the facts, upon a correct analysis, upon a weighing of the facts and the truth as the record reflects them, then further discussion would be of no avail.

Mr. President, I ask unanimous consent to insert in the RECORD as a part of my remarks an article that appeared in the Washington Evening Star of October 17, 1969. The title of it is "The Haynsworth Case." It takes up the charges made against Judge Haynsworth and then the replies thereto. I think the writers undertook to do an objective analysis. They undertook to be fair both as to the accuracy of the charge and as to what the facts were. I think one could read the article, if he did not want to review the whole record of the hearings, and a reading of it would be sufficient to convince any fairminded man that the case against Judge Haynsworth is no case at all.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

[From the Evening Star, Oct. 17, 1969]

THE HAYNSWORTH CASE

U.S. Circuit Judge Clement F. Haynsworth Jr., President Nixon's nominee to be an associate justice of the Supreme Court, came under attack even before his nomination was officially announced more than eight weeks ago.

Charges against him—by some senators, labor and civil rights groups, and some investigative news reporters—have drawn replies from the judge, the White House, the Justice Department, senators who support him, the American Bar Association, or private citizens favoring his nomination.

Here, in comparative form, are the charges that have been made and the replies which have been given—in approximate chronological order of development.

Charge 1: Haynsworth voted with a 3–2 majority of the 4th U.S. Court of Appeals on Nov. 13, 1963, to permit the Deering-Milliken textile chain to close one of its plants to avoid unionization there. At the time, the judge had a one-seventh ownership interest in Carolina Vend-A-Matic Co., which was then doing $100,000 worth of business a year on vending contracts with Deering-Milliken. The judge should have disqualified himself because of this tie.

Reply 1: The judge had no duty—legally or ethically—to disqualify himself from the labor case because (a) Vend-A-Matic was not itself involved in the case, (b) he had a personal interest in only $390 in profits from the firm's Deering-Milliken business, (c) he took no active part in vending contracting, (d) his role in the case had been cleared by his Circuit Court colleagues and by the Justice Department at the time. He had a legal duty to participate in that case.

Charge 2: The judge should have disqualified himself from the case also because he continued, after becoming a federal judge in 1957, to take an active part in Vend-A-Matic affairs—at least nominally holding office as vice president and director until 1963, attending regular weekly board meetings, receiving director fees of as high as $2,600, and having his wife Dorothy serve as secretary for two years.

Reply 2: He resigned orally from the vice presidency in 1957, and by letter as a director in 1963—before the court ruling. He did not participate in any Vend-A-Matic business except arranging financing. His wife was not secretary when the court ruling came down. Her role was limited to "helping out" at the office.

Charge 3: The judge should have disqualified himself from the case because he had committed his personal credit on Vend-A-Matic borrowings in amounts as high as $501,987. Some of this occurred after he became a judge in 1957.

Reply 3: The most indebtedness outstanding at any one time endorsed by him was $55,550, on Feb. 19, 1957—before he went on the bench.

Charge 4: The judge should have disqualified himself from the case because it was crucial to the economic health of the entire Southern textile industry, which he had helped develop and which was the source—in 1963—of three-fourths of Vend-A-Matic's business.

Reply 4: The court ruling was only one of three decisons involving the Deering-Milliken plant's labor situation, and the judge ruled against the company in the last of these. His role in helping develop the textile industry was confined to normal legal advice given as a private attorney. Vend-A-Matic's business had outlets other than textiles, and its overall business reflected a cross-section of area companies.

Charge 5: In the years the judge has been on the bench, Vend-A-Matic's gross sales have risen from $296,413 in 1956 to $3,160,665 in 1963, lending "suspicion" to the charge that his name and judicial position were used to promote business.

Reply 5: Vend-A-Matic's growth pattern was typical for the vending industry in general, and the industry in South Carolina. The firm's leading competitor says he knows that Haynsworth's name was never used to promote Vend-A-Matic.

Charge 6: The judge had a conflict of interest when he participated in a 1959 ruling in a case favorable to Homelite Co., which bought $15,957.22 worth of goods from Vend-A-Matic that year.

Reply 6: Vend-A-Matic was not involved in the court case. The judge voted in favor of Homelite only because the other litigant had committed fraud.

Charge 7: The judge had a conflict of interest when he participated in 1959 and 1961 cases involving Cone Mills Corp. Vend-A-Matic sales to Cone and related firms totaled $97,367 in 1959 and $174,314 in 1961.

Reply 7: Vend-A-Matic was not involved in either court case. The judge voted against Cone in both cases.

Charge 8: The judge had a conflict of interest when he participated in 1962 and 1963 cases involving Deering-Milliken Research Corp. (The 1963 case was different from the labor ruling cited in charge 1 above.) Vend-A-Matic sales to Deering-Milliken totaled $50,000 in 1962 and $100,000 in 1963.

Reply 8: Vend-A-Matic was not involved in either court case. Each case involved only procedural questions, not necessarily favorable or unfavorable to Deering-Milliken Research.

Charge 9: The judge had a conflict of interest when he participated in a 1961 case involving Kent Manufacturing Co. In that year, Vend-A-Matic had sales of $21,323 to a Kent subsidiary named Runnymeade.

Reply 9: The Kent Manufacturing Co. involved in the case is a Maryland fireworks firm. The Kent Manufacturing Co. which has a Runnymeade subsidiary which did business with Vend-A-Matic is a Pennsylvania woolen firm not involved in the case. (This charge was retracted after the reply pointed out the error.)

Charge 10: The judge had a conflict of interest when he bought $16,000 worth of stock in Brunswick Corp. on Dec. 26, 1967, while a lawsuit filed by Brunswick was still pending in his court, more than a month before the decision in the case was made public and many months before the case was finally settled.

Reply 10: The judge admits this was an error, and says that he will take steps to avoid such situations in the future. The White House calls it a "technical mistake" on the ground that the decision had already been made in the case on Nov. 10, 1967, before the stock was bought, even though the opinion was not then written or published.

Charge 11: The judge had a conflict of interest when he participated in two court rulings in 1966 involving Maryland Casualty Co. when he owned stock in American General Insurance, a parent corporation of Maryland Casualty.

Reply 11: The parent company was not directly involved in the lawsuit, and, besides, Haynsworth's financial stake in the outcome of either case was very small.

Charge 12: The judge had a conflict of interest when he participated in a 1967 court ruling involving Grace Lines Inc. at a time when he owned stock in W. R. Grace & Co., parent corporation of Grace Lines.

Reply 12: The parent company was not directly involved in the lawsuit, and, besides, the dollar value of the issue at stake in the case was "insignificant."

Charge 13: The judge may have had a conflict of interest in 1962, when he participated in a court case involving Greenville Community Hotel Corp. Some records supplied to the Senate Judiciary Committee were interpreted to mean that the judge owned stock in the corporation at the time of the decision.

Reply 13: The judge had owned one share of stock in the corporation from April 26, 1956, until sometime in 1958 or 1959, at least three years before the court case. The one share had a value of only $21 in 1959. (The charge was retracted after the reply pointed out the error.)

Charge 14: The judge had a conflict of interest in 1958 when he participated in a court case involving Olin Mathieson Chemical Corp., at a time when he owned stock in Monsanto Chemical Co., which was understood by those making the charge to be the parent company of Olin Mathieson.

Reply 14: The company in which the judge owned stock—Monsanto—was totally unrelated to the company in the case—Olin. (The charge was retracted after the reply pointed out the error.)

Charge 15: The judge had testified in a Senate hearing earlier this year that he had retained only one trusteeship position after becoming a judge in 1957, and that was in a small foundation. He had in fact remained a trustee, and serves in that capacity now, of the Furman Charitable Trust.

Reply 15: The initial reply was that "there is no Furman Charitable Trust." That reply was retracted when it was discovered that Haynsworth had served on such a trust beginning in 1947. He remembers orally resigning in 1957.

Charge 16: The judge had testified in the earlier Senate hearing that he had resigned all directorships in businesses when he became a judge in 1957. He had in fact retained a position as director and officer of Main Oak Corp. until 1963, and a director of Vend-A-Matic until 1963.

Reply 16: Since the earlier hearing came well before his nomination and Senate hearings on his business ties, his earlier testimony involving "a confusion of dates" was "certainly understandable."

Charge 17: The judge had written a letter to the Senate Judiciary Committee, after his nomination, saying he had never been involved in securing vending machine locations for Vend-A-Matic. The minutes of the firm's board meeting soon after he became a judge include a resolution saying that the "main sales and promotional work" of the firm had been done by its directors.

Reply 17: The minutes do not contradict the judge's "express and detailed statement" that he played no part in such decisions.

Charge 18: The judge, as a trustee of a Vend-A-Matic employe profit-sharing and retirement plan, qualified as an administrator of that plan. Federal law provides that administrators of pension funds must file reports to the Labor Department. No such reports have been filed.

Reply 18: Federal law provides penalties only for "willful violation," and "inadvertent failure" to file reports is not such a violation. Filing would normally have been done by clerical staff. There is no evidence that the judge violated the law.

Charge 19: The judge was involved, along with others, in a South Carolina cemetery venture (known as Greenville Memorial Gardens) with Robert G. "Bobby" Baker, the former Senate Democratic secretary who resigned under criticism for his business dealings.

Reply 19: There were 25 individuals and business firms involved in the venture, which Haynsworth entered purely on the advice of others. He did not see or communicate with Baker in connection with the investment. He has had only three conversations with Baker, and the last one was in 1958, years before Baker got into trouble with the Senate. None involved business.

Charge 20: The judge has frequently voted, in civil rights cases, against the interests of

Negroes and other minority groups. Such votes have come most frequently in school desegregation cases.

Reply 20: He is not a segregationist, and his record in civil rights cases shows that he has followed directives issued by the Supreme Court. He has shown a capacity for growth and a responsiveness to need.

Charge 21: The judge has an "anti-labor" record in his judicial performance. He has sat on 10 cases which were reviewed by the Supreme Court, and in all 10 his position was reversed by the Supreme Court.

Reply 21: None of the Supreme Court reversals suggested that the decisions being overturned were "anti-labor." Two of the 10 cases were "anti-labor." Haynsworth has written 8 pro-labor opinions and joined in 37 other pro-labor rulings.

Mr. ERVIN. Mr. President, today I rise to urge the Senate not to repeat the tragedy it enacted when the nomination of Judge John J. Parker to be a Justice of the Supreme Court was rejected by this body in 1930. Unfortunately, however, the recent nomination of Judge Clement Haynsworth has become a sad reminder of the events which surrounded the nomination of Judge Parker. Like Haynsworth, Judge Parker was a fine legal scholar from the South who was for many years chief judge of the Fourth Circuit Court of Appeals. Also like Haynsworth, Judge Parker was subjected to vicious attacks by organized labor and civil rights groups after his nomination was announced. Judge Parker's nomination was rejected by two votes, and I think most scholars agree that it was not a very proud day in the history of the Senate. As Judge Harold Medina said about his rejection by the Senate:

> The change of a single vote would have brought about a different result. The heartbreaking part of it was that the opposition was based upon a complete misunderstanding of the facts. One of the two men in the United States best qualified in every way for membership on the Court had been rejected. The other, Learned Hand, never received the appointment.

It was a great tragedy for our country to be deprived of the services of John J. Parker on the Supreme Court of the United States. It will be likewise deplorable if Judge Haynsworth's nomination is rejected.

I do not intend to debate the vague and false charges that Judge Haynsworth is insensitive to judicial ethics. Every charge against Judge Haynsworth was investigated at length by the Judiciary Committee and I fully subscribe to the conclusions the committee issued in its report on the nomination. I think that it is sufficient for me to say that I was present at virtually all of the hearings on the Haynsworth nomination and I assiduously studied the hearing record. After considering all of the insinuations which have been leveled against him, I find no evidence at all to indicate any improper conduct. On the contrary, I find Judge Haynsworth to be an honest and sensitive man of high character and integrity—an opinion shared by the President of the United States, the Attorney General, Judge Simon E. Sobeloff and all of the judges sitting on the Fourth Circuit Court of Appeals, and the American Bar Association.

Why then is there such a furor over this nomination? Candor compels me to state that charges against Judge Haynsworth are based either upon misinformation or little knowledge of the facts by those willing to distort his record because they disagree with his judicial philosophy.

In order to examine further the real reasons Judge Haynsworth is being opposed, the charges of antilabor and anticivil rights have to be considered because the organizations which represent these interest groups have created the false issues which peril this nomination. Witnesses for organized labor at the hearing cited 10 cases dealing with labor problems in which Judge Haynsworth participated which were reversed by the Supreme Court; however, none of the Supreme Court reversals indicated the lower decisions showed an antilabor bias. As a matter of fact, a close reading of the decisions shows that only two of the 10 decisions can be counted as deciding a substantive point against labor. On the other hand, Judge Haynsworth has written eight prolabor opinions and joined in 37 other prolabor rulings. In the area of civil rights, while he may have been understandably reluctant, as are most judges, to establish new precedents before they have been pronounced by the Supreme Court, he faithfully followed every directive issued by the Supreme Court in this field. Yet, the leading witness for civil rights groups called Judge Haynsworth a "hard-core segregationist." In sharp contrast to the views of these organizations, Judge Harrison Winter summed up Judge Haynsworth's legal approach to all areas of the law like this:

> I have never felt or thought that his (Judge Haynsworth's) position on a particular matter has exceeded the area of legitimate and informed debate.

During the debate on this nomination, a great deal has been said about former Justice Abe Fortas. I opposed the elevation of Justice Fortas to the office of Chief Justice of the United States because of his constitutional philosophy. He made a public speech at American University in which he declared that the Constitution of the United States has no fixed and unchanging meaning. On another occasion before the Trial Lawyers' Association of the State of Virginia, he declared that the genius of the Constitution lay in the Supreme Court, because the Supreme Court had the power to change the meaning of the Constitution.

My study of his speeches and my study of his opinions convinced me that he was not qualified to be Chief Justice of the United States, because a man who does not believe the Constitution has any fixed meaning cannot possibly keep an oath to support the Constitution; and a man who thinks that the Constitution permits the Supreme Court to amend the Constitution is not fit to be Chief Justice of the United States.

It was for those reasons that I opposed the elevation of Justice Abe Fortas to the office of Chief Justice of the United States.

Concerning Judge Haynsworth's judicial philosophy, I happen to reside in the Fourth Judicial Circuit. Prior to coming to the Senate, I read all of the decisions handed down by the U.S. Court of Appeals for the Fourth Circuit; and after I came to the Senate, I kept up that practice as far as was humanly possible. Therefore, even though I did not personally know Judge Haynsworth until he appeared before the Senate Committee on the Judiciary, I was well acquainted with the work which he had done as a member of the Fourth Circuit Court of Appeals. I knew that he was one of the finest legal craftsmen in this country. I also knew that, unlike Justice Fortas, he was more devoted to the Constitution of the United States and what it did say than he was to his own opinions of what it should have said. I knew that he would, as a Justice of the Supreme Court, be more interested in interpreting the Constitution and interpreting the laws than he would be in amending them by judicial usurpation.

We certainly need, in this hour, as the distinguished Senator from Arkansas has just stated, a Supreme Court in which the people of this land will have confidence; and the only way we can secure a Supreme Court in which the people of the United States are going to have confidence is to place upon that tribunal men who recognize that it is the function of judges to interpret the Constitution and the laws, and not to make them.

Judge Haynsworth is such a man, and he is attacked here by certain special interests because they recognize that he will be a judge who will be faithful to his oath to interpret the Constitution according to its true meaning, and will not be a judicial handmaiden for those groups who oppose him.

My study of Judge Haynsworth's opinions reveals not only that he is a good legal craftsman, but also that he has the capacity to judge the cases which come before him with what Edmund Burke called "the cold neutrality of the impartial judge." I know of no higher qualification which any man can take to the Supreme Court than that capacity—the capacity to judge his cases with the cold neutrality of an impartial judge, rather than with the capacity of a judicial activist, who wishes to rewrite the Constitution of the United States to suit his own image or the wishes of any special groups of our citizens.

Judge Haynsworth would be a most valuable addition to the Supreme Court, and I feel it would be one of the greatest tragedies of our generation if the American people were to suffer again, as they did in the case of Judge John J. Parker, the denial of a seat upon the Supreme Court to a man of his judicial learning and experience, and his intellectual and personal integrity.

This has been a peculiar fight on the nomination of Judge Haynsworth. We have had National Education Association officials come out and publicly oppose his confirmation. They have done so, I charge, without authority from the members of that organization. I have had numerous communications from people of North Carolina who are members of the NEA, and who have informed me that they were given no voice in the matter, and that the position of the organization

did not represent their position, but was exactly opposite from their position.

The same thing can be said of the American Trial Lawyers Association. I charge that the officers of that organization, without any authority from its members, took a public position on this matter not in harmony with the thinking of many of its members, and not authorized by its members.

I ask unanimous consent to have printed in the RECORD at this point, as a part of my remarks, telegrams and letters which I have received from members of the National Education Association and the American Trial Lawyers Association, which sustain my charge that officials of those organizations who undertook to speak for the organizations were speaking without authority from their members.

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

Raleigh, N.C.

Senator SAM ERVIN,
Senate Administration Building,
Washington, D.C.:

At the regular meeting of the board of directors and presidents of the North Carolina Division of Superintendents on November 11, the following motion was passed unanimously: "That a telegram be sent to the president of the National Education Association, to the North Carolina Senators, and to Sam M. Lambert, executive secretary, National Education Association, objecting to the recent action taken by the NEA president and executive committee in regard to the Haynsworth appointment, this objection being based on the following premises: (1) That the NEA was not authorized to speak for the NEA administrator members in North Carolina on this matter; and (2) that such unwise action during the height of our NEA membership drive is having an adverse effect."

CHARLES H. CHEWNING,
President, North Carolina Division of Superintendents.

THE NORTH CAROLINA ACADEMY
OF TRIAL LAWYERS,
Raleigh, N.C., October 14, 1969

LEON L. WOLFSTONE, ESQUIRE,
President, American Trial Lawyers Association, Seattle, Wash.

DEAR LEE: I was most interested in reading the telegram which you made public at a news conference in Seattle yesterday in connection with Judge Haynsworth and the fact that you would like to poll "about 1,000" of the members of our Association for their feelings. This conference was reported today in our local newspaper.

I am sure that you will poll carefully and give great consideration to the opinions of the members of the American Trial Lawyers Association here in the Fourth Circuit, many of whom have argued cases before him and know him best. While he would not have been my first choice, nevertheless, I feel that he is highly qualified and get the distinct impression that pure sectional politics is now playing an unfortunate role with many of the Senate members in this matter.

I send my highest regards.

Sincerely,

CHARLES F. BLANCHARD.

RALEIGH, N.C.,
November 11, 1969.

NATIONAL EDUCATION ASSOCIATION OF THE UNITED STATES,
Washington, D.C.

GENTLEMEN: This fall I, as a veteran teacher of sixteen years service, advised several younger teachers to join NEA because I felt that it was the one national organization which spoke professionally for all the teachers. Now after reading the attached editorial by David Lawrence, I am having second thoughts on what I thought was NEA's policy of speaking *professionally for all teachers.*

A national organization by necessity must represent *all* spectrums of opinion on complex social and political issues; it cannot, in my opinion, hold the loyality of the diverse membership if it takes blatantly partisan positions. Therefore, I now must confess that I would give serious consideration to supporting an alternative organization to NEA.

I am also obliged, by copy of this letter, to notify the Senators from North Carolina that NEA does not necessarily speak for all educators on this issue. Hopefully they will, in turn, so inform their colleagues.

Yours truly,

(Mrs. G. F.) VALERIE S. COOPER.

ROCKY MOUNT, N.C.,
October 27, 1969.

HON. LEON L. WOLFSTONE,
President, American Trial Lawyers' Association, Cambridge, Mass.

DEAR MR. WOLFSTONE: I have been a member of ATLA for many years; and have noted with regret the manner in which you and the other officers of our fine organization have entered the dispute over confirmation of Judge Haynsworth.

In the first place, the procedure of having a poll taken of 1,000 members of ATLA is more in the nature of a popularity contest. These lawyers polled have access to no more facts than I have; and all I have is what I have read in the newspapers. Of all groups concerned, ATLA should be most suspicious of trial by news media.

J. P. Morgan is reported to have said that there are always two reasons for a course of action taken, the "good reason" given, and the real reason. I am inclined to suspect that the real reason for your objection to Judge Haynsworth is that he is admittedly a strict constructionist on Constitutional questions, and, therefore, might be expected to give some weight to the doctrine of *stare decisis.* While this doctrine was undoubtedly given undue weight in times past, the pendulum seems to have swung too far in the other direction in the Federal Courts. I think President Nixon is correct that we need to restore some balance to the Supreme Court.

It would appear that the liberals and other opponents of Judge Haynsworth may be operating on the assumption that, if this man's nomination is defeated, President Nixon will then appoint a more liberal man to fill the vacancy. It is entirely possible that, if the President is defeated on this appointment, he may well appoint a man who is much more conservative.

If the ATLA is going to get into the field of passing on judicial appointments as the ABA has done, I have no objection, provided they are given access to the same facts as the ABA committee had. However, I do disapprove of your present procedures. In the action which you have taken, you certainly do not speak for me as a member of ATLA.

Sincerely yours,

DON EVANS.

WILMINGTON, N.C.,
November 11, 1969.

MR. GEORGE D. FISCHER,
President, National Education Association,
Washington, D.C.

DEAR MR. FISCHER: The statement issued by you criticizing President Nixon for proposing the name of Judge Clement Haynsworth to the Supreme Court and requesting him to withdraw the nomination was totally uncalled for. I am a member of the N.E.A. and you certainly do not speak for me and I am sure you do not speak for thousands of other N.E.A. members.

Judge Haynsworth is a very honorable man and would be a most welcomed improvement to the Supreme Court. He certainly has my support as a citizen and as a member of the N.E.A. This announcement was most uncalled for and I believe that the N.E.A. should not approve or disapprove this appointment, but work with whomever is approved.

Again, you did not speak for me in your disapproval of Judge Haynsworth. I am 100% for him.

Sincerely,

WALLACE I. WEST.

NATIONAL EDUCATION ASSOCIATION,
Washington, D.C., November 14, 1969.

The Honorable SAM J. ERVIN, JR.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: Recently you received a communication from Mr. George D. Fischer, President of the National Education Association, opposing the appointment of Judge Clement F. Haynsworth to the United States Supreme Court. As director of the National Education Association from North Carolina, I write to inform you that neither President Fischer nor members of the Executive Committee of NEA conferred with North Carolina teachers before reaching their decision concerning Judge Haynsworth. Following announcement of their position, I have received much adverse criticism from our members. It is my opinion that the majority of our membership would like for you and Senator Jordan to exercise your own wisdom and good judgment in this matter and not be influenced by the NEA leadership. Generally, our teachers seem to deplore the action of our leaders in taking sides on this controversial matter.

Sincerely yours,

BERT ISHEE, *NEA Director.*

RICHMOND, VA.

Senator SAM J. ERVIN, JR.,
Old Senate Office Building,
Washington, D.C.:

The following telegram was sent November 14 to the President, Senator Eastland, Senator Spong, and Senator Byrd: We the undersigned members and former members of the board of governors of the American Trial Lawyers Association for the Fourth Circuit presided over by Judge Haynsworth have had the privilege of arguing cases in his court. We know that he is honest, that his integrity is above reproach, and that he possesses all the qualification necessary for a Supreme Court justice. We urge you to stand firm in support of the nomination. Signed by Max R. Israelson, Baltimore member; Ross G. Anderson, Jr., Anderson, S.C., member; George E. Allen, Jr., Richmond, Va., member; George E. Allen, Sr., Richmond, ex-member; Emanuel Emroch, Richmond, ex-member; Charles F. Blanchard, Raleigh, N.C., ex-member; Eugene H. Phillips, Winston-Salem, N.C., ex-member; Louis B. Fine, Norfolk, Va., ex-member; Warren Stack, Charlotte, N.C., ex-member, secretary to George E. Allen.

Mr. ERVIN. Let us not repeat the tragedy which was enacted in the Senate when Judge John J. Parker was defeated for membership upon the Supreme Court of the United States. Let us give the American people an opportunity to have the services of a sound judge, a great legal craftsman, and a devoted supporter of the Constitution, Judge Clement F. Haynsworth, Jr.

Mr. ALLOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLOTT. Mr. President, I ask

unanimous consent that the order for the quorum call be rescinded.

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

Mr. ALLOTT. Mr. President, I quote from the hearing record:

I am a practicing attorney confining my practice to representing poor people, laboring class of people. I have never represented a corporation.

I am a union lawyer in the true sense of the word.

I have over the years done a great deal of work for the Textile Workers Union.

I was tainted as a CIO lawyer which to me is an honor.

I am a Democrat.

I was State President of the Young Democrats.

Hubert Humphrey was my candidate for President.

I would not have recommended that they give the job to Judge Haynsworth. I would have recommended that they put Arthur Goldberg back on.

In contrast to the content of a file of letters which I have from executive offices of labor unions, it was somewhat surprising to read the conclusion of this labor attorney I just quoted as to the appointment of Clement F. Haynsworth to be an Associate Justice of the U.S. Supreme Court. He told the Judiciary Committee that it was his belief that President Nixon had a mandate from the American people and that if President Nixon "searched the whole Nation over he could not find a man more suitably qualified for the job than Judge Haynsworth." The witness was John B. Culbertson from Greenville, S.C., within the jurisdiction of the court of which Judge Haynsworth is a member, and who is also president of the county bar association there. The testimony from which I have quoted begins on page 211 of the hearing record and I should also mention that Mr. Culbertson conveyed to the committee a message from the attorney for the National Association for the Advancement of Colored People in Greenville indicating his support for Judge Haynsworth.

I have cited this testimony—although it has been, in part at least, previously referred to here—for the reason that I believe this man touched upon, or, more accurately, demonstrated, an underlying truth involved as the Senate considers the pending nomination. The competent chairman of the Judiciary Committee (Mr. EASTLAND) identified this truth in his statement on November 13. He spoke of that great vast majority of our citizens which, in his words, are "angry and concerned about Supreme Court decisions that have unleashed a wave of rioting and crime in our streets" and "about Supreme Court decisions that mistake license for liberty and tie the hands of local prosecutors in their efforts to stop the flood of obscenity that has inundated our country" and who are "tired of demonstrators waving Vietcong flags, and agitators calling for the overthrow of the Government."

Mr. President, I submit that when President Nixon nominated Judge Haynsworth to a place on the Supreme Court, he did respond to a mandate from this great majority of our citizenry to which Mr. Culbertson gives witness, including the substance of the labor unions of this country; the working rank and file dues paying membership, not the highly paid executive officers of these unions who, from their lofty skyscraper suites, have inundated us with mail and testimony and who have generally, in almost every available way, opposed the nomination of Judge Haynsworth, under the guise that Judge Haynsworth is unethical and anti-civil rights and, finally, anti-labor.

To those of my colleagues who might be influenced by the massive assault which organized labor has unleashed, to those who reason that behind all this smoke there must be a fire of substance justifying it, I suggest that to respond to it will neither be in the best interest of the cause of labor nor desired by the rank and file labor union members.

On November 12, I stated my position that it is not the function of the Senate to consider an interpretation of the nominee's philosophy.

I believe this to be true, but others insist on the opposite view and maintain that an interpretation of the nominee's philosophy constitutes grounds for rejection or approval. Others have seized upon charges of actions contrary to the Canons of Judicial Ethics in opposing the nomination. But when the facts are examined, no violations are found, so we have seen them fall back on claims of "insensitivity" and "appearances of impropriety." As I, and many others, have said, these attempts to rely on unfounded ethics charges must ultimately find their origin in an opposition to the nominee's interpreted philosophy, or the manner in which it is anticipated he "might" rule on a certain kind of case. This is what we have experienced. Thus, I have deemed it of possible value to here direct myself to this matter of the philosophy of the nominee and its acceptability as a criteria. Let me quote, if we are to deal in interpretations of philosophy, from a statement by Judge Walsh, chairman of the American Bar Association committee, Standing Committee on the Judiciary:

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

It is this interpretation of the nominee's philosophy that I believe is consistent with the philosophy of the Senator from Mississippi (Mr. EASTLAND) described as the majority view of Americans, including then the majority of labor union membership. In fact, if anything, it has been those who are likely to be members of the labor unions who have been quick to speak out against the pace and philosophy of the so-called "Warren court." The executives of these labor unions do not seem to be able to hear their memberships, but it is not their role to confirm, or reject, Judge Haynsworth; and perhaps it is only logical that we, not they, should hear from their members and recognize the signs. For example, the following is a letter recently received by me:

OCTOBER 14, 1969.

Hon. Senator GORDON ALLOTT:

I am writing you in behalf of President Nixon's nominee Clement F. Haynsworth for the Supreme Court of America. I know by the papers you have said you would vote for him. I have lived and voted in (the) county for 48 years and pray to God that you let nothing change your belief in him not even the CIO or any other union. I personally have carried a paid up union card for 55 years. Both vote for him and do all you can in his behalf for the good of Colorado and all of America. . . . (My) county is predominantly democratic but talking to many of my friends I was amazed that most all of them were for Haynsworth as supreme court Judge (sic).

I have examined the cases cited by the labor unions as evidencing an anti-labor philosophy on the part of Judge Haynsworth. The common ingredient is that they are decisions by the Fourth Circuit Court of Appeals where the labor union, or the labor interest, did not win all aspects of the case. I personally am convinced that the members of these labor unions do not want a Justice appointed to the Supreme Court who will always rule in favor of a labor union in all of the cases that come before the Court, regardless of what the case is about and who is right.

George Meany, the president of the AFL–CIO, stated in the hearings—page 168—that he would not approve of any decision that was against labor, but I do not believe the membership believes this. Nor do I believe we should adopt this view by voting against the nomination. Any union member knows that a fair and impartial judge who makes his decision on the basis of the facts and the law is a far better judge than one who is so prejudiced and biased that he can be expected to take a "side" in a case.

Every other American knows this, too; and I think that, if we were to question every American in the United States, 98 percent of them would say that all they wanted was an intelligent and fair and unbiased judge, not a judge who is on their side. If he has that kind of judicial philosophy—that is, that he would take a "side" in a case—he may give a union an undeserved break somewhere along the line at someone else's expense. At the same time, he also may let bias and favoritism sway his decision in a case with an unfavorable result to an individual union member. What is more important it would be contrary to the decision which a fair and unbiased judge would have rendered. For a litigant to win 10 or 20 cases undeservedly will never offset the

hurt of losing one case which would have been decided favorably to a person before the courts but for the lack of a fair judge.

Several of my colleagues have mentioned the duty of Congress to protect the image of the Supreme Court by rejecting this nomination in favor of one about which no one raises questions. I most earnestly assert that to deny Judge Haynsworth this place on the Court will deny the people of this country a judge on the Supreme Court of the judicial temperament they most decidedly believe is needed. I also assert that it would be an injury to the Supreme Court to deny confirmation to a nominee simply because of "appearances" and philosophy. In my opinion, it would also tarnish the reputation of the Senate itself.

Mr. President (Mr. GOLDWATER in the chair), we cannot succumb to this admitted demonstration of what a group claiming to represent one segment of the citizens of this country believes it has the power to cause. Not only would such action result in a weakening of the role of the Senate; it would also demonstrate to the Executive and the judiciary, up and down the line, that here is a power group that can inflict its will upon them through those who make the laws, appropriate the moneys, and confirm nominations. The labor unions will not need to repeat the same activity in regard to the next nominee, if they are successful. In fact, I am sure they would not, for their point will have been made, just as the attorney for the AFL–CIO bragged to the Judiciary Committee what the labor unions had done in 1930 by blocking the nomination of Judge John J. Parker. He said:

> I agree . . . that the attack on Judge Parker on that ground was unjustified. But the federation succeeded in blocking his confirmation to the Supreme Court and, as you say, he served for many years thereafter as a prolabor judge and if we can get both the same two results here we will be happy. Page 173.

It is also interesting to me to observe that Judge Parker was admittedly opposed by the union because—according to them—he allegedly did adhere to an earlier Supreme Court decision. Now they oppose Judge Haynsworth because he allegedly did not adhere to an alleged earlier Supreme Court decision—page 173.

After having read the testimony of the witnesses in the hearings, I am constrained to say there is no doubt in my mind that the charges of improper philosophy against Judge Haynsworth stem from the opposition of the labor union hierarchy. This includes the allegations of improper civil rights philosophy. No real case was attempted by those representing civil rights groups. Hence, it is apparent to me that they were, instead, made the pawns of labor. Labor had the civil rights groups join them in the Judge Parker case, and the same pattern, for the same reason, is apparent here. I am sure that if the labor hierarchy had not decided to oppose Judge Haynsworth, the civil rights groups would not have been heard from; and I was impressed from the hearing record by the minimal degree of importance the civil rights advocates placed in taking part in the hearings. For instance, Roy Wilkins of the Leadership Conference on Civil Rights was supposed to attend but he did not. Instead, Mr. Mitchell appeared in his place—page 288. He had an airplane to catch, so he said he would probably have to leave Mr. Rauh behind to present legal arguments. They did have a statement from Mr. Wilkins but it took less than a page of the hearing record—pages 423 and 424. The worst Mr. Wilkins statement contains is a conclusion that Judge Haynsworth was not "with it" and that a study of Judge Haynsworth's opinions revealed that he has not been for "pressing forward" enough in the civil rights area and is only for "inching along." The appearance of Mr. Mitchell and Mr. Rauh was the extent of appearances before the committee by members of civil rights groups, with the exception of a representative from the Black Americans Law Students Association, an attorney from the Virginia NAACP, and an attorney for the ADA. In addition, however, two or three written statements were filed with the committee. Compared to the prestigious personal appearance of George Meany and all the other labor people that were present, the civil rights groups made only a token appearance which coincides with the conclusion of the Washington Post on Sunday that the philosophical allegations against Judge Haynsworth are that he is anti-labor and only "luke warm on civil rights." I also was interested in reading in the hearing record that while the labor union executives were generally careful to see to it that they also charged Judge Haynsworth as being against the recognition of the civil rights of Negroes, there was no instance where the representatives for civil rights groups said anything about his labor decisions that I saw.

These facts together with the very clear commitment made by the union officials in 1963 in connection with the Darlington case to charge Judge Haynsworth with improper and illegal conduct convince me that, as I said, the labor unions have been the prime movers in carrying out the attack against him.

Mr. President, in rereading portions of the record a few moments ago I think it is significant, when we consider the pattern of what has been accomplished by these groups to blacken and smear the name and professional career of Judge Haynsworth, to note that the nomination of Judge Haynsworth was sent to the Senate on August 18. The hearings in this case opened on September 16, and after less than two pages, the first item in the record is a memorandum of the Senator from Mississippi (Mr. EASTLAND) and the Senator from Nebraska (Mr. HRUSKA), relating to the Department of Justice file on Judge Clement F. Haynsworth, Jr., in response to public charges which had been made. So that between the dates of August 18 and September 16, before this man had ever had an opportunity to appear before the committee, at a time when he could not be making public statements on his own, he was already in the eyes of this country, through the news media—printed, visual and auditory—a defendant, to the extent that literally the first thing concerning his nomination was a long statement explaining matters which had been placed before the people of this country in a false and, in fact, in an untruthful light.

Before leaving the civil rights aspect of Judge Haynsworth's philosophy, however, I do want to mention the statement of the senior Senator from New York (Mr. JAVITS) on Friday in which he announced his opposition to this nomination solely because of the judicial philosophy of Judge Haynsworth in the civil rights field. I noticed an apparent irreconcilable difference between his ideas on the proper method for evaluating the judge's philosophy and those of the AFL–CIO which, as I said, also opposes his philosophy. I refer to the statements of the Senator from New York on page 34275 of the RECORD wherein it is said that a judge's philosophy cannot be gleaned from cases in which he merely votes for a particular result which is then expressed in an opinion written by another judge, but that the opinions he actually writes are the only reliable criteria.

The AFL–CIO attorney, Mr. Harris, whom Mr. Meany brought with him to the hearings, on the other hand, took the position that the cases where Judge Haynsworth actually wrote opinions were of less importance in gaining an insight into his philosophy than are the cases of the court where a subsequent Supreme Court review is had and the cases of the court where there is a division of opinion among the circuit court judges—page 174. On page 181, Mr. Harris stated "we think it does not matter whether he wrote the opinion or not."

So, we have the proponents of the anti-labor-philosophy argument making their judgment by looking at a different type of case than the type of case that the major spokesman, so far, of the anti-civil-rights-philosophy argument examined. Also, the Senator from Montana (Mr. METCALF), in speaking against the nomination, adopted the AFL–CIO method of analysis in his statement on Monday.

On the face of it, I think we might have to conclude that either the anti-labor-philosophy proponents or the anti-civil-rights-philosophy opponents are applying the wrong test and we should disregard the conclusions of one. However, I have reexamined the hearing record and the truth of the matter is that both are wrong.

When Mr. Harris made his statements, he was defending the fact that he had not taken into consideration all of the cases in which Judge Haynsworth participated. On behalf of the AFL–CIO he had only read 10 of about 50 labor cases in which the judge participated. Thus, Mr. Harris did not know in how many labor cases the judge had participated—page 175. Nor did he know with certainty in how many labor cases the judge had actually written the opinion—page 169. Furthermore, he categorically refused to give the committee a list of all of the labor cases in which he believed Judge Haynsworth had participated—page 172.

The statement of my good friend from New York, by the same token, states that not all civil rights cases in which Judge Haynsworth participated had been investigated on page 34275 of the RECORD.

In both instances, I must agree with my colleagues on the Judiciary Committee in that I do not see how we can put much faith in a purported review of the judge's philosophy as reflected by his judicial activities without taking stock of all the pertinent cases in which he served as a judge. Therefore, I agree with the senior Senator from New York the cases in which the judge wrote the opinion should not be overlooked. I also agree with the AFL–CIO attorneys that the cases in which there was a divided court and the cases which went to the Supreme Court are also important in reaching any kind of a comprehensive indication of either the judge's labor philosophy or his civil rights philosophy. No case should be overlooked.

Mr. President, I reiterate my belief that we should not delve into the philosophy of Judge Haynsworth in agreeing to the appointment, but I also point out to those who would take his philosophy into consideration that no comprehensive and complete review of that philosophy has been made by those who have already decided they oppose that philosophy in the two areas of supposed objectionable philosophy mentioned. The statement by Senator KENNEDY when the confirmation of Justice Marshall was before us is appropriate:

> I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job.

If most of those opposed to the nomination of Judge Haynsworth were to apply the criteria which Senator KENNEDY laid down in the Thurgood Marshall confirmation case, there would be overwhelming support in the Senate for Judge Haynsworth.

Mr. President, I believe that we will be doing more than just voting to confirm or deny confirmation of a Supreme Court nominee. In a sense we will be deciding the personal fate of an honorable man who, if he is rejected by the Senate, must live with that reality for the rest of his life. More than even that, however, we will be testing the strength of the "iconoclasts" who are able, by making unfounded charges, to create doubt about a man in the minds of nearly everyone.

Judge Haynsworth is the third nominee of President Nixon who has suffered from the "iconoclast" syndrome. The first was Interior Secretary Hickel. The second was Subversive Activities Control Board member, Otto Otepka. And, of course, now Judge Haynsworth.

Regardless of the outcome of the Haynsworth vote, the pattern will be repeated in the future, and I think that thoughtful Americans ought to be aware of the pattern. It goes like this:

Leading newspapers, particularly some on the east coast, start "floating" around questions of a serious nature about the nominee, as I pointed out, even before he had an opportunity to come before the committee. These questions are, in turn, picked up by others then who add a few charges to the questions. The charges, which usually catch the supporters of the nominee by surprise, are serious and almost always involve allegations of "deals" and "conflict of interest" and "unusual or questionable activities."

In this case, there is hardly a man in this Chamber who will vote against the judge who has not declared already that he believes him to be an honorable man, that his integrity is unquestioned, as well as his legal ability.

The charges which are made in the situation I described are baseless, ridiculous, and many times even completely false. Any answers to the charges are then obscured. They can be put in the right place in the newscast or in an obscure place. They can be slanted. They can be put on the back pages of the newspapers. By the time the charges are answered, so much smoke has been created that the nominee is then labeled "controversial" and some legislators, particularly those who have not had time to study the record, come out against the nominee on the grounds that, if he is that controversial, there must be something wrong with him.

I think the "silent majority," however, is beginning to recognize the pattern. I hope so, because we can count on another "spectacular production" against a nominee of the President sometime in the future.

Mr. President, I have discussed the fact today, and on November 12, that, while the matter of ethics, or "appearances" and "sensitivity" in regard to ethics, has been made the fulcrum of the reason for the opposition of many to the appointment by President Nixon of Judge Haynsworth to the Supreme Court, there is nothing to these charges and the only real reason for the opposition can be traced to an "alleged" anti-labor philosophy.

I throw back to these people the words of Senator KENNEDY in the Thurgood Marshall nomination.

But, as I have demonstrated, I firmly believe that when I cast my vote for the confirmation of this appointment of Clement F. Haynsworth as an Associate Justice of the Supreme Court, I will be representing the majority of Americans and, therefore, the majority of the rank and file membership of the labor unions whether their leaders know it or not.

Now, Mr. President, one further matter requires our attention.

Each time I turned to the hearing record in this matter, invariably I seemed to find page 1 before me. On that page appears the date of September 16, 1969. Below it stand the words of the senior Senator from Mississippi (Mr. EASTLAND), the chairman of the Judiciary Committee, giving recognition to our great loss on the first convening of the committee, to which the deceased minority leader, Senator Everett Dirksen, had given so much time before his death on September 7, 1969.

I commend the dedication of the senior Senator from Nebraska (Mr. HRUSKA) in presenting to the Senate the matter of the appointment of Judge Haynsworth in the capable, responsible, and knowledgeable manner that Everett Dirksen would have wanted, had he been here. I know of Senator HRUSKA's extreme desire properly to perform this task. He has met the challenge. I pay my respects to him for the capable way in which he has done it.

Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, first, I wish to commend the senior Senator from Colorado, the ranking member on the Interior Committee, who has just finished his comments, which I have had occasion to read before he presented them to the Senate.

I think his statement is one of the important and serious statements which have been made in this Chamber, and one which analyzes the problem very deeply.

The problem of dealing with the confirmation of the nomination of Judge Haynsworth is not an easy one for any Senator.

I do not know of any matter, other than of the Alaskan native claims problems, which has occupied so much of my time, which has generated so much mail, with so many questions and communications from my State, as has the nomination of Judge Haynsworth to be a Justice of the Supreme Court.

Being involved in controversy over a nominee of the President is not a new thing for those of us from Alaska. As the senior Senator from Colorado has pointed out, the first nominee that received great, nation-wide attention was that of our Governor, Walter J. Hickel, when he was nominated to be Secretary of the Interior.

I think that we have seen some similarities between these nominations, as has been pointed out by the Senator from Colorado.

I remember at one time during the period when we thought Wally Hickel's confirmation was in a little bit of trouble, the senior Senator from South Carolina, Senator STROM THURMOND, asked me pointedly whether I thought Wally Hickel would be a good Secretary of the Interior. Of course, I told him I thought he would be. I believed that very sincerely.

Later, the junior Senator from South Carolina, whom I did not know very well, spent some time with me and talked with me about our then Governor Hickel's qualifications to be Secretary of the Interior. When we concluded the conversation, he ended up with a comment that was very relevant as far as I was concerned. He said, "In a matter of this type, we have to rely upon somebody, and I am going to rely upon you. If you think your Governor would make a good Secretary of the Interior, I am going to vote for him"; and he did.

I have been worried about this nomination because of some of the very pointed comments that have been made by those opposed. I decided to go into the matter, and to go into the matter very deeply. I want to start off by saying that I think the junior Senator from Kentucky (Mr. COOK), as one of the new

Members of the Senate, has done an outstanding job in studying the record, in showing his dedication to the committee he serves on, the Committee on the Judiciary; and I have been particularly persuaded by the matters he has put before the Senate.

I went one step further than he did. I want to insert in the RECORD the record vote upon four of the nominees to the Supreme Court—that of John Marshall Harlan, Potter Stewart, Thurgood Marshall, and Warren Earl Burger.

I ask unanimous consent that that tabulation be printed in the RECORD at this point.

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

[Vol. 101, pp. 30-36, March 1955]

John Marshall Harlan:

For	71
Against	11

[CONGRESSIONAL RECORD, vol. 105, pt. 6, p. 7472]

Potter Stewart:

For	70
Against	17

[CONGRESSIONAL RECORD, vol. 113, pt. 18, p. 24656]

Thurgood Marshall:

For	69
Against	11

[CONGRESSIONAL RECORD, p.15195-15196]

Warren Earl Burger:

For	74
Against	3

Mr. STEVENS. Mr. President, I think these record votes demonstrate what the Senator from Kentucky (Mr. COOK) was trying to say. It is, that, in the past, nominees have been viewed by this body on the basis of their integrity, their ability, and their personal fitness to serve as judicial officers on the Supreme Court. And, as Senator COOK has pointed out, the criticism that has been levied against Judge Haynsworth on the basis of ethical standards has been proved to be completely baseless; and I share his conclusion in that regard, as apparently does the Washington Post and the New York Times, who agree that these ethical questions have not been supported, or that the issues that have been raised have not been supported.

Incidentally, that conclusion is concurred in by Alaskan editorial comment, although a couple of newspapers disagree.

We are then left with the question of whether Judge Haynsworth's philosophy, in and of itself, should disqualify him from serving in this position—if, Mr. President—and I emphasize this, if—his philosophy is, in fact, what his opponents believe it to be.

As I pointed out at the time we were involved in the confirmation of the nomination of Secretary Hickel, many people said at the outset that our Governor did not possess the "right" conservation philosophy. Those of us who knew Wally Hickel and knew what he had done as Governor knew we had a man who had a philosophy, as far as conservation was concerned, that was balanced and one that we could live with; one that could see the Interior Department perform its functions and provide us with the guidance that we should have from the Department of the Interior.

I think anyone who has witnessed what Secretary Hickel has done since his nomination was confirmed by this body, even his opponents, know that those who opposed him were wrong and that, in fact, he has become one of the great Secretaries of the Interior of this country.

I say that if the philosophy of Judge Haynsworth is what those who oppose him say it is, I still do not believe that that is a condition that should be reviewed by any Member of this body as being one that prevents Judge Haynsworth from becoming a Justice of the Supreme Court.

Again, I refer back to the votes I placed in the RECORD. I am certain that the 11 Senators who voted against Thurgood Marshall did so for good reason; but had philosophy, in and of itself, been a part of the qualifications to be a Supreme Court Justice, there probably would have been more votes against Thurgood Marshall on the basis of his philosophy.

I do not happen to concur in some of the things which people say are the philosophy of Judge Haynsworth. I have not had the opportunity to read all of the cases which have been brought before the committee to set forth the conclusions that people reach as to what his philosophy is. But I believe that Judge Haynsworth has demonstrated that he has a balanced judicial mind; that he approaches each case on the basis of that case; and that anyone who attempts to draw a personal philosophy from a judge's judicial opinions is off on a rabbit chase.

It is my opinion that Judge Haynsworth is qualified to be a member of the Supreme Court, and I want to say that in reaching this conclusion I have examined a great many things.

As a matter of fact, since I do not know Judge Haynsworth personally, and since I was not a member of the committee, and have only the testimony and the written report to rely upon, I think it is necessary to go beyond that and to answer the question for myself. Upon whom am I going to rely in making a decision in this matter?

Parenthetically, I might say that, along with the junior Senator from Kentucky, I too thought some of the procedures we use in this body to review nominees should be changed.

Coming back to Secretary Hickel's nomination problems, when someone voiced a question about him, we saw to it that our Governor had an appointment with that Member who had a question, and visited with him personally. I think that many of the questions that were originally raised were dispelled by the fact that Secretary Hickel visited, even with those who spoke against him, and discussed it man to man.

The real problem in this matter is that Judge Haynsworth, following a line of tradition, apparently, that a sitting judge is not subject to meet with Members of the Senate on a personal basis in order to support his own nomination to a higher bench, has not sought out those who oppose him.

I personally believe that no nominee for a high position in our Government, such as the Supreme Court of the United States, should have his nomination voted upon until he has been personally presented to each Member of the Senate. I think that might take some time, but it would be little enough time to give each Member an opportunity to make up his own mind about a man who was about ready to take a lifetime position on the highest court of the land.

I might say that I passed on this comment to those who have the duty of passing on future nominees. I hope the bar itself will examine the concept that a sitting judge should not personally lobby for his own consideration. I do not, personally, think it is personal lobbying to meet with a Senator on a personal basis and answer personal questions concerning his fitness or qualifications to sit as a judge.

But in determining whether to support this nomination—and I have determined to support it, as I announced yesterday—I want the RECORD to show that, beyond my own review, I am relying upon the recommendation of the ranking member on the Republican side of the Judiciary Committee, whom I respect very greatly, my good friend the senior Senator from Nebraska (Mr. HRUSKA).

I think he has demonstrated that he has examined into Judge Haynsworth's qualifications, and he has found the judge to be eminently qualified to be a member of the Supreme Court.

Second, as I have already stated, I have relied on the advice and guidance of the junior Senator from Kentucky, whose ability and dedication to his task as the newest member of the Judiciary Committee have amply been demonstrated by his noteworthy support of this nomination.

Third, I rely especially upon statements made to me personally by the Senators from South Carolina, who relied upon me when they voted for my good friend and Alaska's former Governor, Mr. Hickel, to be Secretary of the Interior.

Fourth, I have relied upon the fact that I know that Assistant Attorney General William F. Rehnquist of the Office of Legal Counsel of the Department of Justice thoroughly reviewed this nomination and the qualifications of Judge Haynsworth. It may seem strange to announce this, and it may be immaterial to some people, but it is important to me because back in the days when we were both fresh out of law school Bill Rehnquist was the law clerk to Justice Jackson of the U.S Supreme Court, and I know of no member of the bar who values the traditions of our Supreme Court more than Assistant Attorney General Rehnquist. He is a man of extreme brilliance, and knows the values of a Supreme Court Justice and what it takes to make one. The fact that Bill Rehnquist personally reviewed this nomination before it was sent to us means a great deal to me, as does the fact that his superior, the Deputy Attorney General, Richard G. Kleindienst, who was

my classmate in law school, has also personally endorsed this man.

Moreover, I would be remiss if I did not point out that it means a great deal to me to know that Dwight David Eisenhower also endorsed Judge Haynsworth, when he nominated him to be a member of the circuit court of appeals. He felt Judge Haynsworth had the qualifications to serve upon the second highest level of the courts of this land, and this body gave its advice and consent to that nomination.

But, lastly, and most importantly, I rely upon the judgment of President Richard M. Nixon. I have personally discussed this matter with the President, and I was present when the President outlined the extent to which he had personally reviewed the confirmation hearings record. As a matter of fact, I was astounded that the President, with the amount of work he has to do and the problems that he faces, had the time to become so intimately aware of the allegations made and had taken the time personally to satisfy himself that the allegations were without merit.

I may not agree with Judge Haynsworth's judicial decisions—I already know that I do not agree with some of the decisions he has rendered in the past—but I am assured in my own mind that he has the qualifications to be a good Supreme Court Justice. I doubt seriously that he will agree with everything that President Nixon or his administration will do—in fact, it is very clear from the recent decisions of the Supreme Court that the present Court, including its recently confirmed Chief Justice, maintains vigorously its right to be free of any influence, including past political allegiance or gratitude.

For these reasons I join with what I hope will be the majority of this body, in its vote on Friday at 1 p.m., in supporting the nomination of Clement F. Haynsworth, and I say to my colleagues from South Carolina that I hope his performance as a Supreme Court Justice will do as much credit to their State and our Nation as I believe the performance of our Secretary of the Interior has done and will do for my State and our Nation.

ORDER FOR ADJOURNMENT FROM FRIDAY, NOVEMBER 21, TO 11 A.M. MONDAY, NOVEMBER 24, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 11 o'clock on Monday morning next.

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

ORDER FOR RECOGNITION OF SENATOR SYMINGTON ON MONDAY NEXT

Mr. MANSFIELD. I ask unanimous consent that at the conclusion of morning business on Monday, the distinguished Senator from Missouri (Mr. SYMINGTON) be recognized for not to exceed 1 hour.

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

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. CASE. Mr. President, I join my colleagues who have expressed appreciation particularly to the members of the Committee on the Judiciary for the hard work that they have done, both those who happen to take the same position that I expect to take on this matter and those who take the opposite view. The Senate has benefited greatly from their labors, and the decision that is rendered will be much better because of it. As a matter of fact, in a matter of this kind, particularly, without the earnest, hard work of members of the Committee on the Judiciary, the Senate could not begin to do its job properly.

Mr. President, a long time ago the late Senator George Norris said, when the question of confirming an associate justice was before the Senate, "We ought to know how he approaches these great questions of human liberty."

Valid then, his statement applies with even greater force today. Our society is struggling to realize equal justice under law for all our citizens at a time when it is beset by internal strains and tensions and when millions are looking to the courts for vindication of rights long denied.

The administration has increased the need for confidence in the Supreme Court by its announced policy of putting greater reliance on enforcement through the courts of such statutory protections as title VI of the 1964 Civil Rights Act. This is the title which forbids discrimination in federally assisted programs of all kinds, including education.

It has been argued that philosophic considerations are beyond the responsibility of the Senate: that the Senate should confine itself to examination of the character, technical qualifications, and standards of conduct of the nominees selected by the President for our highest court. But the words of the Constitution provide no support for this view. And history is against it.

And I suggest, Mr. President, that a very wholesome trend in the attitude of the Senate of the United States in regard to its responsibilities vis-a-vis the Executive is against it also.

The first rejection of a nominee for the Supreme Court, in this case for Chief Justice, occurred in 1795. In the 19th century, 72 men were nominated to the Supreme Court bench and 18, a full quarter of them, were not confirmed.

However narrowly, the Senate should regard its role in regard to appointments within the executive branch, I suggest that the situation with regard to the judiciary presents very different considerations. Unlike Cabinet appointments, for example, involving service at the pleasure of the President and removal at his pleasure, Federal judicial appointees, once appointed and confirmed, cannot be removed except by the long, cumbersome, and in most cases inappropriate process of trial in this body upon impeachment by the House of Representatives. In other words, they hold their appointments, in effect, for life. And a Supreme Court Justice serves on the highest level of the third independent branch of our Government.

So it seems to me very clear that in exercising our responsibility of advising and consenting, to use the words of the Constitution, to nominations for the Supreme Court of the United States, we have a role of equal responsibility, though somewhat different in character, to that of the President himself; and I do not in any fashion regard our consideration—practically de novo—of these appointments as being a usurpation of any function that is not rightfully ours, and our duty to perform.

"How he approaches these great questions of human liberty"—this, for me, is the essence of the issue in the pending nomination of Judge Haynsworth.

The word "insensitivity" has been applied by many to Judge Haynsworth's financial transactions while sitting as a Federal judge. Others have rejected it. But to me, the insensitivity he has shown in his holdings and opinions on matters involving equal protection under the 14th amendment is undeniable and incontrovertible.

The senior Senator from New York has already put in the RECORD an analysis of all cases involving segregation in which Judge Haynsworth wrote an opinion. It should be emphasized that all these opinions were written 8 or more years after the landmark case of Brown against Board of Education in 1954. That is from 1962 on, these opinions, all that Judge Haynsworth has said in his own words on segregation cases, were written. I have also reviewed the analyses prepared by other Members and discussed at some length in the RECORD.

The conclusion is inescapable, I believe, that Judge Haynsworth has shown a persistent reluctance to accept, and considerable legal ingenuity to avoid, the Supreme Court's unanimous holdings in the Brown case and in subsequent decisions barring discrimination in areas other than the field of education. Moreover, in those few cases where Judge Haynsworth has ruled against a discriminatory practice, no other choice was possible. I suggest that no other choice was possible for him or any other judge, that the precedents were controlling and the facts and circumstances in cases obviously required the decision in which he joined. As late as 1968, Judge Haynsworth was continuing to voice his preference for "freedom of choice" plans in the desegregation of schools, even while he reluctantly implemented prior decisions by the Supreme Court. Only last year he was still insisting that the burden of expensive litigation to secure constitutional rights be borne by those seeking relief, even when those people had been upheld in their contentions by his own court.

The debate on this floor is replete with discussion of the dozen or so cases involving segregation in which Judge Haynworth wrote an opinion. But one in particular deserves special mention be-

cause it is so revealing of Judge Haynsworth's approach and philosophy. This is the case involving the closing of public schools in Prince Edward County in Virginia.

This case began in 1951 and was one of four resulting in the historic Brown decision of 1954. Prince Edward County was, however, determined to resist. In 1959, with the abandonment of "massive resistance" by the State of Virginia, Prince Edward County refused to levy any school taxes and the public schools did not reopen that fall. Private schooling for white children was arranged, but schooling for Negro children ceased.

In 1961, 10 years after the original complaint was filed and 7 years after the Supreme Court had spoken in the Brown case, the district court forbade the county to pay tuition grants and allow tax credits which in fact went wholly for the education of white children in the private schools. Shortly thereafter the district court ruled that Prince Edward schools could not be closed while public schools were open in all other counties. Local officials challenged the rulings of the district court and the schools remained closed, pending a decision by the fourth circuit court.

The circuit court decision written by Judge Haynsworth did not come until 1963, 9 years after the Brown case and 11 years since the Prince Edward case was filed. The court overruled the district court action in forbidding grants and tax credits. On the question of closing the schools, the court abstained from deciding and ordered the district court to abstain until the Virginia State courts had acted on what the U.S. Supreme Court later termed "issues that imperatively call for decision now." The Supreme Court felt so strongly that it expedited its review in this case.

Reversing the circuit court decision in 1964, the Supreme Court noted "this is not a case for abstention" and went on to point out:

> The record in the present case could not be clearer that Prince Edward's public schools and private schools operated in their place with state and county assistance, have one reason and one reason only: to ensure through measures taken by the county and the state that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. (337 US 229 (1964).)

Thirteen years after the case arose, 9 years after Brown and after 5 years of no public schooling, Negro children of Prince Edward County finally were assured of public education by the Supreme Court.

Contrast the Supreme Court's sense of urgency with the attitude expressed by Judge Haynsworth in his opinion for the court of appeals:

> The impact of abandonment of a system of public schools falls more heavily upon the poor than upon the rich. Even with the assistance of tuition grants, private education of children requires expenditures of some money and effort by their parents. One may suggest repetition of the often repeated statement of Anatole France, "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

We come back now to Judge Haynsworth's ruling:

> That the poor are more likely to steal bread than the rich or the banker more likely to embezzle than the poor man, who is not entrusted with the safekeeping of the moneys of others, does not mean that the laws proscribing thefts and embezzlements are in conflict with the equal protection provision of the Fourteenth Amendment. Similarly, when there is a total cessation of operation of an independent school system, there is no denial of equal protection of the laws, though the resort of the poor man to an adequate substitute may be more difficult and though the result may be the absence of integrated classrooms in the locality. (322 F. 2d 336.)

At best his statement indicates a degree of insensitivity to human rights unfitting the tribunal to which the American people look as the ultimate protector of constitutional guarantees.

Sensitivity and dedication to the solution of the very real problems that confront the Nation today are the critical need. What might have been reasonable or tolerable at an earlier time is no longer so.

I believe there can be no doubt that Judge Haynsworth's confirmation by the Senate would be taken by great numbers of our people as the elevation of a symbol of resistance to the historic movement toward equal justice for every American citizen. This appointment, at this time, would drive more deeply the wedge between the black community and the other minorities on the one hand and, on the other, the rest of American society.

I shall vote against confirmation.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. CASE. I yield.

Mr. BAYH. Mr. President, from the beginning, my distinguished friend, the Senator from New Jersey, has been one of the loud voices in the Senate speaking out in support of the efforts made by the judicial, the executive, and the legislative branches of our Government to remove the vestiges of second-class citizenship from the shoulders of minority groups.

I feel that his analysis of the judicial record of the nominee bears more weight, perhaps, than the analysis of the average Senator.

There have been a great many questions and discussions by Senators relative to the Presidential prerogative. I notice with some interest that the Senator from New Jersey discussed the distinction between nominations to the Supreme Court and nominations to the executive branch. Is it fair to suggest that one could honestly and sincerely believe that the President of the United States—whether he be Lyndon Johnson, John Kennedy, Richard Nixon, or some future President—should be given maximum leeway in choosing his own teammates, so to speak, to help run his administration, but that he should not be given this leeway in choosing a judge who, once appointed, is indeed a part of no administration but rather is a man appointed for life?

Mr. CASE. I think the Senator has emphasized a point which I believe is important here, and which I attempted to make in my own remarks. I do not know how far a Senator ought to go in dealing with appointments that are, in effect, appointments of the President's own right-hand men in the executive branch. Surely, much more leeway should be allowed the President to make his own mistakes, in a sense, especially when, as in the case of appointments which are at his pleasure, he can eliminate these men at will.

There is a great difference between that situation, as I attempted to point out and as the Senator has suggested, and that of appointments which are for life and which are to the third and independent branch of the Government of the United States—the judiciary.

Mr. BAYH. Will the Senator yield? I would like to expand one other thought that I think he made in his statement.

Mr. CASE. I am happy to yield.

Mr. BAYH. I sense that it is possible for a person to distinguish between degrees of judicial philosophy. As I recall—and I hope I quote him accurately—the Senator from New York discussed a type of philosophical bent that ran through the cases that might indeed turn the clock of history back.

Is it fair to suggest that in some philosophical matters, one might waive his objections, but if the philosophical difference is so great, and the nominee's philosophy runs counter to the needs of the country, then one should say, "Wait, I am not going to go that far?"

Mr. CASE. The Senator is quite correct. These are questions which cannot be answered absolutely and as to which no absolute rule can be set as to what the Senate's duty is, the degree to which it should or should not take into account considerations of the sort with which the Senator has been dealing.

As the Senator knows—and as I said explicitly in my remarks—whatever might be tolerable at another time in regard to a person of the bent of mind of Judge Haynsworth, to me it is so unfortunate at the present time and in the present circumstances that I am impelled to vote against confirmation.

Mr. BAYH. I appreciate very much having the Senator's thoughts.

Mr. CASE. I should like to say this to those who make a plea to us, "Do not destroy this man." This is not destroying a man, so far as I am concerned. I base my judgment and decision entirely upon an attitude which for people in his area and his territory, his time of life, is an honorable position. It would not be for me. It is for him; and in the circles in which he has moved all his life, there is nothing wrong with this. This involves no blight upon him. Nevertheless, it is to me disabling so far as appointment at this time to the Supreme Court of the United States is concerned.

Mr. BAYH. I appreciate very much that the Senator is taking the time and trouble to let us have the benefit of his study. It was prepared with a great deal of expertise. I said earlier, on the floor of the Senate, that I have struggled with the matter of how great a weight—if indeed any—philosophy should bear in our determination. I think the Senator makes a distinction between different weights, different burdens of responsibility, as the Senator from New York did.

The Senator from Indiana has been more concerned about another aspect, as the Senator from New Jersey knows. I suppose because of this I might be subject to a greater degree to the criticism of destroying an individual.

Mr. CASE. I appreciate that.

Mr. BAYH. I certainly did not intimate that the Senator suggests this. But I think there are others in this august body who have, and I am not unmindful of the personal impact that my opinions and my statements and my feelings have had or may have on the nominee. For this reason, only with the greatest reluctance have I become involved in this particular type of examination.

I hope and pray that regardless of the outcome of this vote, it will not destroy this man personally. I do not believe in destroying any man personally. But if we feel there is substance to the constitutional authority to advise and consent, we have to do what we think is right. As the young people say today, over and over again, we have to tell it as it is. When one gets involved in this type of controversy, he, himself, by bringing accusations toward others, is the brunt of accusations from others. This is not pleasant. But, in the final analysis, I think the issue to be determined here is not the personal future of the nominee, not the personal future of the junior Senator from Indiana, nor, indeed, the personal future or prestige of the President of the United States. We have the sober responsibility of seeing that whoever is nominated and confirmed as an Associate Justice of the Supreme Court meets the standards which the people of this country have every right to demand.

I certainly appreciate the Senator from New Jersey taking the time to let us have his thoughts on this matter.

Mr. CASE. The Senator has been most generous. No one, it seems to me, could have stated with greater sensitivity the feelings we all have when we come to deal with a matter of this kind.

Perhaps the fault is in the machinery set up by the Constitution, by which the President sends to the Senate a nomination and asks our advice and consent. In effect, we are then passing judgment on the President, as well as upon the nominee, and that is a troublesome factor. But, as I emphasized in my remarks in chief, I regard this responsibility, in effect, as de novo when it comes to appointments at least to the Supreme Court of the United States.

I hope that in this case and in all cases I exercise this responsibility with due appreciation of all the factors that ought to be considered, including human factors. Nevertheless, it is a responsibility that I cannot duck, and I think the Senator from Indiana has stated with sensitivity and delicacy and propriety exactly the same position that I feel I am in.

Mr. COOK. Mr. President, will the Senator yield?

Mr. CASE. I yield.

Mr. COOK. I am interested in some of the questions that the Senator from Indiana asked the Senator from New Jersey, under the theory that a President is entitled to his team, as he put it—those people he wants. I was pleased that the Senator from New Jersey, in a way, corrected this theory; because, in essence, the Senator from New Jersey would not agree that, under the treatise he just read, Judge Haynsworth would be acceptable to him if it were just a 4-year appointment would he?

Mr. CASE. I do not think I have to pass—and I do not think it is fair to the judge to ask me to pass—on him for some hypothetical appointment. I do not believe I will do that. The Senator understands fully how I feel about the judge in regard to the nomination that has been presented to the Senate. I am sorry.

Mr. COOK. That is perfectly all right.

The point I am trying to make, both in the question that was asked by the Senator from Indiana and the answer that was given by the distinguished Senator from New Jersey, is that, somehow, or other, those who are wanted by the President as a part of his team are acceptable, without analogy or without in-depth research, and yet, let us take, for instance, a position as sensitive as the Secretary of State. Would the Senator say this would be subject to a great deal of analogy by the Senate, who was approved without a record vote, to approve the Secretary of State who, conceivably, could foul up the foreign policy of this Nation?

Mr. CASE. I think the Senator knows how I feel about that. As a member of the Committee on Foreign Relations I think we have a very high responsibility to examine qualifications in depth in matters of appointment of that sort.

Mr. COOK. Does the Senator feel this should be as deep an analysis of all Members who have a responsible position in Government, regardless of whether it is for the Supreme Court, or any particular department of Government?

Mr. CASE. Maybe I can bridge whatever difference there may seem to be among the three of us by saying the whole thing depends on many factors: The general importance and nature of the job—those factors relating to the job applying at all times, in all places. But even more important, and this is the point I wish to emphasize, are the time and circumstances in which we are asked to consider the appointment for that particular job, specifically the Department of State. If it were at a time when the world was peaceful and we, for instance, were secure behind our oceans, particularly protected by the British Navy, and it did not matter very much what our relations were with the rest of the world, then, it would be not as important as now when we have a position of world leadership thrust upon us.

I think it is much more important now that we have a first-class man as Postmaster General, than when the Department was running smoothly, in order to get mail to my State rapidly instead of taking 3 or 4 days.

It depends on the nature of the circumstances obtaining at the time, the importance at the time, and the significance at the time of the appointment.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. CASE. I yield.

Mr. BAYH. I wish to say to my distinguished friend from Kentucky that if, indeed, the message he is conveying, and I think he is—I do not want to put words in his mouth—is that there should not be unlimited carte blanche power for the President to nominate whoever he wants to his administrative team, I concur. In fact, I think it is most significant. I undertook a most distasteful matter that I was involved in before this body prior to this matter. There was one case when I undertook to try to suggest to the former President that a man he was appointing to our foreign aid program, because of the misadministration of the program under his leadership in Southeast Asia, did not recommend the man for appointment.

I do not believe that even in an administrative capacity the President has unlimited authority, but I think what the Senator from New Jersey has rather specifically dealt with, and accurately dealt with, is that you have a whole new ball game when they talk about putting a person on that Court for life without being subject to removal except for impeachment, and particularly in these times.

I do not want to put words in my friend's mouth. If that is what he is driving at, I concur.

Mr. COOK. I have no objection to the Senator putting words in my mouth so long as they are carried in the RECORD as his words. However, I suggest to the Senator that the President has an entire Cabinet. They are extremely powerful positions in this country. No one asked for a rollcall vote in relation to those gentlemen. As a matter of fact, we saw to it by voice vote at the time the President was sworn in, so all of them could be in office.

I am not saying Senators should act here without speed. I think we should get ourselves down to the point. This represents an occasion, as there have been occasions in the past history, where the distinction of ideological and philosophical wrath, so to speak, has been rained down on the nominee for the Supreme Court, much more than has been true with offices such as the Secretary of State.

I wish to read something to the Senator from New Jersey and ask him to comment on it in regard to his speech.

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 said this about Judge Haynsworth:

> 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.

Does the Senator agree with that?

Mr. CASE. Of course, no. I do not. My disagreement with his characterization is quite complete.

I want to say again that, listening to that quotation in its entirety, I get the impression that what the scholar was talking about was a whole range of cases in which the judge took part, segregation cases. I have dealt only, and my review dealt only, with the cases in which the judge expressed himself in written opinions. As to that, it seems to me there is no disagreement possible with the conclusion of the senior Senator from New York that the judge has a philosophy which is inappropriate to an appointee to the Supreme Court at this time.

Mr. COOK. I have one more question if the Senator does not mind. Under that theory, and only on this point, I would like to ask the Senator if in his mind this would also rule out, on that ideological basis, his consideration of those judges on the circuit court who concurred with Judge Haynsworth or with whom Judge Haynsworth concurred in that series of cases that the Senator from New Jersey quoted in regard to the philosophical and ideological approach of Judge Haynsworth in regard to Brown against Board of Education.

Mr. CASE. I do not think I would draw this matter too finely, but I do want to point out that one cannot put too much stock in the fact that a member of the court concurred in the decision of the court in which he did not write the opinion. He may have done this for many reasons. I am talking about, considering, and basing my chief reliance on the judge's own words in cases where he wrote the opinion in most cases for the court, and, in some cases, as dissenting opinions. I do not think I can go along, therefore, with the Senator in his suggestion that my view of Judge Haynsworth necessarily would be the same for all people who may have arrived at the same conclusion; that is to say, who may have voted the same way Judge Haynsworth voted without expressing their own views in cases.

Mr. COOK. I am delighted to hear the Senator say that. I got the feeling in his last few remarks that he was kind of excluding it. As I read an editorial from the Louisville Courier Journal the other day, it said that Judge Haynsworth was the right man but in the wrong century. The indication in the editorial was that, really and truly, no one from the parochial, sedate South was entitled in this modern age to be considered for appointment on the Court.

I am glad that the Senator from New Jersey gave the explanation he did.

Mr. CASE. The Senator is most generous in allowing me to have the right attitude. I do have it. I am glad that he gave me the opportunity to make the distinction.

Mr. ALLOTT. Mr. President, will the Senator from New Jersey yield to me for one or two questions?

Mr. CASE. I yield.

Mr. ALLOTT. Several things have just occurred in the previous colloquy that have bothered me. One of them is the apparent approval of the complete position taken by the Senator from New York (Mr. JAVITS) in his remarks last week, who pointed out that he thought the only reliable criteria of the judge's record in any given area—and I do not concede, in asking this question, that the philosophical point of view has anything to do with this whole question—were the opinions of the judge significant, and not the whole range of cases upon which he is acting?

The Senator from New Jersey, I am sure, does not believe that, does he?

Mr. CASE. I do not mean that anything is exclusively important and that the way a judge has decided cases has no importance; but I think, as the Senator from New York has pointed out, and as I just did earlier in my discussion with the Senator from Kentucky (Mr. COOK), that there are many reasons why a judge may vote mostly with the majority and sometimes with the minority on the court, and when he does not write an opinion, we cannot say why he necessarily voted in conformity with the majority or the minority, as the case may be.

Mr. ALLOTT. The Senator would have to admit, whether he wrote the opinion or not, whether he voted with the majority or whether with the minority, that in voting, the judge does reflect the position of the majority opinion or against it—one of the two; is that not correct?

Mr. CASE. It is difficult to generalize about that. It seems to me, therefore, that——

Mr. ALLOTT. I do not really know what other conclusion we can come to——

Mr. CASE. There are many reasons why a judge will vote a certain way in a case. He may feel, regardless of how his own views may be on it, that he is bound by the decisions in his circuit, in the case of the court of appeals, or the decisions of the Supreme Court. He may have other grounds for voting as he does in a particular case, and if he does not express them, then we are entitled, indeed to draw what conclusions we wish, or feel that we can, or should, from the facts of his vote. But, to me, it is not nearly so persuasive as the judge's own words and opinions as expressed in the opinions which he himself wrote. That is the whole point of it.

Mr. ALLOTT. I would say the Senator probably has a deeper reaction to his philosophy, but, on the other hand, I am sure the Senator is not so naive as to believe that, when a circuit court of appeals, for example, meets, the opinion which the judge to whom that case was assigned writes it, it is not modified, and sometimes in material respects, by one or more of the judges sitting on that court of appeals.

Mr. CASE. In different circuits, I think different practices apply; but, generally, certainly there is discussion of the decision, and probably of the general nature of the opinion, although I think the chief judge is the only one who really looks over the opinion before it goes out.

Mr. ALLOTT. One other thing, if the Senator from Arizona will allow, because this is a very important point. In a colloquy with the Senator from Indiana, he indicated he thought the Supreme Court was in a different category. The Senator and I both have been here awhile, and I am sure he remembers a particular time when a man was nominated for a certain very high and technical office, for which it was obvious he was completely unqualified from both a technical and a professional standpoint. I am sure the Senator remembers about whom I am talking.

Mr. CASE. Will the Senator whisper the name to me?

Mr. ALLOTT. I call the Senator's attention to the fact that the Constitution, in article II, makes absolutely no distinction in the advise and consent of the Senate as between ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. I have read from article II of the Constitution. Therefore, I think we have a very dangerous situation here.

I agree that this is certainly one of the most important votes. From the protocol standpoint, this body is probably the most important one in the United States. But I think we are going down the wrong road if we try to apply one standard of advise and consent for a Cabinet member, another one for an ambassador, another one for a Supreme Court Justice, another one for a circuit court judge, and another one for a district court judge. True, we all agree it is important. The fact is that the differentiation which I understood the Senator to make does not apply, depending on the importance of the position. There is no justification for it in the Constitution and, thus, no authority for it.

Mr. CASE. I am very happy to have the Senator's views. Many things have happened in the long years since he and I came to this body on the same day.

Now that the Senator has whispered to me, I understand the particular case he was talking about. We just disagree about this.

Mr. ALLOTT. I was hoping my friend would see the light, that is all.

Mr. CASE. The Senator is so generous. He is always willing to instruct me and is generous in sharing with me his insight in these matters. I sit at his feet most of the time, except when he is wrong. He is wrong this time. What can one say? I respect him in his right to be wrong. I will defend him as long as I have breath to do it.

Mr. ALLOTT. I hope to spend many years with the Senator in the Senate, and I know I will hear him say some day that a man's philosophy should not be taken into consideration in considering his nomination.

Mr. CASE. I do not think that day will ever come.

Mr. JAVITS. Mr. President, I am very gratified that the Senator from New Jersey (Mr. CASE) saw fit to take his position on the nomination of Judge Haynsworth upon the issue of what the judge would bring to the Court. I think this is a key question. I deeply believe that it has been rather under- than over-discussed in the course of the debate.

I have caused the cases to be analyzed again in the light of the position taken by the Senator from Tennessee (Mr. BAKER), and he and I have introduced into the RECORD our concepts of these cases. But I believe that a very important consideration which Senators must evaluate in these last hours before the vote is taken is whether they have a right to determine their votes on the basis of what Judge Haynsworth would represent to this Court. I think they do. I think that that is the long and constant history in respect of the Court and the way in which the Senate has passed on it. Often, that has been unexpressed, but often, that has been expressed as well.

I should like to point out that, interestingly, those who have expressed it—that is, as a proper guideline for the Senate—are today generally found in the ranks of those who support Judge Haynsworth.

Mr. President, we have been asked, in fixing and zeroing in on the whole question of breaches of ethics or other standards of propriety by Judge Haynsworth, to take the ground which I think is very difficult for Senators, and where the questions of fact become very sharply in issue. But that assumes—and I think there has been an unwitting but nonetheless a very real effort to channel us into that course—that we only have the right to ask of the President what is equivalent in military parlance to name, rank, and serial number. I do not believe that this is the criterion of judgment to which the Senate of the United States is limited. I believe that if I am asked to vote to confirm the nomination of a Justice, I have a right to determine in my own conscience what that Judge is going to represent to the Supreme Court of the United States. I have a right to cast my vote that way.

I wish to draw very sharply again the distinction between a Cabinet officer, who goes in and out with the President, who is subject to the legislative oversight of Congress, and over whom we have all kinds of controls, including appropriations and authorizing legislation, and a Justice appointed to the Court for life, where his philosophy can influence the world in which my children and their children after them can live, and I can do nothing about it except this one time. In my judgment, that demands that I appraise not only that Judge's honesty and ethics and the fact that he holds a lawyer's certificate but also what he will do when he gets on the Court.

It is my deep conviction—and this is a tribute to, not a denigration of, Judge Haynsworth's sincerity—that he deeply and sincerely feels, especially in the key and extremely sensitive issue of civil rights, that we were right before 1954 and that we are wrong now.

I do not agree with that. I think we were wrong before 1954 and that we are right now.

I do not believe that I have any right to vote to put a man on the bench who will seek to bring the Court back—that will be his duty, and he will work there to persuade others—to a time which I think has been completely passed by in history and to a social order which is archaic and cannot persist—the so-called separate but equal social order which for so long, in my judgment, held back a critically important area of our country.

This, Mr. President, is an issue which has not been discussed too much here, but I feel very strongly about it. I think it is borne out as we look at the opinions of Judge Haynsworth—and that is the only basis on which we can judge him—what he said in explaining his own concept of the law and his own philosophy. As we look at these opinions of Judge Haynsworth, we see how he lagged behind the times by years—not months, not days, but years.

He was dissenting in cases in 1962 like the *Dillard* case, 308 F. 2d 920 (4th Cir. 1962), cert. denied, 374 U.S. 827 (1963), for example, which I analyzed before, many arguments in dissent which the Supreme Court has heard, rejected, and already passed by in terms of history in 1954. But there was Judge Haynsworth, still clinging to these archaic and completely outworn concepts.

He dissented in the *Bell* case in 1963, 321 F. 2d 494 (4th Cir. 1963), 9 years after the Supreme Court had already outlawed segregation.

He dissented in the *Cone Hospital* case in 1963, 323 F. 2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964), which was at the very minimum 2 years after the Supreme Court had gone the other way in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

He decided the *Griffin* case in 1963, 322 F. 2d 332 (4th Cir. 1963), fully 9 years after segregation had already been outlawed in respect of public schools by the Supreme Court, and the Supreme Court in Griffin reversed him unanimously, 377 U.S. 218 (1964). He decided the *Pettaway* case, 332 F. 2d 457 (4th Cir. 1964) in 1964, 10 years after the original Brown decision.

He decided a whole series of cases—*Bradley, Gilliam, Nesbit* and *Bowditch*, 345 F. 2d 310, 325, 329, 333 (4th Cir. 1965) in 1965—11 years after the 1954 decisions—and was again reversed by the Supreme Court, 377 U.S. 218 (1964).

Even in 1968, 14 years after the Supreme Court decision, he dissented again from a desegregation order in the *Brewer* case, 397 F. 2d 37 (4th Cir. 1968).

Mr. President, I beg Senators to think of this very seriously. I think this has been a very much underestimated argument in respect of this whole situation. I am the first to agree that I should not vote against a judge merely because he is conservative in his views on social questions or on the timing with respect to which people should be required to conform to the constitutional law as found by the Supreme court. We may differ. I differed, for example, with Judge Burger in many decisions in respect of civil liberties and other propositions which he decided as a circuit court judge.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. JAVITS. I should like to complete my remarks.

That did not mean that I voted against the judge. I voted for him. But I do distinguish the "conservative" or "liberal" cast of a judge, on the one hand, from a judge who persists in error—persists, after years and years and years, in the view that the old was right and the new is wrong, particularly on this critical civil rights question. I do not feel that within my conscience I can, by my vote, send to the Court that judge, with that kind of philosophy. He is sincere—I do not denigrate or in any way deprecate the judge—but precisely because his philosophy is sincere, and I believe it is, I have to vote "no" on his confirmation.

I yield to the Senator from Wyoming.

Mr. McGEE. I thank my colleague the Senator from New York for yielding me just a brief moment.

I have listened to a portion of his very thoughtful revelations of his own philosophy and his own reasoning processes in regard to arriving at his own conclusion in the case of this particular nomination.

I could not pretend to match the knowledge of the law and some of the other delicate principles involved that my colleagues in this body have generously shared with the rest of us who are not lawyers. There are not many of us who are not of the legal profession, one way or another. However, that does not release us from responsibility of trying to arrive at the best and balanced judgment we can by all our lights, whatever those may be.

I have read with deep interest the committee report and the individual views with respect to the judge. Allowing for all, as I understand it, I would be moved to say, as others have already noted, that at almost any other time Judge Haynsworth would be approved almost routinely; that what really catches us in our present mind is this particular time, right now.

And I have been deeply concerned about the argument of those who ask what will happen to Judge Haynsworth if there is an adverse vote by this body. I think we have to go very slow in making a judgment that might have a serious and adverse effect on a man's integrity or personality, on his professional career, or the bench on which he now sits.

Yet, as this Senator sees his responsibility in connection with the vote on the confirmation of Judge Clement Haynsworth, he must decide more than just the fitness of the man for the job. If that were the only question involved, the decision would be easier, for Judge Haynsworth has acquitted himself well before the Judiciary Committee and the record supports the conclusion that he is what we call an honorable man. If it were not for the times, Judge Haynsworth's name probably would not have become controversial. Through most of our history, a Judge Haynsworth likely would have been approved without incident.

But what about the times in which we live, these times—in fact, this moment in time. Are we to verify only the fitness of the man, or is our responsibility also to assess the consequences of an appointment—any appointment—on the future of the Supreme Court and to measure our judgment in the context of our times? The responsibility of a Senator in resolving that issue becomes the

heart of my conclusions in regard to the judge.

We cannot shrug off the times, nor the events which have preceded this day. Judge Haynsworth, as I see it, has already become their victim. Had there been no Fortas affair, with all its attendant publicity and even breast beating, a man of Judge Haynsworth's attainments, with experience as an appeals judge, undoubtedly would have been confirmed. But, Mr. President, there was a Fortas affair. There has been much breast beating. There has been a demand that our Presidents abandon all former criteria for the selection of judges—especially members of the Supreme Court—and submit to the Senate as nominees only those found to have the highest level of personal and professional integrity.

The issue, therefore, becomes so much bigger than the man being considered for the post or the consequences of adverse Senate action in regard to an honorable judge. The issue becomes, rather, that of restoring the prestige of the Supreme Court of the United States to its constitutional position of balance in our separation of powers system.

It is understandable to most of us that a President of the United States has to weigh whatever decision he makes in terms of political realities, in terms of loyalties, and in terms of the personal integrity of the nominee. But even more than these criteria, there ought to be the President's concern about our constitutional functions and—in this instance—the role of the Supreme Court. The shadows already cast over the Court by recent events have caused it to slip in public esteem, and thus its function is threatened with erosion.

It is imperative, in my judgment, that one consideration emerge above all others in the decision that we reach here today; and that is that the President and this body do everything in their power to measure the future role of the Court ahead of the immediate exigencies of a Court appointment. In my view the primary responsibility in meeting this one issue is the President's. The prestigious role of the Supreme Court itself should take precedence over the more personal or political factors. I respect, however, the decision of a President who arrives at an opposite position.

It had been my hope all along, therefore, that the President of the United States would arrange for the withdrawal of the name of his nominee and then submit a new name—a new candidate. Since through his best judgments he could not do this, it becomes the responsibility of the Senate of the United States to take the appropriate action.

It is for this reason only—namely, restoring the Court to its proper place among our historic institutions—that I intend to vote "no" on the question of confirmation of Judge Haynsworth.

I thank the Senator from New York for yielding.

Mr. JAVITS. Mr. President, I thank the Senator for his helpful intercession. I shall conclude momentarily.

Mr. President, as bearing upon the point which has decided me in this matter, I wish to call attention to a very interesting bit of testimony which appeared in the hearings on the nomination. I juxtapose the testimony of assistant professor of politics and public affairs at Princeton University, Gary Orfield, with the testimony referred to in a very eloquent speech by the Senator from South Carolina (Mr. HOLLINGS), given by Professor Foster of the University of Wisconsin Law School.

Professor Orfield concludes his analysis of Judge Haynsworth's decisions in the cases in the following way, which I find to be very supportive of my position:

A variety of new and difficult civil rights issues will continue to come before the Supreme Court. The Court's essential role is to decide new issues not yet clear in the law and to resolve disputes that have divided the lower courts. As new devices to subvert school desegregation and prevent implementation of other civil rights laws are invented, the Supreme Court will be called on for critically important decisions.

There is exceedingly little in Judge Haynsworth's record to produce confidence in the minds of civil rights litigants. At a time when issues basic to the future of American society will come before the Court, I believe the Senate will fail in its duty if it confirms a judge who has been so tardy in protecting children asking for an elemental constitutional right.

Mr. President, I think that word "tardy" is the key word in the conclusion of the professor, who analyzed the cases.

I ask unanimous consent to have printed in the RECORD the testimony of Professor Orfield.

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

TESTIMONY OF GARY ORFIELD, ASSISTANT PROFESSOR OF POLITICS AND PUBLIC AFFAIRS, PRINCETON UNIVERSITY

Mr. ORFIELD. My name is Gary Orfield, I am assistant professor of politics and public affairs at Princeton University.

Senator ERVIN. You may proceed in your own way, either by reading your statement or orally.

Mr. ORFIELD. Senator Ervin and members of this committee, I asked the opportunity to testify before the committee because my own research over the past several years in southern school segregation policy has made me feel deeply concerned about the impact of the appointment of Judge Haynsworth to the Supreme Court.

Because of my concern, I went back and read his decisions over the last 6 or 7 years, and tried to determine what his outlook was on the critical problems of school desegregation in the South during this decisive period. I was very deeply concerned and disturbed by what I saw.

One of the most remarkable things about this year, to a student of school desegregation, is the ease with which actions unthinkable a year ago become commonplace. Each week seems to bring a further retreat by the executive branch in civil rights enforcement.

The Justice Department, so long in the forefront of the battle to enforce constitutional guarantees, has succeeded in postponing desegregation in Mississippi schools. The House has passed, with administration support, an amendment that would destroy what remains of HEW's school desegregation program. Now the newspapers report that few Senators are worried about putting on the Supreme Court a backward-looking judge from a circuit court with a very poor record in protecting civil rights.

After 15 years of effort, we are very near a decision about the future of southern race relations. Some obvious forms of discrimination have been very largely eliminated from southern life. A great deal can be done to remedy others, such as school and voting discrimination, through firm executive and judicial action.

Obviously, the courts and especially the Supreme Court will have a great deal of influence in determining the national choice between equal rights and an increasingly segregated society. The role of the courts is made all the more central by the decision of the Nixon administration to rely primarily on litigation rather than administrative action in enforcing civil rights laws.

At this decisive juncture, the appointment of Judge Haynsworth would symbolize a willingness to see our highest court turn away from the cause of equal rights. The appointment would deepen the worries of an already demoralized black community and rather embolden the forces of reaction, which once again sense the possibility that desegregation may be delayed or defeated. Approval of the Haynsworth nomination would be one more sign that Congress lacks the will to face the Kerner Commission's grim warning that we may soon be "two societies, black and white, separate and unequal."

Commentary in the press has given the impression that Judge Haynsworth is a moderate on civil rights, tinged with a touch of conservation. When I read his school desegregation decisions and evaluated them in terms of what I learned during my study of the southern school issue, I found that his position was actually that of a very conservative member of a very conservative court.

He has been willing to permit interminable delays by local segregationists, he has shown little understanding of the nature of discrimination, and he has demonstrated neither skill nor a sense of urgency necessary in forging remedies for proven local abuses.

This record, demonstrating a basic lack of sympathy for some of the basic developments in American constitutional law of the past 15 years, should disqualify Judge Haynsworth for appointment to the Supreme Court. Indeed, it is my belief that if it were not for this very conservative record on civil rights matters, it is very unlikely that senior members of this committee would still continue to support this nomination after the serious ethical problems that have been raised in earlier testimony.

This statement has two basic purposes. First, I will examine a number of school desegregation cases decided by Judge Haynsworth compared his conclusions with those of his own court and with the opinions of the Supreme Court.

Second, I will discuss the Senate's responsibility for reviewing Supreme Court nominations and the very ample historical precedents for rejecting Presidential choices on grounds far less serious than those present in this case.

Judge Haynsworth's school desegregation record is particularly important and revealing because of the great importance the Supreme Court gave to the circuit courts of appeal in supervising implementation of its 1954 decision.

Since the Supreme Court seldom intervened in school matters, the circuit courts, particularly the fifth circuit for the Deep South and the Fourth Circuit for Virginia and the Carolinas, played absolutely central roles in the development of the legal principles necessary to carry out the 1954 decision.

Unlike the fifth circuit, which often broke new legal ground in coping with the more difficult problems of Alabama, Mississippi, and Louisiana, the fourth circuit interpreted the Supreme Court mandate narrowly, even in situations where the local resistance was

far less serious. The court allowed stalling and token compliance. Several times Haynsworth cast the deciding vote against prompt desegregation.

In three very important cases the Supreme Court found it necessary to reverse school rulings authored by Judge Haynsworth. In a number of less famous cases he ruled in favor of local resisters. If allowed to stand, Judge Haynsworth's rulings would have threatened the entire desegregation process. None of the cases I will present came early in Judge Haynsworth's career on the fourth circuit bench. The earliest is in 1962 and most came after passage of the 1964 Civil Rights Act. Indeed the one most important case came after the Supreme Court decision in the *Green* case in 1968.

As desegregation finally began to gain momentum in Virginia in the early 1960's, school questions were heavily litigated in the State. I will use two school districts within 3 hours drive of this hearing room, Charlottesville and Powhatan County, to illustrate Judge Haynsworth's approval of procedural delays and local tactics of evasion.

When his court refused to approve a Charlottesville plan that would perpetuate segregation by letting the white minority but not the black majority transfer out of the school in the city's ghetto, Haynsworth dissented. He claimed that the plan local authorities put forward was nondiscriminatory and he added gratuitously in his opinion the common segregationist argument that many black students would "likely have senses of inferiority greatly intensified" by integration.

Even in this case involving a moderate university town with relatively simple problems, Haynsworth took an extremely narrow view of the local school board's responsibilities. He argued that the Constitution required nothing more than token desegregation of one of the city's six schools. *Dillard* v. *School Board of City of Charlottesville, Va.*, 308 F. 2d 920 (4th Cir. 1962), cert. denied, 374 U.S. 827 (1963).

I might point out, having recently lived in Charlottesville, the city now has totally desegregated schools, but it has followed for the last couple of years voluntary busing plans to maintain racial balance in its schools and it has dealt with its problems without incident.

Similar attitudes were evident in his 1963 ruling on the *Powhatan County* case. He cast the decisive vote postponing admission of the first three black students to the county's schools. Judge Bell of his court dissented, saying that both the facts and the law of the case were clear and there was no excuse for further delay on this first step, the first step coming some 9 years after the 1954 decision.

Later in the same case, Haynsworth dissented from his court's decision to force the local authorities to pay the legal fees of black children. The court's intention was to discourage school systems from engaging in years of unjustified courtroom maneuvers which put an overwhelming burden on those claiming their rights. "To put it plainly," the majority said of the county's dilatory tactics, "such tactics would in any other context be instantly recognized as discreditable." Judge Haynsworth failed to see what was plain to the other judges, 8 Race Rel. L. Rep. 1037 (1963).

I think that this is an important theme that I get from reading Judge Haynsworth's opinions, that it is exceedingly difficult for him to see the problem of discrimination from any perspective other than that of local white leadership, and I think not even local white Southern leadership, the local white leadership over the Southern black in the Deep South.

The following year, 1964, Judge Haynsworth was reversed by the Supreme Court in the extremely important case of Prince Edward County, Va. The county, one of the original four school systems involved in the Supreme Court's 1954 decision, had become the symbol of white resistance across the South when it shut down its public schools to avoid token desegregation. After 11 years of litigation, blacks in the county appealed to the Federal courts to force reopening of the schools. A Virginia Federal district judge responded by ruling that the county could not close its schools simply to avoid compliance with the Supreme Court decision while local taxpayers continued to pay State taxes used for public schools in the rest of the State.

Judge Haynsworth, however, cast the deciding vote on the appeals court reversing the district court judgment and returning the case for yet another round of litigation in the Virginia State courts.

In his opinion, Judge Haynsworth reached the incredible conclusion that Prince Edward County "abandoned discriminatory admission practices when they closed all schools as fully as if they had continued to operate schools, but without discrimination.

Such a doctrine would have confronted black citizens in many Southern towns with the horrible choice between "voluntarily" remaining in inferior segregated schools and having no schools at all.

I talked with the superintendent in the county adjoining Prince Edward. He told me that there was a period of several years when these matters were being litigated in the Federal courts when there was a strong movement in his county to close public schools as well, and the people who favored continuing public education had to meet secretly with drawn shades to speak to each other, in the hope that they could get enough local support to retain public schools.

Judge Haynsworth saw no greater legal barrier to closing down the schools, a public service essential to individual opportunity, than to local action giving up a rather minor Federal-aid program.

He refused to strike down a local ordinance subsidizing the private segregationists schools by allowing people to subtract from the tax bills substantial contributions to the white schools. *Griffin* v. *Board of Supervisors*, 322 F. 2d 332 (4th Cir. 1963).

Judge Haynsworth has recently said that it is unfair to judge him by his past decisions. "They are condemning opinions written when none of us was writing as we are now," he commented in response to civil rights groups' criticism. The *Prince Edward County* case, however, demonstrates the inadequacy of his explanation

This case, like a number of others found other members of the Fourth Circuit bench far in front of Judge Haynsworth but unable to persuade him to join in their efforts to protect constitutional rights. Judge Bell, for example described his *Prince Edward* opinion as "a humble acquiescence in outrageously dilatory tactics." Local officials, Judge Bell wrote, had openly announced that they "closed the schools solely in order to frustrate the orders of the Federal courts that the schools be desegregated."

I had a graduate student at the University of Virginia 2 years ago who went down to Prince Edward County to talk to the local white leadership there and there had been no change whatever in their interpretation of why the schools had closed. There had never been anything that had been exceedingly hard to understand. It has been openly proclaimed very shortly after the 1954 decision.

Bell saw the Haynsworth decision as an "abnegation of our plain duty." Bell wrote:

"It is tragic that since 1959 the children of Prince Edward County have gone without formal education. Here is a truly shocking example of the law's delay."

While hundreds of children were being educationally crippled by a fourth year without schools, Judge Haynsworth deferred to the local request for still another delay.

The Supreme Court rejected Judge Haynsworth's reasoning. Writing for the Court, Mr. Justice Black described what was then a 13-year delay since the filing of the initial suit. The record clearly showed, Justice Black wrote, that "Prince Edward's public schools were closed and private schools operated in their place with State and county assistance, for one reason only: to insure, through measures taken by the county and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school."

The aged Alabama Justice seemed able to easily grasp facts that eluded a circuit judge far less aware of the nature of discrimination and far more sympathetic to the sensibilities of local white leadership. *Griffin* v. *County School Board of Prince Edward County*, 84 S. Ct. 1226 (1964).

Two years later, in a less important case, Judge Haynsworth again ruled in favor of Prince Edward County. While the constitutionality of tuition grant payments was being litigated before the Fourth Circuit, the county board ignored an assurance that no action would be taken and suddenly distributed and cashed $180,000 in aid for children attending the segregated white private schools.

The clear intent was to get the money spent before the Federal courts could issue a final order against it.

The majority on the Fourth Circuit saw this as "willful removal beyond reach of the court of the subject matter of the litigation." Haynsworth dissented, relying on a technical issue and downplaying the significance of the local defiance *Griffin* v. *County School Board of Prince Edward County*, 363 F. 2d 206 (1966).

Two more Haynsworth decisions, involving the important question of faculty desegregation, were reversed by the Supreme Court in a 1965 case. In ruling on the desegregation plans of Richmond and Hopewell, Va., Judge Haynsworth refused to require faculty desegregation, in spite of growing recognition in Southern Federal courts that this was an essential part of the desegregation process. He cast the deciding vote in the Richmond case, where the dissenters argued that "as long as there is a strict separation of the races in faculties, schools will remain 'white' and 'Negro,' making student desegregation more difficult . . ." *Bradley* v. *School Board*, 345 F. 2d 312 (4th Cir. 1965), and *Gilliam v. School Board*, 345 F. 2d 325 (4th Cir. 1965).

The Supreme Court rejected this reasoning, indicating its judgment that faculty integration was related to student integration. Had Judge Haynsworth's position prevailed, the difficulties in implementing successful desegregation would have increased and it would have been easier for school boards to fire black teachers as schools were desegregated.

Once again in 1968, the Supreme Court found it necessary to reverse an important Haynsworth school decision. When the Supreme Court handed down its historic *Green* decision against "freedom of choice," it rejected a leading device for delay repeatedly defended by Judge Haynsworth. "Freedom of choice" is the phrase used by the South to describe an approach to desegregation based on the assumption that local officials have no legal responsibility to end racially separate schools. All they have to do is offer each student a choice of which school he wants to attend once each year.

In practice, because of local pressures, the system generally permits localities to maintain separate schools indefinitely. The constitutional right to an equal education is available only to those families willing to take the risks involved in openly challenging local racial practices. In a study conducted shortly before Haynsworth's free choice de-

cisions, the U.S. Civil Rights Commission found widespread evidence of economic, social, and even physical intimidation of black families exercising their "freedom of choice."

I should say that earlier this month the Civil Rights Commission reaffirmed that finding and stated that the free choice system has encouraged "intimidation and economic retaliation" against families who allow their children to transfer to the white schools.

Although freedom of choice had left the pervasive segregation of the two Virginia counties concerned virtually untouched, Haynsworth clung to a distinction between "desegregation" and "integration" that had been abandoned in the other circuit court.

The level of difficulty in implementing freedom of choice plans is extreme in many areas of the South. Perhaps the great bulk of those that remain still retain segregated schools. There was a hearing held just over a year ago in a Virginia county not far from where Judge Haynsworth's fourth circuit sits. The parents came up and testified that their houses had been shot into, that crosses had been burned in front of their homes, that they had been fired from jobs, denied credit, and so forth.

In casting the decisive vote on two Virginia free choice cases, one of which became the basis for the subsequent Supreme Court decision, Judge Haynsworth spurned the proposal of two members of the five-judge panel that the court find out whether free choice plans actually worked and set firm deadlines for faculty desegregation.

Thus, as recently as two years ago, Haynsworth identified himself as hostile to the claims of black students on the two most important issues then under examination in the development of school desegregation law.

The facts in these two counties were particularly outrageous. Neither county had much residential segregation, but each maintained costly duplicate sets of schools and buses which traveled the same roads to separately pick up white and black students. Neither county had the minimum number of students in either the black or the white high school needed to permit efficient operation and an adequate curriculum. Only a handful of black children had "chosen" to enroll in the white schools.

"The situation presented in the records before us," wrote two of the court's judges, "is so patently wrong that it cries for immediate remedial action, not an inquest to discover what is obvious and undisputed." Judge Haynsworth favored procedural delays. *Bowman* v. *County School Board*, 382 F. 2d 326 (4th Cir. 1967), and *Green* v. *County School Board of New Kent County, Va.*, 382 F. 2d 338 (4th Cir. 1967).

The Supreme Court again found fault with Haynsworth's conclusions. The Court held that State and local governments, responsible for creating and perpetuating separate school systems, were now responsible for dismantling them. "In the context of the State-imposed segregated pattern of long standing, the fact that . . . the Board opened the doors of the former 'white' school to Negro children . . . merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system . . ." Local authorities were ordered by the Supreme Court to take the fastest available route to a unitary system "in which racial discrimination would be eliminated root and branch." 391 U.S. 430 (1968).

Four days after the *Green* decision Judge Haynsworth ruled in the case of *Brewer* v. *The School Board of the City of Norfolk*, even after the Supreme Court had ruled against freedom of choice except in exceptional circumstances, Judge Haynsworth stated his approval of the free choice plan.

"I think freedom of choice," he said, "is highly desirable."

It would be unfair to argue that Judge Haynsworth has been uniformly hostile to the legal rights of black children. He has participated in a number of opinions, mostly unsigned, in which his court upheld settled desegregation law or granted some of the claims of the litigants. In each of the cases that I have criticized there are procedural and technical issues that can be argued. What is striking, however, is the fact that in his few signed opinions and dissents he speaks for those who wish wide latitude for local evasion and narrow construction of the rights of black children.

The technical issues are decided in a way that limits civil rights enforcement. Thus, while he generally favored broad discretion for district judges allowing procedural delays, he overruled a district judge forging new remedies to deal with the extreme local resistance in Prince Edward County. It is remarkable that among his few opinions in this area, three were reversed by the Supreme Court.

Judge Haynsworth's 12 years of service on the fourth circuit have produced a weak civil rights record. This record cannot be explained by local political necessity, like that which generated black criticism of the nominations of Justice Black and Judge Parker. Judge Haynsworth was not running for office, but was expressing his beliefs as a secure and independent judge with lifetime tenure on a high Federal court.

I believe, therefore, that the argument that is often made that because Justice Black's record was different from that which some predicted, because Justice Parker was not as ineffective in implementing the rights of black litigants as most expected, that therefore you can make a generalization from those cases as to Haynsworth's circumstances. I think that there was a very critical difference in the circumstances in which the statements that lead to grave doubts about their ability on a Federal judgeship were made.

A variety of new and difficult civil rights issues will continue to come before the Supreme Court. The Court's essential role is to decide new issues not yet clear in the law and to resolve disputes that have divided the lower courts. As new devices to subvert school desegregation and prevent implementation of other civil rights laws are invented, the Supreme Court will be called on for critically important decisions.

There is exceedingly little in Judge Haynsworth's record to produce confidence in the minds of civil rights litigants. At a time when issues basic to the future of American society will come before the Court, I believe the Senate will fail in its duty if it confirms a judge who has been so tardy in protecting children asking for an elemental constitutional right.

Mr. MURPHY. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. MURPHY. Do I correctly understand that Professor Orfield is a professor of politics at Princeton University?

Mr. JAVITS. Yes. That is correct.

Mr. MURPHY. I thank the Senator very much.

Mr. METCALF. Mr. President, again I wish to compliment the Senator from New York (Mr. JAVITS) for his analysis of the civil rights cases and for his repetition of some of the statements which he has made. I have read his speech on the civil rights cases and I listened to a part of it. I do not pretend to be an expert in that area. I have served on labor committees in both the Senate and House. I have represented labor unions in the courts. I have also opposed labor unions in the courts. I know a little bit about labor law, and thus, tried to read the cases Judge Haynsworth decided insofar as labor was concerned.

I came to the conclusion that he was behind the times in his decisions regarding various labor questions. I feel that he is even further behind the times—and the Senator from New York has suggested it also—in civil rights cases.

Some of his decisions were made before the Norris-LaGuardia Act. I feel that he has failed to leave behind his representation of textile employers and other employers and has decided cases not in the main line of decisions in labor law.

I tried to outline that proposition. But, that is not the only reason I am against him.

I concur with the Senator from New York and other Senators about his decisions in civil rights cases, although I defer to their judgment on that.

I wish to comment on the ethical situation because it was a matter in controversy today.

One of the canons of judicial ethics provide that a judge's official conduct should be free from impropriety and the appearance of impropriety, that he should avoid infractions of the law in his personal behavior not only upon the bench and in his performance of judicial duties but also in his everyday life he should be beyond reproach.

Now the Senator from Kentucky read the statute and the statute provides that he shall do certain things, and that is in the canon of judicial ethics, that he should avoid infractions of law. But the canons also provide additional things, that he should avoid impropriety. I feel that Judge Haynsworth has failed to avoid impropriety.

I can understand that. I can remember when cases were assigned, such as the Brunswick case, which I have read, and I would have decided it the same way as did Judge Haynsworth, that when it was handed down and decided, perhaps he did not even know that his broker had purchased Brunswick stock for him. But after a lot of labor cases where someone says, "Well, look, I lost that case up there and Judge Haynsworth wrote the opinion and he has stock in the company," that is the kind of avoidance of impropriety that we want to obtain.

Mr. President, I was at the luncheon today for Prime Minister Sato of Japan. In speaking to us, he used an example from the sports world. He said that Japan was like a marathon runner. He had finally pulled into second place, but he was still way behind, back in the pack, and the United States was in first place.

If Senators will pardon me, I should like to use an example from the sports world, too. We all know about Joe Namath, that he had an interest in a nightclub called Bachelors III, and Pete Rozelle, Commissioner of Football, said to him, "Look, Joe, you have got to get rid of that club. We do not think that you have committed any crime or that you have committed any violations of ethics, but you must avoid even the appearance of a violation of ethics."

We all know how easy it is to assume that if one of Joe's passes were intercepted, and later that night Joe were seen talking to one of the Mafia, rumors would be circulated about that football game.

We all remember Paul Hornung when he was suspended for a year——

Mr. MURPHY. Mr. President, will the Senator from Montana yield right there?

Mr. METCALF. May I finish what I was going to say about Paul Hornung first, and then I shall be delighted to yield to the Senator from California.

Mr. MURPHY. I wanted to get one point straight. Did not Joe just open up a new place?

Mr. METCALF. About what?

Mr. MURPHY. Joe Namath—did he not just open up a new place?

Mr. METCALF. Did what?

Mr. MURPHY. I am not trying to give Joe a commercial. I am just asking for information as to whether Joe did not just open up a new place in Boston.

Mr. METCALF. Pete Rozelle said to Joe, "Look, Joe, you have got to get out of that business." Joe did.

What I am trying to develop—and I am not criticizing Joe because I do not think he ever "threw" a pass for anyone. I do not believe that he went into any game except with the complete will to win it.

The same thing with Paul Hornung, if the Senator will allow me another sport analogy. He bet on his own team, but they suspended him for a year.

Professional football could go the way of professional wrestling, and it would not make much difference as far as the people of America are concerned, except for those of us who love the game. But if there is doubt about the integrity of a Supreme Court Justice, it strikes at the very heart of America. That is the ethical question that has come up and has been discussed by the Senator from Maryland and other Senators.

Mr. MURPHY. Mr. President, will the Senator yield?

Mr. METCALF. I am delighted to yield.

Mr. MURPHY. I did not know that there was any allegation that Judge Haynsworth had been guilty of anything such as the things that Pete Rozelle talked about in these matters. If the Senator will forgive me, I think he is stretching the point a little. I think there has been great confusion in this.

I had something to do with the inception of the Fortas matter a year ago. I had a great deal to do with it. If the Senator will recall, it started with a group of 17 Senators who decided they were not going to vote for the confirmation of the nomination; that the people had had a chance to elect a new executive officer—and they had. We thought at that point it was proper and right that the new Executive should have the right to appoint some judges, because, over the years, the confidence of some people in the court had slipped somewhat.

Many of my constituents thought the Supreme Court had gotten into the area of writing law rather than interpreting law. This feeling was quite widespread.

That was the whole basis of the Fortas matter at that time. Later on, all sorts of things developed.

But I have not heard anything developed in the Haynsworth case that even begins to bear the slightest possibility of comparison. I just wondered if perhaps making a comparison of that case with Pete Rozelle is a little different. I am a lover of football, just as my distinguished colleague is.

Mr. METCALF. I know the Senator is.

Mr. MURPHY. I think I was there when it started. I sat in Walter Camp's lap a few times, and my father was the first professional coach and trainer in America, so I know something about this. I wondered if, in our enthusiasm, one side or the other, pro and against, we were getting a little afield in likening these cases.

It was not anything Joe Namath did; it was because of some of the people who were known to be habitues of that place that might cause some people to wonder about it. It is not the first time it has happened in professional sports.

I have not read all the record. There are 700 pages of it. That is a little too much for me at the end of a day. But I have not found anything in the Haynsworth case that would lead me to believe that there was a parallel to be drawn here.

My distinguished colleague who a few minutes ago quoted a series of cases has, unfortunately, left the Chamber. I am not a lawyer. I have not read all those cases. I do not know all the details of those cases. I doubt if anyone in this Chamber or in the membership of this body has read all those cases.

Mr. METCALF. No; but if the Senator from California will let me have the floor back for a minute——

Mr. MURPHY. I am delighted.

Mr. METCALF. I will tell him that I have read over 100 of Judge Haynsworth's cases.

Mr. MURPHY. I congratulate the Senator.

Mr. METCALF. I did not read the civil rights cases, but I sent over to the Library of Congress, and the Library sent me a list of the citations of labor cases, and I read every one. My office is full of volumes of the Federal Reporter.

Mr. MURPHY. Did the Senator read the full record of the case?

Mr. METCALF. I read the cases, and that is what we decide on, just as Judge Haynsworth decides in labor cases.

Mr. MURPHY. I have had some experience in labor law, too, and I have read some cases. I find that sometimes one has to take the trouble to read all of the details in order to get a full understanding. I know many citations go a certain way. I know the presentations of the lawyers may incline a person one way. But without a full understanding and the effort to digest the entire record, one is apt to make a mistake.

As I read the record, Judge Haynsworth has not been too consistent one way or the other. I had the impression that he found in favor of labor in some cases and opposed to labor in other cases. I may be wrong. I am not a lawyer. That has been the result of my reading.

I have taken too much time of the Senator. I thank him for yielding.

Mr. METCALF. I am delighted. I examined the hearings, and I read a lot of cases. I do not pretend that I read all the cases that the 4th Circuit decided during the 12 years Judge Haynsworth was on the court. I have already acknowledged that I am not an expert in civil rights matters. I read some of the cases on taxation. I do not agree with Judge Haynsworth on them.

I learned, when I was on a court, that two honorable men of integrity and honesty can take a whole list of cases, the same cases and the same precedents, and arrive at different decisions.

Mr. MURPHY. Mr. President, if the Senator will permit me another observation, many years ago I had a dual job. I was concerned with community relations and with public relations. I have had some experience in that field with the Metro-Goldwyn-Mayer studios in Hollywood. I went one day, at the invitation of my friend, former Associate Justice Frank Murphy——

Mr. METCALF. A great judge.

Mr. MURPHY. And I listened to the pleadings before the court. At the end of 2 hours I called a page. Being a kind of movie actor at that time, the page did not know what to do. He did not know whether to come to me or not. But because moving picture actors are kinds of freaks, he did come, and I asked him for a pad of paper. I wrote on one of the sheets, "After listening to all this, I am convinced that 90 percent of the problems of this world are caused by lawyers and public relations men."

We sit here and try to write the law as exactly as we can. We hear Members of the Senate say, "Let us make the language exact. Let us make certain that two honest men will not read the same law, or the same sentence, and completely disagree."

That is one of the problems. It is one of the problems that face us in the particular case that comes before us at this time. We find one colleague saying he wishes the President had withdrawn the nomination. That would have been simple. It would have been easy. It would have been convenient. It would have been comfortable. But it might also have been dishonest. I think the President did the proper thing in not withdrawing the nomination. The President of the United States went over this matter very cautiously and carefully.

I am pleased that the latest polls taken show that the President in office at the present time enjoys possibly the highest popularity and confidence of the people than any President I can recall in late years from either party.

I think the President went over the question carefully and made the selection with all sincerity and honestly thought the nominee was a fair man, a capable man, and a distinguished man. We never heard anything against him until he was nominated, and suddenly all sorts of things come up which seem to hinge more on appearance than substance.

I do not think it is right for us to sit in judgment of the President as to whether he did the right thing or not. Here we have a case which is certainly open to view. Here is the volume. Much has been said on the floor of the Chamber.

The distinguished Senator from New York (Mr. JAVITS) said that he certainly has a right to make up his own mind. So do I. So does the distinguished Senator from Montana. I think we will. But

there is so much that must be exposed in order that we may make a just judgment. Certainly bias, one way or the other, should not be the turning point of the decision. I would hope that we will find a Justice to sit on the Court who is as able as is humanly possible to interpret the law as written, and to do so fairly and considerately for all concerned, and to the highest degree possible, without bias.

I thank the distinguished Senator from Montana.

Mr. METCALF. I thank the distinguished Senator from California. I may say to him that I have voted against the confirmation of nominations of persons of my own party. It is not a challenge of the integrity or the popularity of the President. I vote the conscience of the junior Senator from Montana. I am merely trying to explain to the Senator from California why I shall do so.

Initially, I would have voted to confirm the nomination of Judge Haynsworth, until I read the hearings and read the cases. We do not have a Pete Rozelle on the Supreme Court. We do not have someone to judge the ethics of judges. I really do not wish to impugn the integrity of Judge Haynsworth as a circuit court judge. I have tried repeatedly to say that I understand, or I think I understand, some of the things that motivated his conduct. He has let a broker handle some of his affairs. One having this kind of careless disregard or appearance of impropriety should not be elevated to the Supreme Court of the United States. That is all I am trying to say.

I do not agree with my good friend from Colorado that we are destroying the life of this man. I would not want to do that. But he is nominated for the highest Court—a job that requires excellence above and beyond that of the ordinary circuit judge and the ordinary lawyer; and that is the standard that we must require that he meet. That is the standard I am trying to ask him to meet.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. METCALF. I yield to one of the most able and respected lawyers who has ever served in this body, the Senator from Nebraska.

Mr. HRUSKA. I return the compliment. I suggest that the Senator from Montana is an authority in many fields, but there is one in which he is reputed to be particularly well qualified—the field of labor law. He come by that reputation honestly.

It was with some interest that I heard he had sent to the Library of Congress for 100 cases, or thereabouts, and read most of them.

Mr. METCALF. That is correct.

Mr. HRUSKA. I wonder if the Senator recollects, having considered this record well, that when Mr. George Meany was on the stand, he took great exception to the 10 cases which Judge Haynsworth had decided adversely to labor, and he seemed to become obsessed with the idea that Judge Haynsworth was antilabor.

Mr. METCALF. I believe I remember the incident of which the Senator is speaking.

Mr. HRUSKA. I wonder if, in the hundred cases or so the Senator has read in the field of labor decisions, the Senator from Montana was not impressed with the fact and does not consider it noteworthy that, as against the 10 cases referred to by George Meany as having been rendered by Judge Haynsworth against the position of labor unions, there were at least 37 cases in which he sustained the position of the unions.

Mr. METCALF. I read those.

Mr. HRUSKA. As a matter of fact, it would not have been necessary to send over to the Library of Congress for that list of cases; it is on pages 195 and 196 of the hearings record. During a colloquy that was conducted by the Senator from Kentucky (Mr. COOK) there were listed the names and citations of those 37 cases—3.7 times more than the decisions against the unions—decided by Judge Haynsworth in favor of the unions.

Mr. METCALF. Mr. President, let me say to the Senator from Nebraska that most of those cases are cases that every lawyer in this body would have agreed with Judge Haynsworth on. They are the sort that are appealed perfunctorily. The critical cases are the cases where the Supreme Court grants certiorari, and they are argued in the circuit court and taken up to the higher court on appeal.

I am sure the Senator will agree that many of the cases that all of us argue, many of the cases decided in the circuit courts, are cases you do not take any farther, that every one agrees on. I submit these 37 cases were of that type. But I did not rely on Mr. Meany's list of cases, nor did I rely on the Cook-Hruska letter. I asked for all the cases.

Mr. HRUSKA. This list of 37 cases was not given us by Mr. Meany in the testimony. In fact, he denied any knowledge of them, and also said, "They are of no consequence, they were decided in our favor," and in fact he took it for granted they were of no importance as an argument in this case.

Mr. METCALF. And they were not appealed further.

Mr. HRUSKA. They were in a list furnished by the Senator from North Carolina (Mr. ERVIN). He read the list of cases, and in response to a question as to whether or not a case that is not appealed is therefore not important, Mr. Meany said, "Oh, no, that is not right. Even those cases are important."

So I say it is noteworthy——

Mr. METCALF. I do not have to agree with George Meany.

Mr. HRUSKA. It is important to me that there were almost four times as many cases decided in favor of the unions by Judge Haynsworth as were decided against them.

Mr. METCALF. I thank the Senator from Nebraska. As I say, he is one of the ablest lawyers with whom I have been associated in this body, and I regret that I have to disagree with him on this very vital, sensitive, and important matter.

Mr. President, I yield the floor.

SENATOR RANDOLPH SUPPORTS JUDGE HAYNSWORTH NOMINATION

Mr. RANDOLPH. Mr. President, I support the nomination of Judge Clement F. Haynsworth, Jr.

The Judiciary Committee testimony has been given my careful review. And I have studied the debate in the Senate. After doing this over a period of several days, it is my judgment that Judge Haynsworth should be confirmed for Associate Justice of the Supreme Court. My decision results from an earnest consideration of the issues brought into focus during the hearings and further discussed in this Chamber.

Mr. President, I have also weighed the varying opinions of friends and associates who have given me their counsel. The constituents I directly represent as a Senator from West Virginia have provided their points of view. And in a matter of this magnitude I must also rely in great degree on my personal assessment of the pending problem. The decision has been a difficult one and I have tried not to polarize my thinking.

Mr. President, I have asked myself three questions as to the career, the qualifications, and the conscience of Judge Haynsworth. In aswering, I have concluded that the nominee has integrity, he has competence, and he has the objectivity to decide each case on its merits.

It has not been easy for me fully to understand the financial transactions of Judge Haynsworth. I have determined, however, that the material produced against him is not persuasive proof of dishonesty.

There has been understandable concern as to the judicial philosophy of the nominee and of his approach to the vital legal cases which have been brought before him in the fourth judicial circuit, which includes West Virginia. I am very candid in stating that I have not agreed in some of Judge Haynsworth's findings in labor and human rights cases. Nevertheless, I believe that he will, if confirmed by the Senate, be a member of the Supreme Court who will contribute well-reasoned evaluation to all cases coming before him.

Mr. President, in my 11 years in the Senate, I have participated with my voice and my vote in advising and consenting to the nomination of six men who were confirmed for membership on the Supreme Court. In each case I have voted to confirm the nominee. These men are Potter Stewart, Byron White, Arthur Goldberg, Abe Fortas, Thurgood Marshall, and Warren Burger. Each man represented a different personal and judicial philosophy—at times more conservative than mine—at times more liberal than mine.

It is my belief that diversity of opinion and differing viewpoints are wholesome and vital to the life of the Court, as they are to the life of our country.

Mr. President, I am convinced that Judge Haynsworth, if he is confirmed by a majority of Senators on Friday afternoon, will serve as a Supreme Court Justice with fidelity, high purpose, and compassion.

I believe, in approving the choice of the President of the United States, that I am pursuing a course which is right.

Mr. FANNIN. Mr. President, while speaking on the Senate floor last Tuesday, in support of Justice Haynsworth, I did not get a chance to complete the

comparison I had begun because of the lateness of the hour and the fact that several other Senators wished to make short insertions in the RECORD.

I had concluded a recitation of the actions of Judge Haynsworth in relation to his investments in the J. P. Stevens Co., Inc. Judge Haynsworth, while in the private practice of law, had represented the Stevens Co. He also had concluded that he would never be able to properly sit on a case involving Stevens and so had not divested himself of holdings in that company and had excused himself in any cases involving Stevens coming before his court.

That is certainly a proper action to take. I think it indicates the meticulous attention to fairness which he has given to these matters over the years. It should be pointed out that Judge Haynsworth has gone far beyond the standards which Supreme Court Justices have set for themselves in these cases. I refer specifically to former Justice Arthur Goldberg. First I would like to note there is "as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is." In reference to Union Corp., 292 F. 2d 381, 391 (1st cir. 1961), certiorari denied, 368 U.S. 927 (1961).

Justice Goldberg's record in the Supreme Court itself illustrates that judges have an obligation to decide cases, even though those cases sometimes involve interests with which the judge has been associated.

Justice Goldberg, who took his seat on October 1, 1962, and resigned on July 26, 1965, came to the Supreme Court as a partisan of labor. He had served as legal counsel to various unions, particularly the AFL–CIO. Immediately prior to his appointment to the Supreme Court he had been Secretary of Labor.

During his tenure on the Court Justice Goldberg sat in 29 of the 44 labor cases decided. This does not include those labor cases where petitions for certiorari were denied by the court. He sat in seven cases in which AFL–CIO unions were parties. He also sat in nine cases in which the AFL–CIO had an indirect, but significant, interest in the outcome.

He sat on four cases where the AFL–CIO had filed an amicus curiae brief.

Justice Goldberg wrote the opinion in the landmark case of *NLRB* v. *Metropolitan Life Ins. Co.* (1965) 380 US 438. This case involved the Insurance Workers International Union, an AFL–CIO affiliate union. This decision was adverse to Metropolitan Life Insurance Co.

This is not to suggest impropriety on the part of Justice Goldberg. It merely illustrates that judges do not live in a vacuum, and cannot disqualify themselves every time a case comes before them which involves, however, indirectly, an interest with which they may be identified.

Mr. President, I ask unanimous consent to insert in the RECORD information pertaining to Mr. Goldberg and his association with organized labor cases.

I also ask unanimous consent to have printed in the RECORD a statement entitled "Participation of Justice Marshall in Racial Discrimination Cases."

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

ARTHUR GOLDBERG

General Counsel, CIO 1948–1955. United Steelworkers of America, 1948–1961. General Counsel, Industrial Unions Department, AFL–CIO 1955–1961.

PARTICIPATION IN LABOR CASES WHILE ASSOCIATE JUSTICE, U.S. SUPREME COURT

Justice Goldberg sat in 29 labor cases in which opinions were handed down.

Justice Goldberg sat in 7 labor cases in which AFL–CIO union was a party.

Local Union No. 189, Amalgamated Meat Cutters, AFL–CIO v. Jewel Tea Company, 381 U.S. 676.

Local Union No. 721, United Packinghouse Food & Allied Workers, AFL–CIO v. Needham 376 U.S. 247.

Radio & Television Broadcast Technicians Union 1264, International Brotherhood of Electrical Workers, AFL–CIO V. Broadcast Service of Mobile, Inc. 380 U.S. 253.

Calhoun, President or Peters, Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL–CIO v. Harvey 379 U.S. 134.

Local No. 438, Construction & General Laborers' Union, AFL–CIO v. Curry & Co. 371 U.S. 542.

International Association of Machinists, AFL–CIO v. Central Airlines 372 U.S. 682.

NLRB v. Eire Resistor Corp, and international Union of Electrical, Radio, & Machine Workers, Local 613, AFL–CIO 373 U.S. 221.

Justice Goldberg sat in 5 labor cases in which an AFL–CIO union was an interested party, although not a party to the action.

NLRB v. Metropolitan Insurance Co. [Insurance Workers International Union, AFL–CIO] 380 U.S. 438 (Mr. Justice Goldberg wrote the opinion).

Boire v. Greyhound Corp. [Street, Electric Railway and Motor Coach Employees, AFL–CIO] 376 U.S. 473.

Liner v. Jafco Co. Inc. [Chattanooga Building Trades Council, AFL (two member unions are parties] 375 U.S. 301.

NLRB v. Exchange Parts [International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, AFL–CIO] 375 U.S. 405.

NLRB v. Reliance Fuel Oil Corp. [Local 355, Retail, Wholesale and Department store unions, AFL–CIO] 371 U.S. 224.

Justice Goldberg sat in 4 cases in which the AFL–CIO filed briefs as amicus curiae.

American Ship Building v. NLRB 380 U.S. 300.

Republic Steel v. Maddox 379 U.S. 650.

NLRB v. Fruit Packers 377 U.S. 58.

Division 1287, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America v. Missouri 374 U.S. 74.

Justice Goldberg sat in 13 other labor law cases.

Ex Parte George 371 U.S. 72.

Los Angeles Meat & Provision Drivers Union v. United States 371 U.S. 94.

Burlington Truck Lines, Inc. v. United States 371 U.S. 156.

Smith v. Evening News Association 371 U.S. 195.

General Drivers, Warehousemen & Helpers, Local No. 89. v. Riss & Co., Inc. 372 U.S. 517.

Brotherhood of Locomotive Engineers v. Louisville & Nashville Railroad Co. 373 U.S. 33.

NLRB v. Servette 377 U.S. 46.

Hattiesburg Building and Trade Council v. Broome 377 U.S. 126.

Local 20, Teamsters, Chauffeurs and Helpers Union v. Morton 377 U.S. 252.

NLRB v. Burnup & Sims 379 U.S. 21.

NLRB v. Brown 380 U.S. 278.

Minnesota Mining v. New Jersey Wood Finishing Co. 381 U.S. 311.

United Mine Workers v. Pennington 381 U.S. 657.

Following is an expansion of the issues involved and notation of the opinion writers in some of the previously listed cases:

NLRB v. Brown, 380 US 278—affirmed 319 F. 2d 7; Brennan wrote opinion; Goldberg & Warren concur; White dissent. Lockout of employees did not violate 8(a)(3) since no hostile motive.

American Ship Building v. NLRB, 380 US 300—reversed 331 F. 2d 839: Stewart wrote opinion; White concur; Goldberg (Warren joins) concur. After impasse in negotiations, employer may shut down his plant for purpose of applying economic pressure.

Radio & Television Broadcast Local Union, International Brotherhood of Electrical Workers v. Broadcast Service of Mobile, Inc., 380 US 255—reversed 159 So. 2d 452. Per curiam.

Russ v. Southern Railway Co., 380 US 938—(cert. denied): Goldberg of opinion that cert. should have been granted.

Republic Steel v. Maddox, 379 US 650—reversed 158 So. 2d 492: Harlan wrote opinion; Black dissented. Required exhaustion of administrative remedies.

Calhoun v Harvey, National Marine Engineers' Beneficial Assn., AFL–CIO v. Harvey, 379 US 134—reversed 324 F. 2d 486: Black wrote opinion; Stewart & Harlan concur. Requirements for nomination for union office governed by 401(e) of Act.

Amer. Federation of Musicians v. Wittstein, 379 US 171—reversed 326 F. 2d 26: White wrote opinion; Goldberg & Warren took no part. Weighted voting system permitted by 101(a)(3)(B) of Act.

Liner v. Jafco, Inc., 375 US 301: Brennan wrote opinion; Chattanooga Building Trades Council (AFL). State had no jurisdiction to enjoin labor dispute.

Humphrey v. Moore, 375 US 335—reversed 356 SW 2d 241: White wrote opinion; Goldberg (joined by Douglas and Brennan) concur; Harlan concurs and dissents in part. General Drivers, Warehousemen, & Helpers Union. Decision of Committee under collective bargaining agreement determining employers' seniority right is binding on the parties.

Carey, International Union of Electrical, Radio & Machine Workers, AFL–CIO, v. Westinghouse, 375 US 267—reversed 184 NE 2d 298: Douglas wrote opinion; Harlan concurs; Black and Clark dissent; Goldberg took no part in decision. Where labor dispute which involved work assignments is not considered exclusively within the jurisdiction of the Board, and arbitrational procedure set forth in the colective bargaining agreement in not barred.

Retail Clerks, AFL–CIO v. Schermerhorn, 375 US 96—aff 141 So. 2d: Douglas wrote opinion; Goldberg took no part in decision. A state court has jurisdiction to enforce the state's prohibition of an "agency shop" clause in an executed collective bargaining agreement.

NLRB v. Exchange Parts, 375 U.S. 405—reversed 304 F. 2d 368: Harlan wrote opinion. Employer's conferral of economic benefits on employees to induce vote against union violated NLRA.

PARTICIPATION OF JUSTICE GOLDBERG IN LABOR CASES

United Mine Workers v. Pennington, 381 US 657-reversed 325 F. 2d 804: White wrote opinion; Douglas, Black, Clark concur; Goldberg dissent (see Meat Cutters).

An agreement between union and large operators to secure uniform labor standards throughout the industry would not be exempt from the antitrust laws.

Local Union. No. 189, Amalgamated Meat Cutters (AFL–CIO) v. Jewel Tea Co., 381 US 676-reversed 331 F. 2d 547: White (Warren & Brennan join) wrote opinion; Goldberg (joined by Harlan & Stewart) dissenting from opinion but concurs in result. Whether a proposed bargaining subject is a term or con-

dition of employment is not within the exclusive primary jurisdiction of NLRB.

Minnesota Mining v. New Jersey Wood Finishing Co., 381 US 311– aff. 332 F. 2d 346: Clark wrote opinion; Black dissent; Goldberg dissent; Harlan & Stewart did not participate. Section 5 (a) & (b) of Clayton Act.

NLRB v. Metropolitan Ins. Co. (Insurance International Union), 380 US 438—vacated 327 F. 2d 906: Goldberg wrote opinion; Douglas dissent. Extent of union organization is not controlling factor in determining the appropriate bargaining unit.

Textile Workers v. Darlington, 380 US 263: Goldberg & Stewart took no part in decision.

NLRB v. Fruit Packers, 377 US 58—vacated 308 F. 2d 311: Brennan wrote opinion; Black concur; Harlan (joined by Stewart) dissenting; Douglas took no part in decision. Peaceful secondary boycott not barred.

NLRB v. Servette, 377 US 46—reversed 310 F. 2d 659: Brennan wrote opinion. Wholesale Delivery and Salesman Union involved. Union's distribution of handbills to advise the public that an employer is handling products of a struck distributor is not prohibited by the Act.

Boire v. Greyhound Corp., 376 US 473—reversed 309 F. 2d 397: Stewart wrote opinion; Douglas dissenting. Street, Electric Railway and Motor Coach Employees (AFL–CIO) involved Order of Board in certification proceedings under § 9(c) for election by employees of joint employers is not a final order and thus not reviewable.

John Wiley & Sons v. Livingston, 376 US 543—aff 313 F. 2d 52: Harlan wrote opinion; Goldberg took no part in decision. Wholesale and Department Store Union (AFL–CIO). Merger does not automatically destroy rights of employee under collective bargaining agreement.

Packinghouse Workers v. Needham, 376 US 247—reversed 119 NW 2d 141: Harlan wrote. Food and Allied Workers (AFL–CIO). Union's breach of no-strike clause in agreement did not relieve employer of duty to arbitrate.

Steelworkers v. NLRB, 376 US 492—reversed 311 F. 2d 135: White wrote opinion; Douglas concur; Goldberg took no part in decision. Primary picketing includes right to picket entrance gate.

Fibreboard Paper Products v. NLRB, 379 US 203 -aff 322 F. 2d 411: Warren wrote opinion; Stewart (joined by Douglas & Harlan); Goldberg took no part. Union involved was United Steel Workers. Contracting out to an independent contractor of maintenance work which replace employees in bargaining unit is a statutory subject of collective bargaining under 8(d) of Act.

NLRB v. Burnup & Sims, 379 US 21—reversed 322 F. 2d 57: Douglas wrote opinion; Harlan concurs & dissents in part. Discharge of employees in good faith for alleged misconduct while soliciting for union is unfair labor practice.

Railway Labor Executives' Assn. v. U.S., 379 US 199: Per curiam.

Arrow Co. v. Cincinnati Railway et al, 379 US 642: Per curiam.

Parden v. Terminal R. Co., 377 US 184—reversed 311 F. 2d 727; Brennan wrote opinion; White Joined by Douglas, Harlan, Stewart). Operation of state-owned railroad in interstate commerce constituted a waiver of state's sovereign immunity and consent to suit under FELA.

Hattiesburg Trades v. Broome, 377 US 26: Per curiam.

Teamsters Union v. Morton, 377 US 252—vacated 320 F. 2d 505: Stewart wrote opinion; Goldberg concurred. Secondary boycott unlawful.

PARTICIPATION OF JUSTICE GOLDBERG IN LABOR CASES

Ex parte George 371 U.S. 72: Per Curiam; Unions involved: National Maritime Union; Oil, Chemical and Atomic Workers International Union. Decision favored NMU. NMU official's picketing was arguable protected by § 7 of NLRA and state court was without jurisdiction to enjoin.

Los Angeles Meat & Provision Drivers Union v. United States 371 U.S. 9: Opinion by Stewart; *Goldberg* with Brennan concurring; Douglas dissent Decision against LAMPDU. Union ordered to stop violations of § 1 of Sherman act and to expel from membership all self-employed contractors who had joined union with purpose to eliminate competition. (Goldberg: agree because no countervailing union interest in retaining self-employed in union.)

Burlington Truck Lines, Inc. v. United States 371 U.S. 156: Opinion by White; Black concurring and dissenting in part; Clark concurring; *Goldberg* with Warren, Douglas, Brennan, concurring. ICC erred in granting interstate license to local truckers where needs of commerce were not being met solely because of temporary interruptions caused by labor dispute. (Goldberg: Cease-and-desist order would be appropriate remedy to avoid encroaching NLRB jurisdiction or rights and duties of parties). Union: Teamsters

Smith v. Evening News Association 371 U.S. 195: Opinion by White; Black dissenting. State court has jurisdiction of action by employee against employer seeking damages for breach of collective bargaining agreement between employer and employee's union, even though the employer's conduct was also unfair labor practice. Union involved: Newspaper guild of Detroit.

NLRB v. Reliance Fuel Oil Corp. 371 U.S. 224: Per Curiam; Black concurs in result. Reliance a local distributor of fuel oil purchased a substantial amount of fuel oil and related products from a supplier who had imported them from outside the state and who was concededly engaged in interstate commerce. Therefore Reliance's activities "affected commerce" and it was within the jurisdiction of the NLRB which had found various unfair labor practices.

Local No. 438, Construction & General Laborers' Union, AFL–CIO v. Curr 371 U.S. 54: Opinion by White; Harlan concurring in result. State Court was without jurisdiction to issue temporary injunction against picketing of unions where facts show that there was at least an arguable violation of § 8(a) of NLRA so as to vest exclusive jurisdiction in NLRB.

Incres Steamship Co. Ltd. v. International Maritime Workers Union 372 U.S. 24: Justice Goldberg did not participate.

Gallick v. Baltimore & Ohio R.R. Co. 372 U.S. 108: Opinion by White; Harlan dissents; Stewart and Goldberg dissent. FELA case. Held: State appellate court invaded province of jury, judgment for employee should be affirmed. (Goldberg: Because of inconsistencies in the verdict, a new trial should be given).

Harrison v. Missouri Pacific Railroad Co. 372 U.S. 248: Per Curiam: There was evidence to support the jury's verdict for the employee in the FELA case and judge's entering of judgment notwithstanding the verdict was improper.

Brotherhood of Locomotive Engineers v. Baltimore & Ohio Railroad Co. 372 U.S. 284: Justice Goldberg did not participate. Unions involved were Bro. of Locomotive engineers, Bro. of Locomotive Firemen and engineers, Order of Railway Conductors and Brakemen, Bro. of Railroad trainmen, and Switchmen's Union of North America.

General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co., Inc. 372 U.S. 517: Per Curiam. A decision as to whether a ruling made by the Joint Area Cartage Committee was "final and binding" under the collective bargaining agreement so as to vest jurisdiction in the Federal District Court under § 301 of the LMRA should not have been made on the pleadings alone. Therefore trial court erred in dismissing for lack of jurisdiction.

International Association of Machinists, AFL–CIO v. Central Airlines 372 U.S. 682: Opinion by White. A suit to enforce an award of an airline system board of adjustment (in favor of the union) is a suit arising under the laws of the United States under 28 U.S.C. § 1331 or a suit arising under a law regulating commerce under 28 U.S.C. § 1337.

Basham v. Pennsylvania Railroad Co. 372 U.S. 699: Per Curiam. There was evidence to support the jury's verdict for the employee in this case under FELA. (Harlan dissenting).

Brotherhood of Locomotive Engineers v. *Louisville & Nashville RR Co.* 373 U.S. 33: Opinion by Stewart, Black Dissented, *Goldberg*, with Douglas dissenting. Held: Under the Railway Labor Act, the union could not legally strike for the purpose of enforcing its interpetation of the National Railroad Adjustment Board's money award; the union must utilize the judicial enforcement procedure provided by the act; and therefore the District Court properly enjoined the threatened strike. (Goldberg: I cannot believe that Congress intended that the statute operate in a way which creates such an unfair imbalance, if not outright clear advantage in favor of the carrier and against the employee and his union. The Court's result here means that on all coney claims, the award of the Board is final and binding and not subject to further review or challenge if the claimant loses, but it is subject to de novo review and trial at the sole behest of the employer, if the employer loses.)

NLRB v. Eire Resistor Corp. 373 U.S. 221: Opinion by White, Harlan concurring. Even in absence of a finding of specific illegal intent and notwithstanding the employers' claim that his action was necessary to continue his operations during a strike, the NRLB was justified in finding that it was a violation of § 8(a) of the NLRA for the employer to discriminate between employees who struck and employees who worked during a strike by awarding an additional senority credit to replacement of strikers and to those who returned to work before end of strike.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees v. Allen 373 U.S. 113: Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Reed v. The Yaka 373 U.S. 410: Opinion by Black; Harlan, with Stewart Dissenting. Employee was not barred by the Harbor Workers' Compensation Act from relying on the corporation's liability as a shipowner pro hac vice for the ship's unseaworthiness in order to support his libel in rem against the ship.

Local 100, United Association of Journeymen & Apprentices v. Borden 373 U.S. 690: Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Local No. 207, International Association of Bridge, Structural and Ornamental Iron Workers Union, v. Perko 373 U.S. 701: Justice Goldberg did not participate. AFL–CIO as amicus curiae.

NLRB v. General Motors Corp. 373 U.S. 734; Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Retail Clerks International Association, Local 1625, AFL–CIO v. Shermerhorn 373 U.S. 746; Justice Goldberg did not participate. AFL–CIO as amicus curiae.

Division 1287, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America v. Missouri 374 U.S. 74: Opinion by Stewart. AFL–CIO as amicus curiae. Proceeding under a Missouri statute, the Governor of Missouri proclaimed that the public interest, health, and welfare were jeopardized by a threatened strike against a public transit company and issued executive orders taking possession of the company and

directing that it continue operations. The state court enjoined the strike. Held; the state's involvement in the company fell far short of creating a state owned and operated utility whose labor relations are excluded from the coverage of the NLRA. The state statute is in conflict with the NLRA and cannot stand under the Supremacy clause.

PARTICIPATION OF JUSTICE MARSHALL IN RACIAL DISCRIMINATION CASES

Coleman v. Alabama [exclusion of Negroes from jury] 389 U.S. 22.

Jones v. Georgia [exclusion of Negroes from jury] 389 U.S. 24.

Sims v. Georgia [exclusion of Negroes from jury] 389 U.S. 404.

Lee v. Washington [racial discrimination in prisons] 390 U.S. 333.

Green v. County School Board of New Kent County [school desegregation] 391 U.S. 430.

Raney v. Board of Education of the Gould School District [school desegregation] 391 U.S. 443.

Monroe v. Board of Commissioners of the City of Jackson [school desegregation] 391 U.S. 450.

Jones v. Mayer Co. [racial discrimination in housing] 392 U.S. 409.

Hunter v. Erickson [fair housing ordinance] 393 U.S. 385.

Gregory v. Chicago [civil rights demonstration] 394 U.S. 111.

Daniel v. Paul [racial discrimination in private clubs] 395 U.S. 298.

Mr. FANNIN. Mr. President, today the Indianapolis Star printed a most cogent editorial which pertains to the matter before the Senate.

This editorial analyzes the problem and gives recognition to the contribution many of my colleagues have made to this debate.

The writer of this editorial makes the same point, in regard to the testimony of Union Attorney John Bolt Culbertson, which I made on Tuesday. His integrity is above the question of an admitted adversary.

I ask unanimous consent that the editorial to which I have referred from this great Indiana newspaper be printed in the RECORD.

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

ABSOLUTELY HONEST

Earlier this week, Senator William B. Spong, Jr. (D-Va.), announced his intention to vote for confirmation of President Nixon's nomination of Judge Clement F. Haynsworth, Jr. to the Supreme Court.

Senator Spong, previously undecided on the issue, told the Senate questions concerning Haynsworth's ethics because of his sitting on cases involving companies in which he had a financial interest had not been substantiated.

At the same time, Representative David W. Dennis (R-Ind.) released a statement citing testimony before the Senate Judiciary Committee by John Bolt Culbertson, a South Carolina lawyer and long-time member of Americans for Democratic Action who has been acquainted with Haynsworth for 30 years. According to Dennis' statement, Culbertson testified concerning Haynsworth: "He is absolutely honest. He has impeccable integrity. He is a man whose word I would believe about anything."

In his statement, Representative Dennis says: "In contrast to such positive endorsements, Judge Haynsworth's detractors never venture to say that he is dishonest. They speak vaguely and slurringly about 'suspicion' or 'appearance' of impropriety. This is a typical tactic of those who have no convincing facts."

During the current Senate debate on Haynsworth's nomination, another previously undecided senator, Senator Winston L. Prouty (R-Vt.) said: "The blizzard of accusations against Judge Haynsworth melts quickly under close scrutiny." He termed the opposition to Haynsworth, "more on political grounds than ethical grounds and more emotional than reasoned."

True. It should be understood, however, that those pitted against Haynsworth's confirmation, motivated by dogmatic persuasions and ideologies of the most compelling kind, have been engaged in a tireless propaganda campaign that they are determined to put across by any means whatever.

By constant repetition of sly aspersions and innuendo, they have successfully contrived a thesis, imaginary as it is, that "public confidence in the Supreme Court would be adversely affected" by seating Haynsworth. And, though totally lacking in substance, this fabrication has so insinuated itself into the minds of a member of senators and has made such inroads on the public thought that the nation stands a fair chance of being denied the services of a thoroughly reputable, eminently qualified jurist simply because he is a good man.

That is exactly Haynsworth's trouble. He is a good man. He is a hard worker. He has paid attention to business and become an expert in his field. He has been thrifty and invested his savings wisely. His judicial decisions reflect a devotion to the law, never to preconceived notions. His avocations are simple and harmless. He is a thoroughly decent, respectable person. He represents those virtues that are properly thought to be typically American.

But that is precisely the kind of person his detractors shudder to think of on the high court where his voice may be counted on to be heard on the side of justice, fair dealing, common sense and a treatment of issues based on a well-defined system of ethics.

Over the last 30 years, various liberal and leftwing groups markedly a minority of the American people but closely united and able to lobby in commanding, articulate terms, have been outstandingly successful in securing a majority of justices on the Supreme Court on which they could depend to dispense justice to a very large extent as they thought right and proper. To these groups Haynsworth represents a threat of the first water, one to be eliminated by any means at their disposal.

Mr. FANNIN. Mr. President, I again express my support of Judge Haynsworth's nomination.

HAYNSWORTH'S CRIMINAL DECISIONS

Mr. DOLE. Mr. President, I have previously announced my position with reference to Judge Haynsworth, and that I intend to vote for his confirmation. I have felt for some time that perhaps those of us who support Judge Haynsworth have perhaps been too long on the defensive and not enough on the offensive; and I wish to point out very briefly some of the areas where I believe Judge Haynsworth has been a trailblazer and a pacesetter.

First of all, I think one illustration of Judge Haynsworth's evenhanded, constructive and unbiased approach to the law is his treatment of the law of criminal procedure. I point out, for anyone who may be interested, that most of this material is set forth with great detail in the statement by Prof. Charles Wright, who for 20 years has been a scholar with reference to Federal cases, who has followed the career of Judge Haynsworth very carefully—he is now a law professor at the University of Texas—and whose testimony is set forth in great detail starting on page 591 of the record of the hearings. That is where most of my material was garnered.

He states:

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. . . .

Let me give illustrations of several cases that support this conclusion.

Judge Haynsworth has done much to make the writ of habeas corpus freely available to those who claim they have been denied their constitutional rights. Professor Wright cites specifically the case of *Rowe* v. *Peyton*, 383 F. 2d 709 (4th Cir. 1967), aff'd 391 U.S. 54 (1968) the fourth circuit was asked to consider the vitality of the 1934 Supreme Court decision, McNally against Hill, which precluded a habeas corpus action against a consecutive sentence to be served in the future.

In other words, under that decision, a prisoner had to wait until he had served one sentence, and then served another sentence and perhaps a third, before they would hear a petition for a writ of habeas corpus. In a 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, the 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.

I read the following quotation from the opinion written by Judge Haynsworth to illustrate that he is a forward-looking man, that he is admirably fitted for the job, and that he is a scholar.

He stated:

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)

He also states, in the same opinion:

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 liklihood 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)

In *United States* v. *Chandler*, 393 F. 2d 920 (1968), the fourth circuit sat en banc

to consider the appropriate test to govern the defense of insanity, and thus to determine criminal responsibility. After surveying the growth of the insanity doctrine in England and the United States, Judge Haynsworth concluded that the recent standards formulated by the American Law Institute constituted the best expression of such a test, stating:

Endorsement of the American Law Institute formula solves some problems. It is an advance toward the avoidance of retributive incarceration of those not morally responsible for their conduct and toward assuring for them institutional care with psychiatric and related services. (at 928)

With appropriate balance between cognition and volition, it demands an unrestricted inquiry into the whole personality of a defendant who surmounts the threshold question of his responsibility. (at 926)

The opinion written by Judge Haynsworth declined, however, to "fall into the egregious error of the last century" by mandating that a trial judge instruct the jury on the issue of mental responsibility in any set or specific terms. The opinion expressly permits judges to depart from the ALI formula in particular cases deemed appropriate and thus leaves room for constructive innovation and improvement, stating:

For the present, however, we move within the existing framework of the law with awareness that no judicial response to the problem today is perfect and need not endure beyond the availability of more acceptable solutions. (at 928)

We should not prescribe for invariable use a form of words which may be less appropriate than another in the light of the testimony in a particular case and which might tend to live on long after more rational solutions have been uncovered. (at 927)

Observing that Federal statutes provide for civil commitment in the case of a defendant acquitted because of insanity only in the District of Columbia, Judge Haynsworth urged Congress to enact legislation providing for a similar system for the Federal courts generally. Judge Haynsworth's opinion clearly represents a valuable contribution to the law in this field, and puts to rest any doubts as to the judge's capacity for creative legal thinking, combined with a high degree of scholarship.

In *Hayden* v. *Warden*, 363 F. 2d 647, 657 (4th Cir. 1966), reversed, 387 U.S. 294 (1967), the majority held that the defendant's State court conviction for robbery with a deadly weapon had to be reversed because the prosecution had introduced into evidence articles of clothing worn by the defendant during the crime. The court relied upon early Supreme Court decisions holding that items of evidential value only, as opposed to the instrumentalities of a crime, could not be the subject of a valid search and seizure under the fourth amendment.

On petition for rehearing en banc Judge Haynsworth, who did not sit on the original panel which decided this case, wrote a separate opinion joining the other members of the court in denying the petition. There Judge Haynsworth indicated his disagreement with the majority of the court in its adherence to the old rule that "mere evidence" may not be the object of a lawful search, and the Supreme Court, in reversing the decision, agreed with him.

Judge Haynsworth reasoned that practical considerations of law enforcement dictated a "stretching" of the term "instrumentalities" to include articles of clothing seized in the course of a reasonable search. As a practical matter, the "mere evidence" rule was a needless hobble on the police while at the same time it gave no substantial protection to the right of the people to be secure from unreasonable searches. Judge Haynsworth stated:

With the amendment's proscription of unreasonable searches and unreasonable seizures in mind, I can find nothing in what the Supreme Court has done and said that requires the rejection from evidence of these articles of clothing reasonably seized in the course of a search, which, concededly, was reasonable and lawful. We are not instructed to apply the underlying rule of reasonableness in an unreasonable manner. (658)

Again, in my opinion, and in the opinion, I might add, of Professor Wright, this case illustrates Judge Haynsworth's ability to recognize, based upon the application of reason and society's experience, rules of law which no longer serve a justifiable function today. Judge Haynsworth's practical approach also reveals his recognition of the importance of law enforcement to all parts of society. As Professor Wright stated:

It is not a game in which the police are to be called "out" for failure to touch every base.

This aspect of Judge Haynsworth's judicial philosophy is illustrated by his deference to the factual conclusions of a jury or trial judge, who have heard the actual testimony and weighted the credibility of witnesses. While demonstrating a sensitivity to the need for fundamental fairness in criminal procedure, Judge Haynsworth is not one who favors release of the guilty on technical and insubstantial grounds. In *Outing* v. *North Carolina*, 383 F. 2d 892 (4th Cir. 1967) Judge Haynsworth stated:

The ultimate inference was initially for the District Judge to draw. His ultimate finding is not clearly erroneous as an inference of fact, and it was uninfluenced by any erroneous view of the law. It, as well as the subsidiary findings of fact, was made by the District Judge after observing the witnesses. Since that ultimate inference of voluntariness was a permissible inference, we accept it. (at 896).

Then there is another field I think holds some promise and some hope, and should demonstrate to those who have not made up their minds that we have here a forward-looking nominee for this office. These two final opinions of Judge Haynsworth are noteworthy principally because of the insight which they give into the Judge's substantive views. The Supreme Court has been criticized for failure to state and apply a definition of obscenity which would, in practice, give society some measure of protection against patently offensive publications. Judge Haynsworth has not felt himself so hobbled. In *United States* v. *392 Copies of Magazine Entitled "Exclusive,"* 373 F. 2d 633 (4th Cir. 1967) Judge Haynsworth wrote the opinion holding a variety of magazines to be obscene and thus properly seized by customs officials, stating:

Exclusive is a collection of photographs of young women. In most of them, long stockings and garter belts are employed to frame the pubic area and to focus attention upon it. A suggestion of masochism is sought by the use in many of the pictures of chains binding the model's wrists and ankles. Some of the seated models, squarely facing the camera, have their knees and legs widespread in order to reveal the genital area in its entirety. * * * We agree with the District Court that these apparently unretouched pictures of young women, posed as they are, are patently offensive and that the Magazine *Exclusive* is obscene. (at 634)

Similarly in *United States* v. *56 Cartons Containing 19,500 Copies of "Hellenic Sun"*, 373 F. 2d 635 (4th Cir. 1967) Judge Haynsworth's opinion found that the procedures set forth in the Federal customs laws for reviewing potentially obscene materials were not constitutionally deficient as a prior restraint on expression, since the statutory scheme called for a prompt administrative resolution of the obscenity question. Dealing with the specific material at hand, the opinion found that the magazines were devoted to pictures of male nudes, with the camera's interest languished on the genitals, and had a prurient appeal to male homosexuals. Judge Haynsworth deemed the magazines obscene under the Supreme Court's prevailing standards, notwithstanding the presence of innocuous articles in the magazines concerning various aspects of nudism, which articles the judge termed merely "fillers." The opinion stated:

In the composition of the photographs, the genitals of the models are the focal points of the pictures. * * * Raw in the extreme, and with no redeeming attribute, the normal male, if Dr. Kinsey will permit us to retain a belief there is such a thing, can view them only with revulsion. * * * Other evidence was introduced which indicated that the importer intended to distribute the magazine among male homosexuals. * * * On this showing and for the reasons carefully discussed by the District Court, we hesitatingly affirm its conclusion that these magazines are obscene. (at 640)

The Supreme Court reversed Judge Haynsworth's decisions in both "Exclusive" and "Hellenic Sun", 389 U.S. 47, 389 U.S. 50, in *per curiam* decisions citing *Redrup* v. *State of New York*, 386 U.S. 767 (1967). In Redrup the Supreme Court, with Justices Harlan and Clark dissenting, the majority acknowledged that the Supreme Court was completely fragmented and divided on the issue of obscenity, stating:

Two members of the Court have consistently adhered to the view that a State is utterly without power to suppress, control, or punish the distribution of any writings or pictures upon the ground of their "obscenity." A third has held to the opinion that a State's power in this area is narrowly limited to a distinct and clearly identifiable class of material. Others have subscribed to a not dissimilar standard, holding that a State may not constitutionally inhibit the distribution of literary material as obscene unless "(a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters;

and (c) the material is utterly without redeeming social value." * * * Another Justice has not viewed the "social value" element as an independent factor in the judgment of obscenity. (386 U.S. at 770–71)

I am certain that there are many who feel, as I do, that Judge Haynsworth's scholarly, perceptive decisions, attuned as they are to the present needs of society, clearly indicate the valuable contribution which Judge Haynsworth would make as a Justice of the Supreme Court.

Mr. MATHIAS. Mr. President, one can envy Saul as he traveled the road to Damascus for many reasons, but at this moment I am particularly jealous of the way in which his "decision" was made—in a single, brilliant flash of light. Ever since the President sent to the Senate the nomination of Clement F. Haynsworth, Jr., to be a Justice of the Supreme Court, I have been hoping to find the road to Damascus. Since the way is not in sight, all of us have had to rely instead on a grinding, detailed, intensive personal study of the extensive background and the unfolding developments. It has been one of the most difficult decisions I have been called upon to make during 9 years of service in the Congress.

It is of some value to examine the history of the Senate with regard to such nominations. There has been a suggestion from time to time that active debate over a Supreme Court nomination in some way violates the unwritten law and is unpatriotic if not downright disloyal. History rebuts this charge.

There have been some 133 nominations to the Supreme Court since the adoption of the Constitution. Of these, about 31 have been rejected, withdrawn, or expired. Many of the others were confirmed by rollcall votes in which the Senate divided after discussion and controversy on and off the record. Only a minority of nominations have received unanimous consent without the formality of a rollcall. It is interesting and significant that the latter category includes Justice Abe Fortas whose confirmation was not debated and was agreed to without dissent. Had this not been so, much grief and damage might have been avoided.

The lesson of history is clear. The Senate may and ought to examine every facet of this nomination. We should exhibit great respect for the nominating authority and due regard for the solemnity of the decision. But we should have no hesitation or inhibition in grappling with the facts and in developing conclusions. To avoid this duty on the basis of partisan loyalty or professional etiquette would be to leave a blank page in the history of our time.

There is a further general consideration that applies to most of the incidents that comprise the Haynsworth record. That is the determination of the kind of standard to be applied. Was judicial conduct regulated by one set of principles in 1957 and by another in 1969? This question must be settled to refute the charge that the issues of judicial ethics raised in this instance are an attempt to enforce a rule ex post facto.

In view of the facts, however, it is surprising that this argument has been so seriously considered. The key enactment in Judge Haynsworth's case—the Federal disqualification statute—has been on the books since 1911 and was last amended in 1948. The canons of ethics were first promulgated in 1908. Any Federal judge in doubt on such an ethical question, moreover, could have had recourse to the even earlier examples set by Charles Evans Hughes and Oliver Wendell Holmes, Jr. Both were acutely aware of the necessity to avoid any appearance of impropriety, and although each solved the problem in his own manner, the attitudes of both pointed the way for the modern bench. Chief Justice Hughes conveyed his property to a blind trust and Justice Holmes resorted to disclosure whenever appropriate.

The force of these examples, when fresh and strong, undoubtedly helped to protect the image of the Federal bench. As the years have passed, the need to strengthen existing rules has become more compelling, but the Judicial Conference has backed and filled with a disappointing lack of dedication. Although the principles I am applying in Judge Haynsworth's case have been elaborately established in both canon and statute, I personally favor even more stringent requirements in this area. I have for some time supported legislation requiring disclosure of all outside financial interests by all governmental officials. But until such measure is enacted by the Congress or until the Judicial Conference sets its own house in order, the decision of the Senate in this matter will be influential.

Nonetheless, on the fourth circuit today, it appears that the basic principles are already understood. Judge Harrison L. Winter, of Baltimore, is a colleague of Judge Haynsworth on that court. He appeared before the Senate Judiciary Committee as a proponent of the nomination. His testimony was expert, comprehensive, and obviously intended to be helpful to Judge Haynsworth. The real crunch came when he was asked whether, notwithstanding his admiration and respect for Judge Haynsworth, he would have done those things that Judge Haynsworth had done. He answered:

I would have avoided buying the stock until after the opinion had been filed and the matter had been disposed of. (Hearing Tr. at 241).

In defense of Judge Haynsworth, Judge Winter went on to say that he did not think he would have been legally required to avoid purchase, "since a decision had been reached in the case in my mind." Hearing transcript at 241.

But Judge Winter's personal standard speaks louder than his words in behalf of a colleague. In fact, asked about the problem in abstract terms, he affirmed "the rule of thumb" that a judge "ought not to sit in the case unless there is some exceptional circumstance, and the parties or the counsel for the parties agree that he should sit." Hearing transcript at 260.

It is apparent that the current standard of judicial conduct is appreciated and applies by other Federal judges, including the Fourth Circuit.

II. BRUNSWICK CORP. V. LONG (AND SIMILAR CASES)

Considerable attention was devoted in committee hearings to the case of *Brunswick Corp.* v. *Long*, 392 F. 2d 337 (1967). There are three other instances which are basically similar. For these reasons, I have considered the Brunswick situation very carefully and feel compelled to discuss it in some detail.

A. BRUNSWICK CORP. V. LONG

1. THE SEQUENCE OF EVENTS

Brunswick was docketed in the Fourth Circuit Court of Appeals in May 1967. In October of that year, the case was assigned to a three-judge panel—Circuit Judges Haynsworth and Winter; District Judge Jones, W.D.N.C.

The panel heard oral argument on November 10, 1967, and immediately went into conference to decide the case. The case was not regarded as difficult by the judges, who voted unanimously to affirm the judgment in favor of Brunswick below. Preparation of the opinion was assigned to Judge Winter.

On or at least by Friday, December 15, 1967, Judge Haynsworth had approved a suggestion of his broker to purchase 1,000 shares of Brunswick stock. An appropriate order was entered by the broker on Monday, December 18, 1967, and executed—at $16 per share—December 26, 1967. Parenthetically, the broker had recommended Brunswick purchases to numerous other customers because he felt it was a good investment.

On December 27, 1967, 12 days after Judge Haynsworth approved the purchase of Brunswick stock, Judge Winter circulated the opinion he had prepared. Judge Jones concurred in the draft opinion by letter of December 29, 1967. On or about January 9, 1968, Judge Haynsworth concurred in the circulated draft and submitted a technical memorandum prepared by one of his law clerks. The memorandum dealt with the South Carolina action of "claim and delivery." Judge Winter made minor changes in two pages of the original opinion based on the memorandum; Judge Jones agreed to the revisions by letter of January 26. By letter of January 24, Judge Haynsworth expressed his thanks to Judge Winter for making the revisions.

The clerk of the court of appeals released the written opinion on February 2, 1968.

On March 12, 1968, a petition to extend the time to file a petition for rehearing was filed. The petition was based on the alleged fact that counsel did not receive a copy of the opinion until February 27. Judge Haynsworth forwarded an order of denial of the extension to the clerk on March 26, 1968.

A petition and supplemental petition to reconsider the petition for an extension of time were filed on April 3 and 4, 1968. These papers apparently were misplaced until August 1968, and an order denying them was signed by all three judges and released August 26.

2. THE FEDERAL DISQUALIFICATION STATUTE

The Federal disqualification statute, last amended in 1948, provides as follows:

Any justice or judge of the United States *shall disqualify himself in any case in which he has a substantial interest*, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, *or other proceeding therein*. (28 U.S.C. Sec. 455 (1964); emphasis added)

There are, in my view, two major issues involved in evaluating Judge Haynsworth's participation in Brunswick in light of the statute: First, did his 1,000 shares, purchased for $16,000, constitute a statutory "substantial interest?" And second, if so, did the November 10 conference decision to affirm the district court—before the purchase—make the statute inapplicable?

First. Did the 1,000 shares constitute a statutory "substantial interest?"

There can be little doubt that Judge Haynsworth's holdings in Brunswick constituted a "substantial interest." It is necessary only to consider the views of Assistant Attorney General William H. Rehnquist and legal ethics expert John P. Frank, proponents of the nomination, as well as those of the nominee himself, to reach this conclusion.

In a September 5, 1969, letter to Senator HRUSKA, defending Judge Haynsworth's participation in *Darlington Manufacturing Co.* v. *NLRB*, 325 F. 2d 682 (1963), Mr. Rehnquist made this statement:

The "substantial interest" referred to in the statute . . . is a pecuniary material interest in the outcome of the litigation. The clearest case is one in which the judge is a party to the lawsuit; obviously he may not sit in such a case. *Little different is the case in which the judge owns a significant amount of stock in a corporation which is a party* to a lawsuit before him; he, too, must recuse himself. Parties to lawsuits either win or lose them, in whole or in part, and *it is difficult to conceive of a lawsuit in which* a party, or the *stockholder of a corporate party, does not have a material, pecuniary interest* in the way in which the lawsuit is decided. (Hearing Tr. at 22; emphasis added)

John P. Frank, a prominent attorney acknowledged by proponents and opponents of the nomination as a preeminent expert in legal ethics, testified that "the heavy weight of opinion in America is that if the judge has 'any' interest in a corporation which is a party, he may not sit."—Hearing transcript at 113; single quotation added.

His written statement to the Judiciary Committee noted:

If a judge holds shares in a corporation which is in fact a party before him, *he should disqualify as much as if he himself were a party.*" (Hearing Tr. at 119; emphasis added)

The full context of these quotations is set out in appendix A to my comments.

At this time I ask unanimous consent that appendix A be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MATHIAS. In questioning by Senator BAYH, Mr. Frank reiterated his position. Further, in response to a hypothetical question regarding Brunswick, Mr. Frank stated that the stock involved constituted a holding of a magnitude requiring disqualification. This testimony is set out in full in appendix B.

I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. MATHIAS. I have examined the one case cited by Mr. Frank which differs from the prevailing precedent on disqualification for stock ownership, *Lampert* v. *Hollis Music, Inc.*, 105 F. Supp. 3 (E.D.N.Y. 1952). In that copyright infringement case, plaintiff filed a motion for appointment of a receiver pendente lite. District Judge Byers in his opinion explains the sequence of events:

After the motion papers and briefs were filed, I discovered for the first time that the Radio Corporation of America is one of the defendants. For some years I have owned twenty shares of the common stock of that corporation, which posed the question of my possible duty to impose disqualification to deal with this motion, in view of Title 28 U.S.C.A. § 455 . . . (105 F. Supp. at 5)

Although Judge Byers then ascertained that he held but 20 of 13,881,016 shares, a quantitatively small proportion of those outstanding, "to guard against error in holding this view"—

I notified both attorneys in writing of the stockholding in question, and have been assured by a letter from the plaintiff's attorney that he and his adversary have agreed to request that I decide the motion, and this has been construed as a waiver of any possible statutory objection (105 F Supp. at 5–6; emphasis added).

Although Hollis is cited as the main support for a position stated by Mr. Frank to be in contravention of "the heavy weight of opinion in America," it seems to be of extremely dubious relevance to the Brunswick case. For at no time during the litigation did Judge Haynsworth disclose his much larger holding of 1,000 shares in Brunswick. Had such disclosure been made, we would not have had to engage in such careful scrutiny of Judge Haynsworth's decision to continue in that case.

I have also read Mr. Frank's classic article, "Disqualification of Judges," at 56 Yale L.J. 605, 1947. I find it highly instructive that he states, writing 10 years before Judge Haynsworth's accession to the bench and 20 years before Brunswick, that—

It is now almost universal practice for judges not to sit in cases involving corporations in which they own stock. (56 Yale L.J. at 613).

In addition to the authority of the Assistant Attorney General, Office of Legal Counsel, and Mr. Frank, termed by the President as "the leading authority on conflict-of-interest," the hearing record includes the following colloquy:

Senator MATHIAS. It is a hypothetical question, to which of course there can only be a hypothetical answer, but had you been a stockholder of Brunswick at the beginning of that hearing——

Judge HAYNSWORTH. I would not have sat on it.

Senator MATHIAS. You would not have sat on it at all?

Judge HAYNSWORTH. I would not have sat on it.

Senator MATHIAS. *You consider that your interest was substantial, then?*

Judge HAYNSWORTH. *Yes, I do*, without question, though it was not in the outcome in terms of that, but much more substantial than I think a judge should run the risk of being criticized. (Hearing Tr. at 305; emphasis added)

It thus appears clear that the 1,000 shares of Brunswick constituted a statutory "substantial interest."

We then come to the second part of the question: "If Judge Haynsworth held a statutory 'substantial interest,' did the November 10 conference decision to affirm the district court make the statute inapplicable?"

There is a very ancient law which helps to clarify this case, as ancient as Dr. Bonham's case decided in 1608, in which Lord Coke held that "no man shall be a judge in his own case." This principle has been respected in Anglo-American jurisprudence ever since. See, for example, in re Murchison, 349 U.S. 133, 136 (1955). Disqualification for "interest," defined by Mr. Frank as "a personal involvement in the result, as if the judge had an interest in a property being foreclosed—hearing transcript at 118; written statement—is the basis of 28 U.S.C. 455 (1964). The statute is designed to preserve the integrity of the judicial decisionmaking process.

It has accordingly been suggested that the November 10 conference decision to affirm the district court marked the end of the decisional process, thereby making the statute inapplicable to Judge Haynsworth's December 15 decision to purchase Brunswick stock.

I cannot agree with this viewpoint.

Judge Harrison L. Winter, author of the Brunswick opinion, testified in behalf of Judge Haynsworth. His account of the chronology of the case is included as appendix C.

I ask unanimous consent to have it printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. MATHIAS. Commonsense dictates that the judicial decisionmaking process continues for disqualification purposes at least until a decision is written and made public. It is undisputed that the Brunswick decision was not in any sense public before February 2, 1968, over 1 month after Judge Haynsworth's purchase:

Senator BURDICK. Mr. Chairman, Judge Winter, you gave us a chronology of what happened in this case from November 10, when they had the oral argument until February 2 when the clerk announced the decision to the public. During this period of time no one but the judges knew what the decision was, what the outcome of the case would be?

Judge WINTER. That is correct, sir. The judges and I presume some of the members of their staffs who had been working on this and could not help but know.

Senator BURDICK. But it is a matter of policy that it is not revealed to the public until the decision is announced?

Judge WINTER. It is not revealed to the public until the clerk announces the judgment and the opinion, and this was done on February 2, sir. (Hearing Tr. at 250)

I have no doubt that the time-honored principle that no man shall be a judge in his own case requires that a judge not make a case "his own" at least until a decision has been made and its rationale written and published. The reasoned exposition of a decision is the very essence of the judicial process in this country.

The lack of finality of a decision until it is written and announced is underscored by three possibilities, one of which actually occurred in Brunswick. The record discloses that certain technical changes in the opinion suggested by one of Judge Haynsworth's law clerks were in fact made after Judge Haynsworth's purchase—hearing transcript at 238.

It is also clear that important substantive changes in language could have been made after the purchase. And finally, the possibility of the panel's completely reversing its earlier decision was pointed up by Judge Winter in an exchange with Senator TYDINGS:

How often since you have been on the fourth circuit has a panel to your knowledge changed its mind after an original opinion was agreed upon?

Judge WINTER. Senator Tydings, it would be hard for me to put an exact figure on it. At the moment I think I could recall about a half-dozen instances in all of the 3 years that I have been there. There may have been more. A half-dozen may be a little too generous. There are enough that I am aware that this is a possibility, and freely admit and recognize that it is a possibility, but it does not happen too often. (Hearing Tr. at 250)

The possibility that the panel would subsequently decide completely to reverse its earlier decision was indeed slight. But the argument that Judge Haynsworth was therefore free to purchase the stock at that juncture is no more persuasive to me than an argument that a judge can hold stock in a litigant even during oral argument so long as the likelihood it is very slight that the litigant will win. In both situations, the judicial process is still pending, whatever the probabilities may be.

Judge Haynsworth also participated, after the stock purchase, in formulating and signing an order denying a petition to extend the time for filing a request for rehearing. The denial was mailed to the clerk on March 26, 1968.

On April 3 and 4, 1968, a petition and supplemental petition to reconsider the March 26 action were filed. After apparently being misplaced, those petitions were denied under signature of all three members of the panel in August 1968.

Remarking that the possibilities in Brunswick were "more theoretical than real," Judge Winter nevertheless testified:

It may be fairly stated that a case is never decided finally or never put to rest *until an opinion has been filed, all postopinion motions denied, and the Supreme Court* of the United States *has denied certiorari* . . . (Hearing Tr. at 243; emphasis added).

Whether the Federal statute ceases to apply at publication of the opinion or at the later date of denial of certiorari, it is clear that the prepurchase conference decision of November 10 did not interdict its application to Judge Haynsworth in Brunswick.

In view of this evident inference, Judge Winter, appearing in support of the nominee, had no choice but to concede that the November 10 decision was not final:

Senator BAYH. I do not want to put words in your mouth, but as I recall, you said you thought the court could write a decision which better defined the judicial principles involved than that which had been handed down by the lower court?

Judge WINTER. We were of that view.

Senator BAYH. I think you clarified this by suggesting that there had been a sequence of events in which the various judges had a chance to review the opinion, and *thus it was not finalized on that November 10 date?*

Judge WINTER. *No, it was not, sir.* (Hearing Tr. at 242; emphasis added).

3. CANON 29

In addition to the question of a statutory violation in the Brunswick case, there is also the probability that Judge Haynsworth violated at least one of the canons of judicial ethics. Canon 29 provides in relevant part that a judge "should abstain from performing or taking part in any judicial act in which his personal interests are involved." The American Bar Association Committee on Professional Ethics has ruled under canon 29 that a "judge should not perform a judicial act, involving the exercise of judicial discretion, in a cause in which one of the parties is a corporation in which the judge is a stockholder." In spite of these official promulgations by his professional colleagues, Judge Haynsworth elected to participate in the Brunswick decision in the manner I have described.

B. OTHER CASES

1. MARYLAND CASUALTY CO. CASES

On June 3, 1964, Judge Haynsworth purchased 200 shares of Maryland Casualty Co. stock at $63 per share. On August 17 of that year, the shares were exchanged for 200 shares of convertible preferred and 66⅔ shares of common stock of American General Insurance Co., which had acquired control of Maryland Casualty. Notwithstanding his holdings, Judge Haynsworth sat in *Maryland Casualty Co.* v. *Baldwin*, 357 F. 2d 338 (1966), and *Donohue* v. *Maryland Casualty Co.*, 363 F. 2d 442 (1966).

2. THE GRACE CASE

Similarly, Judge Haynsworth acquired stock in W. R. Grace & Co., in two blocs in 1961 and 1964. While holding this stock, he sat in the case of *Farrow* v. *Grace Lines, Inc.*, 381 F. 2d 380 (1967).

In view of these facts, I am at a loss to understand why Judge Haynsworth wrote the following to Chairman Eastland of the Judiciary Committee:

I have disqualified myself in all cases . . . in which I had a stock interest in a party or in one which would be directly affected by the outcome of the litigation. (Even here, we, on the Fourth Circuit, regard a proportionately insignificant stock interest in a party as not disqualifying if, after being informed of it, the lawyers do not request the substitution of another judge . . .) (Letter to Senator Eastland, September 6, 1969; Hearing Tr. at 28).

III. CANON 26

Canon 26 provides as follows:

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship may warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin. (Emphasis added.)

Although the canon mandates avoidance of investment in enterprises "apt to be involved in litigation," the mere fact that a judge buys stock in a corporation which later is a litigant in his court does not mean that he has committed a breach of ethics. He is required to refrain from purchase only where the corporation is "apt"—where the probability is relatively great—to be a litigant.

Even recognizing this reasonable limitation on canon 26, it is difficult to understand Judge Haynsworth's purchase and retention of stock in a casualty company—Maryland Casualty Co.—after his accession to the bench. I think it may be fairly stated that litigation is inherent in the casualty business and that a judge would and should be aware of that fact. Indeed, Judge Winter sold his stock in casualty insurers on his appointment as a district judge:

Judge WINTER. I mean a typical example of this, at least in my estimation, is if you are a district judge, you do what I did, and that is sell stock in casualty insurers, because you cannot tell who is defending, who is the insurer behind the defender or who is not, and you refrain from going out and buying any other stock in casualty insurers.

Senator ERVIN. Now, I would say not only a judge should abstain from buying interest in a business that is likely to be involved in litigation, but I would say just as a layman he would be a plumb fool if he would buy stock in an organization that is going to be involved in litigation.

Judge WINTER. Except with casualty companies, litigation is a part of their business. (Hearing Tr. at 255.)

By contrast, it is apparent that Mr. Arthur C. McCall, Judge Haynsworth's intimate friend and stockbroker, did not even consider the judge's delicate position as a member of the bench in making stock purchase recommendations:

Senator MATHIAS. Had you ever, as his financial adviser—and let me say, sir, you seem to have been very successful—in the course of this relationship had you ever become aware in any way of the somewhat delicate situation in which a member of the Federal bench is poised, and did this fact enter into your calculations when you made a recommendation to Judge Haynsworth?

Mr. MCCALL. No, sir; I do not think it entered my consideration at all. (Hearing Tr at 269).

IV. TESTIMONY BEFORE THE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

On June 2, 1969, Judge Haynsworth appeared before the Subcommittee on Improvements in Judicial Machinery in the course of hearings on S. 1506, the

Judicial Reform Act. He made this statement to the subcommittee:

Of course, when I went on the bench, I resigned from all such business associations I had, directorships and things of that sort. The only one I retained is the trusteeship of this small foundation which I mentioned in my main statement, and I think that perhaps the best rule for a judge to go by now is to stop doing even that much. (Quoted in Hearing Tr. at 66).

Judge Haynsworth was appointed to the court of appeals in 1957. Yet the minutes of Carolina Vend-A-Matic for its 1963 organizational meeting indicates that Judge Haynsworth was present, that a unanimous ballot was cast for a slate of officers including Judge Haynsworth as vice president, and that Mrs. Haynsworth was elected secretary. As secretary, of course, Mrs. Haynsworth signed the minutes. There is no dispute that Judge Haynsworth was at least a director of Vend-A-Matic for some 6 years after his accession to the bench.

Faced with this apparent contradiction at the Judiciary hearings and asked whether the June 2, 1969, testimony was a mistake, Judge Haynsworth responded thusly:

Judge HAYNSWORTH. 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. (Hearing Tr. at 94).

V. THE "APPEARANCE OF IMPROPRIETY"

Much has been said in the course of this controversy about the "appearance of impropriety." One presumes that this phrase comes from canon 4 of judicial ethics, the so-called Caesar's wife doctrine:

A judge's official conduct should be free from impropriety and *the appearance of impropriety;* he should avoid infractions of law; and *his personal behavior,* not only upon the bench and in his performance of judicial duties, but also in his everyday life, *should be beyond reproach* (emphasis added).

As former Solicitor General Simon E. Sobeloff, now a distinguished fourth circuit colleague of Judge Haynsworth, has observed:

It is a familiar axiom, but worth repeating, that it is not enough for a judge to be impartial; he must also avoid the appearance of partiality. (*Striving for Impartiality in the Federal Courts,* 24 Fed. Bar J. 286 (1964)).

The judiciary, unlike the legislative and executive branches of Government, commands neither money nor manpower. It is, therefore, crucial that it maintain public respect for its integrity. Absent such respect, the judiciary amounts to nothing. Further, judges are the only Federal officers who serve for life and are protected from pay reduction by constitutional command. The special character and role of the judiciary are major reasons for the extraordinary requirement of the appearance of impartiality as well as impartiality in fact.

Equally compelling, of course, is the proposition that our article II responsibility requires us to demand more of opponents of a Supreme Court candidate than innuendo, inaccuracy, and partisan disagreement. "The appearance of impropriety" cannot come to mean the mere presence of derogatory allegations. Nonetheless, a judge undoubtedly can violate this proscription without actually succumbing to the influence of his holdings in a litigant. I assume, in fact, that Judge Haynsworth was not so influenced. Nor is there any persuasive evidence that he was.

Our article II responsibility of advise and consent, however, requires the Senate, like the statute and canons, to demand more of a Supreme Court candidate than mere impartiality in fact. As my distinguished colleague from Delaware (Mr. WILLIAMS) stated yesterday:

The restoraton 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.

* * * * *

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.

VI. RESOLUTION OF DOUBT

During the committee hearings on the nomination, Judge Haynsworth made the following declaration, which is illuminative both of his character as a respected fifth-generation lawyer and of the obligation upon this body:

While I am concerned about myself and my reputation, I much more am concerned about my country and the Supreme Court as an institution, and if there is substantial doubt about the propriety of what I did and my fitness to sit on the Supreme Court, then I hope the Senate will resolve the doubt against me. (Hearing Tr. at 105).

As a member of the bar of the venerable court and of the Senate, I have tried to answer the question, "Is approval of this nomination in the best interest of the Supreme Court and the citizens of this Nation?" After a painstaking review of the entire official and extraofficial record, I have concluded that there is doubt about the propriety of certain of the nominee's actions and that the doubt is substantial.

Up to this point I have not mentioned the question of the nominee's philosophy as reflected in his judicial acts. I do not intend to do so, because it no longer seems necessary. In any event, I would be most reluctant to base a decision on that subject for two reasons. In the first place, the independence of the judiciary is a hard won principle that could be jeopardized if judges are made to feel accountable for their decisions to either the executive or legislative branches of Government. Thus, it would seem undesirable to bring philosophy into a confirmation proceeding, unless it is patently necessary to the determination of the issues raised. Second, as a pragmatic matter, the philosophy of a nominee to the Supreme Court has proved to be a very volatile thing. The men of Cambridge, Sacramento, and Birmingham are not the same after their translation to Washington, and there is no reason to believe that this historical experience would be different in the case of a man from Greenville. And so, Judge Haynsworth's philosophy has played no part in my decision.

A final question that I have considered, however, is the practical effect upon all other Federal judges of a decision by the Senate to condone Judge Haynsworth's failure to abide by even his own stated concept of judicial conduct. Whether or not Judge Haynsworth's lapses were deliberate or inadvertent, and clearly stating that in no case was it necessary to prove a corrupt or dishonest motive, I think the question of the probable impact of his confirmation on judicial standards answers itself: judges across the country will be well aware if the Senate ignores the fact that Judge Haynsworth has done those things he ought not to have done. The only conclusion to which I can bring myself is that his confirmation would lower all judicial standards at a time when the public is anxious to see them raised.

And so I have come to a final and reluctant decision that the integrity of the judicial system at large and the Supreme Court in particular requires that this nominee should not be confirmed. Accordingly, I shall vote "no."

EXHIBIT 1

APPENDIX A—JOHN P. FRANK: EXCERPTS FROM ORAL TESTIMONY AND WRITTEN STATEMENT

In the first place, as I have tried to develop in this memorandum, it is immaterial that Judge Haynsworth was a shareholder in the vending company rather than that he owned it. That doesn't make any difference. The better view is that a shareholder stands in the same position as his corporation. And the rule is in the majority of cases, there are a few exceptions, apparently the Fourth Circuit makes some small exception, but the heavy weight of opinion in America is that if the judge has any interest in a corporation which is a party he may not sit.

In the poll which I conducted of all of the State Supreme Court Justices and the senior Circuit Judges of the United States in 1947, all but two of them adopted that view and while there are cases where judges have not sat where they had—for example, there is a case I have cited to you here, a fellow had 20 shares on 13 million and he felt free to sit but the heavy majority view is if he has any stock in a party he does not sit. (Hearing Tr. at 113–14; oral testimony)

* * * * *

For our purposes, it is immaterial that Judge Haynsworth was a shareholder in the vending company rather than owner of the company in a personal proprietary capacity. The law of disqualification, in the heavy majority and clearly better view, treats a shareholder as though he individually were the concern in which he holds shares. In other words, if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party.[10] As my study shows, every state and federal court reporting agrees that if the judge has a pecuniary interest in the party, he may not sit.

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[10] This is the heavy majority rule; see cases collected at Note, 48 A.L.R. 617, updated in a comprehensive collection at 25 A.L.R. 3d 1331. There is some refinements (sic) where the holding is very small; see *e.g., Lampert* v. *Hollis Music, Inc.,* 105 F. Supp. 3 (E.D.N.Y. 1952) (20 shares on 13,881,016). See also my

EXHIBIT 2

APPENDIX B—JOHN P. FRANK: EXCERPTS FROM ORAL TESTIMONY

Senator BAYH. How large is a substantial interest?

Mr. FRANK. I think that generally the better view, Senator, but not the only view, is that if there is any interest it ought to be regarded as a disqualifier. But the word "substantial" is used here to cover the marginal situation of the small stockholdings, let us say, in a corporation, somebody has a few shares of GM, that sort of thing. I have given an illustration in one footnote of a case of a district judge in the second circuit who had, as I said, 20 shares on 13 million and felt thought it wasn't enough.

In my report in 1947, 33 State and Federal courts felt if there was any holding of stock they thought it should disqualify. Two courts thought if the holding was very small they felt it should not disqualify, and you heard Judge Haynsworth state that was the view of the fourth circuit.

Senator BAYH. Then general nationwide authority on substantial interest would be that if you hold stock of any appreciable value in any corporation that is before you, you should automatically disqualify yourself?

Mr. FRANK. Yes, that is certainly my view of it. (Hearing Tr. at 127)

* * * * *

Senator BAYH. Let me ask you about another specific case. *Brunswick Corp. v. Long*, 392 Fed. 2d 348, which was tried last year before Judge Haynsworth in which he sat on that decision and cast a vote for the majority which ruled in favor of Brunswick Corp. In looking at his portfolio of stock I see that he today has 1,000 shares of Brunswick Corp. worth, well, depending upon whose figures you use, I see on a list that was submitted to us $17,500 as of Tuesday, and as of right now it is worth $18.25 a share, so obviously it is worth a little more.

I have not yet checked out whether he did in fact own it last year when this came before him, but if he did is that a sufficient interest that he should have disqualified himself instead of sitting in that case?

Mr. FRANK. It certainly is my view that a judge should not sit in a case in which he owns stock in a party to the case.

Now, as to this particular case, I haven't the faintest idea at all because I never heard of it before.

Senator BAYH. Well, in fairness, I think, we should hear the judge as to whether he owned the stock.

Mr. FRANK. Well——

Senator BAYH. We can check that out, but since you are here now, I wanted to get your opinion of that particular case. (Hearing Tr. at 128)

EXHIBIT 3

APPENDIX C—THE HON. HARRISON L. WINTER: EXCERPTS FROM TESTIMONY RELATING TO CHRONOLOGY IN BRUNSWICK

November 10—February 2

(Hearing transcript at 238–40)

Judge WINTER. As I say, the case was the third case argued and the last case on November 10, and in accordance with our practice, the panel immediately went into conference to decide on the case.

I made a memorandum subsequently of our conference notes, and from it and my own recollection I well remember that this was not a case in which there was any dispute whatsoever among the members of the panel as to its outcome. We were unanimously of the opinion that the district judge should be affirmed.

We gave some serious consideration to affirming, by handing down an order to that effect that date, affirming on the basis of his opinion, but perhaps unfortunately, in the light of hindsight, we thought we could express the legal principle in the case a little better so we concluded to write our own opinion rather than to use his.

In due course, I would say about a week later, the assignment of opinions was made, and the opinion in this case was assigned to me for preparation. I undertook to write the opinion, and according to my file on the 27th of December 1967, I circulated an opinion to Judge Haynsworth and to Judge Jones, and of course in accordance with our practice to all of the other nonsitting judges on our court, since we consider that they have a right to offer comments on a proposed opinion as well as those who participated in the case.

Judge Jones responded by letter dated December 29, and concurred in the opinion as it was submitted. He went back to Richmond for a term of court the first full week of January 1968, and the early part of that week, I cannot fix the precise date, Judge Haynsworth told me that he had examined the opinion. He had one of his law clerks examine it also. And his law clerk thought that there was some inaccuracies in the language which I had used in the opinion, in describing the South Carolina action of claim and delivery.

I might say, sir, that in Maryland there is no similar action of which I am aware, and I had never run across this before, and on a matter of purely local law, it would certainly not be beyond the realm of possibility that I would have characterized it in a manner in which inadvertently might have upset local lawyers and local judges.

In any event, Judge Haynsworth—I expressed interest in examining the memorandum and he gave it to me. Then later that week, and I do have a letter from him to this effect, which he wrote in Richmond, on January 9, 1968. He also handed me back the opinion endorsed with his concurrence, in the form in which it had been originally issued, so that I understood that his concurrence was not in any sense conditioned upon my making the opinion.

In any event, after further study of the memorandum, after I returned to my home office in Baltimore following the conclusion of the term of court, I concluded to make some minor language changes in two pages of the opinion. These I mailed out under date of January 19.

I received acknowledgments from all of the judges on the courts, specifically on January—by letter dated January 24, Judge Haynsworth thanked me for revising these two pages, and said the revisions seemed to him to be entirely accurate and appropriate.

By letter dated January 26, Judge Jones agreed to the revised pages, and authorized their substitution in the copy of the opinion on which he had endorsed his concurrence. By the time I heard from Judge Jones, I had also received acknowledgments (sic) from other judges on the court, and so on the same date, January 26, I mailed the opinion and the copies, and returned the record and the tape of arguments to the clerk * * *.

The clerk would not ordinarily announce the opinion until the judgment in the case was signed, and in those days the judges themselves signed the judgment, so a judgment was prepared and sent to me as the author of the opinion.

I signed the judgment and mailed it to the clerk in Richmond on February 1, according to the acknowledgment from the chief deputy clerk, she announced the opinion and advised counsel the next day.

That, sir, briefly is the chronology of the actual decision and the filing of the opinion in the case. There were, of course, some post-argument motions.

March 12—August

(Hearing transcript of 243–45)

On March 12, 1968—please bear in mind, sir, that after a judgment has been filed in a case of this nature, parties under the rules have a period of 30 days in which to ask the court to reconsider its opinion or its decision. On March 12, 1968, there was filed a petition to extend the time for filing a petition for rehearing.

To summarize its allegations, it was, in effect, that counsel felt that the 30-day period in which to petition for a reexamination of what was decided ought not to be considered as having run against them until they had a copy of the opinion furnished them by the clerk, and they said that one had not been furnished them until February 27, 1968.

A copy of this petition was circulated to the judges who sat on the panel; that is to say, Judge Haynsworth, to me, and to Judge Jones. I received it on the 20th, and under our practice I as the author of the opinion would ordinarily be the moving party in recommending what sort of action ought to be taken on the petition.

I read it and I communicated with Judge Haynsworth and told him that I thought the petition should be denied. He confirmed this to me, and said he agreed. He said he had also talked to the clerk's office, and he had found that although copies of the opinion could be ordered from the clerk's office, that is a Xeroxed copy if somebody wanted it in a hurry, and of course the opinion was on file and was open to inspection by anybody who wanted to walk into the office and look at it, that no effort had been made here to extend, I mean to get a copy or to examine it, in addition to which the counsel had advised the clerk that even if we extended the time in which to file this petition, he was not really sure that he wanted to file a petition for reconsideration, and so he said that he would accept my recommendation that this petition be denied.

I tried to get in touch with Judge Jones, but Judge Jones sits in a district in which he must hold court in several places, and my recollection is that at that time, Asheville is his home station, that he was holding court, I think it is Asheville, in any event he was holding court in Charlotte.

He did not have his papers there. He was on the bench. So after trying to reach him, I prepared an order denying the petition for an extension of time in which to file a petition for rehearing.

At this time we were in the transitional stage of another change in practice. Ordinarily orders of this type would be signed by judges who sat in the particular matter but we wasted so much time circulating orders that we finally concluded if we were in agreement why one judge could sign on behalf of the whole panel.

The practice, however, was new and I was a little bit reluctant to sign myself particularly when I had been sitting with the chief judge as to whether I was robbing him of one of his prerogatives, so I transmitted the order and a covering letter to Judge Haynsworth, and Judge Haynsworth signed the order and forwarded it to the clerk. Of course, copies of this order were sent to everybody, and in the meantime Judge Jones had expressed himself as being in accord with the order.

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own article at 46 *Yale L. J.* 605, 537 (1947), reporting that in 33 state and federal courts there is disqualification in such circumstances, but that 2 state and 2 federal courts reported that disqualification might be waived where the holding was very slight, and 1 federal court reported that a judge had sat where the holding was very slight. Nonetheless, the view is overwhelming. There are also refinements not necessary to be considered here when the stock is held by a member of the judge's family; see Note, 4 *Minn. L. Rev.* 301 (1920). And see illustratively, *Goodman v. Wisconsin Elec. Power Co.*, 248 Wis. 52, 20 N. W. 2d 553 (1945). (Hearing Tr. at 119; written statement)

Senator BAYH. What was the date of that final disposition then, Judge Winter?

Judge WINTER. Just a minute. I have a copy of Judge Haynsworth's transmittal letter to the clerk. It was mailed to the clerk on March 26, 1968. I assume it would be received and entered the next day.

Senator TYDINGS. That is a denial of the order for a rehearing?

Judge WINTER. It was a denial of a petition for an extension of time in which to file a petition for a rehearing, Senator Tydings.

Senator TYDINGS. But in effect it was a denial of a rehearing?

Judge WINTER. Well, no; because there was nothing before us on what the merits of the rehearing was, except to say we do not like what you have decided. I mean you could infer that.

Senator TYDINGS. Is there any other way that the matter could have been brought up before the court of appeals again after that order was denied?

Judge WINTER. Well, this petition could have spelled out the reasons why they thought the decision was wrong, if there were any factual errors in it for false premises, but it did not undertake to do so. However, there was another one which came along some time in April, April 3 and April 4, a petition and a supplemental petition to reconsider the petition to extend the time for filing a petition for rehearing, a very complicated title. In any event, this did suggest, it not only asked us to reconsider our prior refusal to permit such a document to be filed, but it also suggested some reasons as to why the opinion was thought to be wrong.

This apparently got misplaced. The clerk sent the only copy to Judge Haynsworth and I did not know anything about it until I heard from Judge Haynsworth in August of 1968, in which he told me the matter had been misplaced. He commented on what he thought was the lack of meritorious basis for a rehearing, and he had prepared and enclosed an order which he had signed, but which provided for the signature by me and Judge Jones denying the petition not only on procedural grounds, but also on the merits.

Mr. DOLE. Mr. President, will the Senator from Maryland yield?

The PRESIDING OFFICER (Mr. COOK in the chair). Does the Senator from Maryland yield to the Senator from Kansas?

Mr. MATHIAS. I yield.

Mr. DOLE. I have read the Senator's statement with much interest. He has presented it in a forthright way. I recognize this is a difficult decision to make. I am disappointed—but not particularly surprised with the conclusion the Senator from Maryland has reached.

The Senator is apparently troubled with the same case that troubled me and others, and that is the Brunswick case. At least, I concluded, based on the number of pages devoted to the Brunswick case compared to the others, that it was of paramount importance in the Senator reaching his decision.

On Monday, I was impressed by the statement of the Senator from Virginia (Mr. SPONG), who was also troubled by the Brunswick case. He had written a letter in an effort to clarify the Brunswick case to John Frank, who has been quoted by the Senator from Maryland, and also by many of us, in this Chamber.

As I understand it, the response received by the Senator from Virginia from Mr. Frank indicated that there was no law, pertaining to inadvertent acquisition after a decision has been rendered. There was a mistake, and in fact, Judge Haynsworth said as much. Mr. Frank stated he did not believe the action by Judge Haynsworth rose to the level of ethics. That was the conclusion of Mr. Frank, and as I understand, he is regarded as an expert on the question of ethics.

I am wondering whether the Senator from Maryland had an opportunity to review the RECORD on Monday and to read the letter from Mr. Frank to the Senator from Virginia.

Mr. MATHIAS. I was not only aware of it, I also discussed the question and the existence of the letter with the distinguished Senator from Virginia (Mr. SPONG).

I have devoted a considerable amount of time and effort to this somewhat novel question of acquisition in the middle of a case, which, as the letter points out, apparently is a case of first impression. That is why I have devoted so much time to the analysis of it and how it impinges on the law in this case.

Let me say, that, although I have devoted a considerable amount of time to the Brunswick case, I have done so because I think it establishes the principles that apply to the Maryland Casualty cases and the W. R. Grace case.

I think it would be redundant to repeat the detailed application of the same principles to those cases, although I am willing to do it if the Senator from Kansas is willing to stay and go over it with me.

I would further say this: More than what Mr. Frank has said, more than the expert opinion, authorities such as Mr. Frank, I am influenced by what Judge Haynsworth himself has said. He knew what the rules were, as clearly indicated by his letter to Senator EASTLAND. He stated the rule. He simply did not abide by it. And I think that is the ultimate difficulty of this case.

Mr. DOLE. Mr. President, will the Senator yield further?

Mr. MATHIAS. I am happy to.

Mr. DOLE. I am not privileged to be a member of the Judiciary Committee. I understand however that during the course of the hearings it was revealed that Judge Haynsworth had sat on probably 3,000 cases since his appointment by President Eisenhower in 1957. I assume it is possible for a judge, without any effort or intent to profit, to make one mistake in 3,000 cases. He may make as many as three mistakes. He did indicate, and the record is clear, that when the decision was written on November 10, he did not own any Brunswick stock. I think the record is clear on this. So at the time the decision was made, he was not the owner of stock.

So as stated in my statement previously, I give the judge credit for admitting he made a mistake. I assume others have made mistakes that may not be public knowledge yet. Perhaps we have all made mistakes. So I felt that in my heart I should not vote against confirmation of the nomination of Judge Haynsworth because he made one mistake, because after he rendered the decision, not by himself, but with other judges, his broker recommended the stock, 6 weeks later, a motion was filed, and he did not disqualify himself.

I have reviewed the other cases. I understand in some of the cases the court has said that the court has a duty to sit, on the basis that if a judge wanted to excuse himself from sitting on a case, he could always find reasons.

There was a random selection system in the fourth circuit. It was apparently initiated by Judge Haynsworth. It has worked very well. They have avoided at least the temptation to be excused from sitting on cases.

So I say to my friend from Maryland that, of course, we can reach different conclusions, but I trust we are not saying to Judge Haynsworth, "We are going to punish Judge Haynsworth. We are going to make him an example so that other Federal judges in America will never make a mistake."

Perhaps that is what might be concluded from the paragraph at the bottom of page 11, because the Senator from Maryland asked what practical effect this will have on other Federal judges. Apparently the intention is that for this reason we should not confirm the nomination of Judge Haynsworth. If his nomination is not confirmed, it will be an example and a symbol for every other Federal judge in America.

I do not share that view, believing he can make one mistake and still be a great Associate Justice of the Supreme Court.

Mr. MATHIAS. I thank the distinguished Senator from Kansas for his observation. Let me say, of course, it is ridiculous to assume that anybody who is a human being is totally infallible and will not make a mistake. In fact, the existence of the very court Judge Haynsworth now sits on is predicated on the possibility that the judges of the district courts may make mistakes. The existence of the Supreme Court is predicated on the possibility that judges in the fourth circuit may be fallible.

I am indebted to whoever earlier dropped the pencil which I now hold in my hand. Let me say that for the mistakes that he made in the Brunswick case, there was a readily available eraser. If all of those things happened, if the broker called him up, and he forgot he was in the Brunswick case, and he went ahead and bought the stock anyway, he certainly knew, by the time he got around to revising the opinion, that he was deeply in it. It was a simple matter to call the other judges and say, "Look, boys, I have made a mistake. Let us unravel it." It would have taken two calls, one to Judge Jones and one to Judge Winters.

The Senator from Kansas has also raised the point that Judge Haynsworth participated in a large number of cases. It is a large number of cases. He has been an active jurist. But I would refer again to the practice followed by Justice Holmes over an even longer judicial career, which I am sure involved a great many more cases, in which Justice Holmes, to make sure he did not make such a mistake, kept a list of the securities he owned. A former distinguished dean of the Harvard Law School told me the other day he thought some of those lists

still existed, which were kept as mementos by law clerks of Justice Holmes.

So those mistakes, human as they are, are in the first place avoidable; and in the second place, are not irretrievable.

Mr. DOLE. Mr. President, if the Senator will yield further, I feel the Senator from Maryland will agree that Judge Haynsworth is a man of honesty and a man of integrity. The Senator from Maryland did not question his philosophy. I assume, then, the Senator from Maryland says that his nomination should not be confirmed because of what he says is, and what is referred to by others as, his "insensitivity"? Would that be a correct statement?

Mr. MATHIAS. I would go back to the statement with which the distinguished Senator from Kansas took some issue a moment ago, and say it again: that to confirm this nomination would, in my judgment, lower judicial standards at a time when I think we ought to be raising them.

I thank the Senator for his participation.

Mr. EASTLAND. Mr. President, because of the lateness of the hour when the nomination of Judge Haynsworth was called up this past Thursday, I interrupted my remarks on the nomination in order that other Senators be given an opportunity for opening remarks. At this time I would like to resume my remarks on the Haynsworth nomination and ask unanimous consent that the following letters be printed in the RECORD at this point. First, a letter from Mr. Coming B. Gibbs, Jr., a witness who came to Washington in order to testify on Judge Haynsworth's behalf, but who was precluded by the length of the hearings from doing so. Second, a letter from all of the Federal district judges of Maryland expressing complete confidence in Judge Haynsworth, and third, a letter from Congressman JAMES R. MANN, Democrat, Fourth District of South Carolina.

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

GIBSON, GIBBS & KRAWCHECK,
Charleston, S.C., September 5, 1969.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: So that the Committee may know something of the person making this statement, I have included the following introductory comments.

My name is Coming B. Gibbs, Jr. I am a former law clerk to Judge Clement F. Haynsworth, and I am currently practicing law in Charleston, South Carolina as a member of the three man firm of Gibson, Gibbs & Krawcheck. I graduated from St. Marks School in 1954, from Princeton University in 1958 and the University of South Carolina Law School in 1961. From September, 1961 until September, 1962, I was law clerk to Judge Haynsworth. After active duty in the United States Army, I returned to Charleston and practiced law with my father, and, sometime after his death, formed a partnership with Charles M. Gibson and Leonard Krawcheck.

My law practice has been general in character. Together with a fairly active civil and criminal trial practice, I have among my clients the International Longshoremen's Association which I have been representing in litigation concerning attempted organization of warehouse workers of the South Carolina State Ports Authority. With one of my partners, I represented two Catholic Priests charged with contempt of Court because of picketing during the recent hospital strike in Charleston. I, with several other lawyers, organized an O.E.O. funded Legal Services for the Poor corporation, which has been operating successfully for several years, and which, despite initial opposition from a segment of the Charleston Bar, has now been generally accepted as a permanent and valuable addition to the local legal profession. I currently am chairman of its Board of Directors.

I was active in the organization of the Charleston Young Democrats and during the 1964 Presidential campaign I was co-chairman of the Charleston County Johnson-Humphrey effort. I have been active in the Democratic party and in bi-racial matters, among other things participating with a group of lawyers in preserving Negro participation in the Y.W.C.A. I am currently the Secretary-Treasurer of the Charleston County Bar Association and a member of its executive committee.

The foregoing is included here to give this Committee an understanding of a little of my background, and to show something of the great effect a close relationship with Judge Haynsworth had upon a young man with a traditional and conservative background in Charleston, South Carolina.

Judge Haynsworth's qualifications as a Justice of the United States Supreme Court are to me clear and free from doubt. His academic background and history show him to have been a brilliant and conscientious student. As a lawyer, he became senior partner in the largest and most prestigious firm in our state. His decisions as a Court of Appeals Judge are public record and will be discussed by lawyers far more eminent than me.

My thought is that I could be of assistance to the United States Senate in enabling them to understand a little of the personality and character of Judge Haynsworth, without specifically discussing his thoughts and conversations as they related to specific cases pending before the Court of Appeals.

Perhaps his most impressive quality to one who knows him is his compassion. His regard for the individual, in cases involving human rights, civil or criminal, is deep.

On the bench, in a Circuit noted for close scrutiny, sometimes acerbic, of counsel's argument, he has universally been kind and gentle. This winter I was in his Court and young counsel violated almost every rule of proper appellate argument, including not addressing himself to the Court's questions and ignoring the time limit. After a time, Judge Haynsworth with a smile sat back and let the young man finish reading his set speech.

Combined with his kindly and compassionate nature is a considerable sense of humor, mostly dry, but occasionally quite robust. To work with him, he was thoughtful, kindly and considerate. Good work and good ideas were praised and the bad were gently corrected.

For one who has worked with him daily for a year to read, as I have in the press, that he is a racist, is ludicrous. He epitomizes our common law heritage that each man is equal before the law. Without going into specifics, in all the school cases which came before him when I was his clerk, he conscientiously endeavored to apply to complex records the rules laid down by the United States Supreme Court as he understood them.

The similar charges that he has an anti-union bias is also, to me, equally false. During the period I worked for him he had before him many cases involving labor organizations and in all our vigorous give and take, no such thing was manifested.

The one year that I spent as his clerk was the most important educational experience of my life. I learned from him the true meaning of intellectual and legal integrity. He equipped me with, I hope, the ability and certainly the self-confidence, to take part in South Carolina in sometimes unpopular and controversial causes. From him, I was equipped to attempt to cut new ground in our law and to join with a few older lawyers in similar efforts. I believe these other lawyers felt I had been equipped by Judge Haynsworth to work with them.

Speaking for myself, and I think for my colleagues at the bar in South Carolina whose practice has gravitated as has mine, there would be no hesitancy in bringing any matter before Judge Haynsworth. His decisions have and will reflect the thoughtful consideration of a good human being and good lawyer, applying justice with a compassionate heart and an even hand.

I recommend him to you as a man, as a lawyer and as a future great Justice of our Supreme Court.

With best wishes, I am,

COMING B. GIBBS, Jr.

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF MARYLAND,
Baltimore, Md., October 20, 1969.

Hon. CLEMENT F. HAYNSWORTH, Jr.,
Mayflower Hotel,
Washington, D.C.

DEAR JUDGE HAYNSWORTH: All of us have been reading about the recent developments in connection with your nomination, and we want you to know that all of the Judges of our Court have complete confidence in your integrity and ability, and in your fitness to be a Justice of the Supreme Court.

You are free to make such use of this letter as you may desire.

ROSZEL C. THOMSEN,
Chief Judge.
R. DORSEY WATKINS,
U.S. District Judge.
EDWARD S. NORTHROP,
U.S. District Judge.
FRANK A. KAUFMAN,
U.S. District Judge.
ALEXANDER HARVEY, II
U.S. District Judge.

HOUSE OF REPRESENTATIVES,
Washington, D.C., November 10, 1969.

Hon. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: As the time for full Senate consideration of the confirmation of Judge Haynsworth approaches, I wanted to pass on to you a few words of support from this member of the Democratic Party.

Shakespeare could well have been describing Clement Haynsworth when in Scene I, Act 3, of Timon of Athens he wrote, "Every man has his fault, and honesty is his." You and I know that the shrewd, the clever, the unscrupulous, the dishonest, in the judiciary or in politics, have no trouble covering their tracks. On the other hand, he who is inherently honest goes about his duties with no thought in mind but to do fairly and justly, with no search for, or even awareness of, reasons why he should be other than fair and just.

I mentioned my Democratic affiliation to emphasize my feeling that this matter is above party and to form a basis to join mentally with you in agreeing that this is not a decision based upon being "pro" this or "anti" that. I know that you do not regard your decision as one of either politics or advocacy. There are segments of the press, of special interest groups, and of the public which would not recognize that this is one of those rare instances when responsible objectivity and deep conscience are your foundation stones, and the clamor, from whatever source, will be resisted and ignored.

Your position on the confirmation of Judge Haynsworth demonstrates your objectivity and your fearless resistance to those forces that would distort and blacken without conscience in order to promote their special interests. I sincerely believe that your courage

in this instance will further enhance the stature and reputation which you already enjoy.

Respectfully,

JAMES R. MANN,
Member of Congress.

Mr. EASTLAND. Mr. President, the same columnist for the Washington Evening Star who scornfully noted that the President has given "the forgotten American a truly forgettable American" raised another issue that lies shallow beneath the surface of the debates and has been obvious by repeated references and innuendos throughout. On September 17 of this year this columnist's article appeared entitled, "Does Supreme Court Need a Southern Accent?" The article begins with this judgment:

It is quite obvious that Richard Nixon chose Clement Furman Haynsworth Jr. of South Carolina to please the enemies of the Supreme Court rather than its friends.

Its enemies think the court needs a Southerner, and Haynsworth is certainly that, having spent his entire life in Greenville, S.C.

I do not know whether this columnist has more courage or less sense than her associates, but at least this writer was perceptive enough to recognize this underlying motive behind the Haynsworth opposition and to lay it squarely on the line. At least this writer has said what others are embarrassingly reluctant to admit, but extremely anxious to exploit. Witness after witness has pointed up the nominee's Southern background. They have repeatedly, with bitter tone and inflection of voice, referred to the Judge as a "fifth generation South Carolinian." They have emphasized his Southern background in order to exploit the prejudices and resentments that still linger in the minds of some Americans toward the people of that region.

At a press conference a Senator is reported to ask "whether the moral standards of Greenville, S.C., are acceptable to the Nation? Mr. Schlossberg of the UAW said:

His decisions, his investments, his judicial conduct, and his lifetime close association with socially backward, irresponsible, and reactionary economic interests in the South raise very serious doubts concerning his ability to administer justice objectively and impartially.

Even Mr. Rauh became concerned as the undertones of sectional hatred became more and more pronounced by opposition witnesses. Mr. Rauh hastened to say:

The suggestion is sometimes kind of intimated that somebody is against southern judges.

Mr. Rauh hastened to point out that he had no objections to liberal Southern judges such as Judge Brown of the fifth circuit. The junior Senator from Maryland also hastened to add:

I would agree and I think the South, as every part of the country, has the right to be represented on the Supreme Court.

It is not surprising that every citizen of a Southern State is offended and embittered by the privately spoken and publicly insinuated charge that they are precluded by birth from high national office. They recall when Senator John F. Kennedy, while a candidate for our Nation's highest office, pleaded eloquently for fair treatment. He asked that he not be judged as a Catholic candidate, but rather as an American who deserved to be tested on his qualifications. He said:

If I should lose on the real issues, I shall return to my seat in the Senate, satisfied that I have tried my best and was fairly judged. But if this election is decided on the basis that 40 million Americans lost their chance of being President on the day they were baptized, then it is the whole Nation that will be the loser.

Now comes Clement Haynsworth, a candidate for a seat on our Nation's highest court. I submit that he can paraphrase President Kennedy's plea as follows:

"If I should lose on the real issues, I shall return to my seat as chief judge of the Fourth Circuit Court of Appeals, satisfied that I have tried my best and was fairly judged. But if this nomination is decided on the basis that every American from the South has lost his chance to serve on the Supreme Court, then it is the whole Nation that will be the loser."

It is, of course, outrageous that the people of the South should have to plead for fair treatment.

Mr. President, another key to the sectional antagonism aroused by the nomination of Judge Haynsworth appeared in an article by Mr. B. J. Phillips in the September 7 issue of the Washington Post. The article stated that after World War II Judge Haynsworth was engaged "in a lot of legal work behind the scenes which brought the large textile firms in from the North." Questioned about the statement by a Senator opposing the nomination, Judge Haynsworth replied:

Well, beginning shortly after the second world war there began a general industrial expansion in the South. New plants were being built, and not just textiles, all kinds of industry. And many of the concerns interested in locating plants in the State came to me for legal advice. And being in the practice of law, I was not displeased to see them. And I did what I could to help them resolve legal questions which they had. Of course, they had a great many. But I served only as a legal adviser to them with respect to legal questions they would run into in connection with the location or construction of a new plant in my State.

If the implication is that I went out to such people and enticed them into the State, I didn't do that. I was a lawyer, not a salesman.

The repeated references to the loss of Northern industry to the South ran like a broken record throughout the hearings. Typical of these remarks, Mr. Pollock noted:

I might say that listed here are a number of mills that were formerly located in the North, which were under contract with our union and our relationship was excellent.

The sectional animosity ignited by this nomination is deeply rooted in economics, upon the loss of payrolls and union dues. Like all hate, it is rooted in fear—fear of the industrial development in the South to date and its projected development in the future at the expense of northern prosperity.

This resentment exists partially because my section of the Nation has refused to content itself to the role of economic colony of the North, a pastoral state to provide cheap raw materials for Northern industry and a market for Northern products. It has only been with great sacrifice and effort that we have established an industrial base and every effort has been made to stop us, from discriminatory freight rates of yesterday to abolition of tax-exempt industrial bonds today. But we have come a long way from the days of which John F. Kennedy would write:

Vachel Lindsay's poem expressed clearly the helplessness and bitterness with which the South . . . watched the steadily increasing financial domination of the East:

"And all these in their helpless days
By the dour East oppressed,
Mean paternalism,
Making their mistakes for them,
Crucifying half the West,
Till the whole Atlantic coast
Seemed a giant spiders' nest.'"

Mr. President, I am reminded of the story of how Cato, shocked by the rapid recovery of Carthage from the effects of the Hannibalic war and fearful of her economic rivalry with Rome, thereafter concluded every speech with the words:

Ceterum censeo delendam esse Carthaginem—Besides, I think that Carthage must be destroyed.

Mr. President, today the South is no longer ensnared in the economic "spiders nest" of which John Kennedy wrote. Nor will we be destroyed. Nor will our economic progress be thwarted or delayed. If Judge Haynsworth played a substantial role in bringing industry to South Carolina, it was to give his people a better life with more promise and opportunity. It is to his credit and those who resent him for it have not benefited their own people by making Judge Haynsworth the object of their vengeance. But since this has already been done, it is to Judge Haynsworth's favor that he has borne this abuse without complaint, without apparent bitterness and without striking back at his tormentors. As Prometheus withstood his unjust ordeal by vultures on the rocks of the Caucasus, Judge Haynsworth has endured his trial in a manner which proves conclusively the high character and nature of the man.

Some may protest that it is not the origin of Judge Haynsworth's birth that gives rise to their enmity but rather a desire to apply the same test as was applied in the Fortas case. They say their concern springs from a lack of confidence in the court which the Fortas hearing created and compels the extensive investigation, the grueling interrogation, and the demand for public disclosure in this case. Unfortunately for those who advance this justification for their conduct, the Burger hearing stands as an embarrassing contradiction. If their representations are true, why was the interrogation of Justice Burger routine and perfunctory? Why was Justice Burger not requested, required, or compelled to furnish any information or make any disclosure whatsoever? It is true that Justice Burger brought to the committee a reputation as a conservative, but he did not

bring with him a Southern heritage and therein lies the heart of the matter.

Mr. President, it is difficult to review in a comprehensive manner the testimony offered against Judge Haynsworth. I might say that it ran the full spectrum from the absurdly ridiculous to the embarrassing and distasteful. On the same day whites and Negroes were battling in the streets of Pittsburgh over union exclusion of Negro apprentices in the construction trades, Mr. Meany was telling the committee he opposed Judge Haynsworth because:

He has demonstrated indifference to the legitimate aspirations of Negroes.

On another occasion we heard Mr. Randolph Phillips attack the President of the United States, a U.S. Senator, and the nominee in a base and distasteful manner. According to Mr. Phillips:

What we thus have is not a single payoff not a double payoff, not a triple payoff, but a quadruple payoff. Roger Milliken, Strom Thurmond, Clement Haynsworth, Jr., and Richard M. Nixon all win. They win in one of the dirtiest and most sordid political games that has ever been played with judgeships as pawns and poker chips in the history of the Republic.

* * * * *

There is not a single judicial nomination to the Supreme Court of the United States, insofar as I can see by reading the history of the Supreme Court, Senators Hruska, Cook, and Mathias, that has ever been determined by such low principles as the present nomination seems to be.

We heard Mr. Stephen I. Schlossberg of the UAW demonstrate the technique of slander by insinuation and innuendo. We saw Mr. Schlossberg reveal himself as a man without the courage, the honor or simple decency to charge the nominee with improper conduct, but clearly intent upon leaving that impression. Consider, for instance, Mr. Schlossberg's following colloquy with Senator HRUSKA:

Mr. SCHLOSSBERG. I have been told by friends of mine who have studied these cases, the Fortas case and the Haynsworth case, that Haynsworth's conduct makes Fortas look like an altar boy. Since I am obviously not qualified to describe altar boys I cannot judge whether that is an accurate description or not. * * *

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

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

Senator HRUSKA. If he had that much influence and prestige, and if he was possessed of the near omnipotence that you assign to him, why didn't they get more business with the plants of the Deering-Milliken Co.?

Mr. SCHLOSSBERG. I do not know.

Senator HRUSKA. They had them in only three plants out of——

Mr. SCHLOSSBERG. Maybe those were the only connections that Dennis and Haynsworth had, you know. I just do not know.

Senator HRUSKA. They served only three plants in the mills of the Deering, Milliken——

Mr. SCHLOSSBERG. Three or four.

Senator HRUSKA. There were three companies in one of those mills, but it was one building as I understand it.

Mr. SCHLOSSBERG. Right.

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

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

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

Mr. SCHLOSSBERG. I did not say that.

Senator HRUSKA. You just said so.

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

Senator HRUSKA. Do you change that language?

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

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

Mr. SCHLOSSBERG. Right.

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

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

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make that charge.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make the charge that Judge Haynsworth consciously attempted to influence Deering-Milliken with his decision in the *Darlington* case.

Senator HRUSKA. That is good.

Mr. SCHLOSSBERG. I do not make that charge. The charge I make, Senator, and I make it again for about the fifth time, is that he was guilty of serious impropriety; that he misstated, perhaps inadvertently, to this committee, the secrecy of the vending machine business; it was not such a big secret when Wade Dennis was telling people, bragging, that Judge Haynsworth was the first vice president, that Deering-Milliken could have known of it, and that it was improper for him to sit because there was an appearance under canon 4 of impropriety.

Now, I do not say there was any payoff and I want to make that absolutely clear.

I am sure Mr. Schlossberg considered his testimony to be quite clever. However, there is nothing amusing or clever in a disgusting, underhanded effort to smear and discredit and degrade an honorable man with rumor, insinuation, lies, and half-truths. As we read the testimony of Mr. Schlossberg, as we hear Mr. Harris' bragging about destroying the reputation of Judge Parker as an example to others and how he will be glad to reach the same result in this case, as we listen to Mr. Randolph Phillips, we might recall Louis Nizer's summation to the jury in the libel case of Quentin Reynolds against Westbrook Pegler:

What does a defense lawyer do in a case of this kind? He does what Mr. Henry so skillfully did—he attempts from the very first moment to becloud the issue, not to discuss the merits, not to discuss the facts, not to discuss the truth, but to raise every conceivable prejudicial issue he can. I would like to tell you something about an octopus.

When an octopus is attacked by an enemy, it emits a black inky fluid, and the water around it gets very black, and in the confusion the octopus escapes.

In this case from the very first moment . . . until this skillful summation, the defendants emitted black fluid to becloud the issues in this case.

And as we hear the relentless and repetitious campaign of character assassination that went on day after day, we hear another voice from the past, a voice from another day at another Senate hearing. It is the voice of a previously unknown lawyer from Massachusetts whose simple words were the turning point in the career of a U.S. Senator who, even though his cause was right and his motives just, had exceeded the bounds of what the average American considers to be fair play and a fair fight. His words were not spoken in anger or passion but in a manner calm and studied and sincere. The words were these:

Little did I dream you could be so reckless and so cruel as to do an injury to that lad. It is true he is still with Hale & Dorr. It is true that he will continue to be with Hale & Dorr. It is, I regret to say, equally true that I fear he shall always bear a scar needlessly inflicted by you. If it were in my power to forgive you for your reckless cruelty, I will do so. I like to think I am a gentleman, but your forgiveness will have to come from someone other than me. * * *

You have done enough. Have you no sense of decency, sir, at long last? Have you left no sense of decency?

As we read the press clippings and editorials that have appeared in certain quarters throughout these hearings, as we saw the testimony of Judge Harrison Winter headlined and portrayed as an attack upon the judge's character and reputation, as we saw the rumors which were daily attributed to "aides and sources on Capitol Hill," as we saw the headlines announcing discovery of links between Bobby Baker and the nominee, and as we saw and heard the countless other distortions and misrepresentations in our Nation's press, we cannot help but hear the summation of Louis Nizer before the U.S. court of appeals in the case of Quentin Reynolds against Westbrook Pegler as Mr. Nizer told the court:

Reckless attacks equivalent to character assassination have become too frequent an occurrence in personal column editorializing. Newspapers are like cannon. They must not be shot carelessly and with abandon.

This case afforded an opportunity to protect the individual from malicious libel; to inculcate a revived sense of responsibility in newspapers; to encourage the old tradition of checking facts, and to control reckless writers who build circulation by extremism and sensationalism.

It is the misfortune and the tragedy in a case such as this that, as Mr. Nizer says:

Libel seldom causes as much public indignation as it does private anguish.

Now, Mr. President, I do not want to belabor a comparison between the Haynsworth hearing and the Fortas hearing, but there are those who justify their conduct in this matter by saying, We are only giving Haynsworth the same treatment that Fortas got. Thus Mr. Schlossberg, whose testimony certainly needed some moral justification, posed the question as follows:

> The people of this country, the young people, the students, the disillusioned people, the disinherited people, the intellectuals, people in all walks of life, want to know—is a northern liberal judge, a sitting Supreme Court Justice, to be judged by the same standards as a southern conservative or reactionary judge? * * *
>
> People want to know, Is the test the same? Will the standards be the same? Will the same Senators and commentators who demand the purity of one judge demand it also of another?

While it is true that there are striking parallels between the Haynsworth nomination and the nomination of John J. Parker and Louis D. Brandeis, the only parallel with the Fortas case is the proximity of chronology. But for the record, I would like to make the following observations between the Fortas hearings and the Haynsworth hearings.

As I have detailed at length, Judge Haynsworth voluntarily made full disclosure of all his private financial transactions including the income tax returns of both himself and his wife. Justice Fortas made no such disclosure at all, nor was it suggested, requested, required, or compelled by the committee.

A comparison of testimony in these two cases reveals that Judge Haynsworth was open, frank, candid, and forthright in his testimony while Justice Fortas was clever, vague, and evasive.

Judge Haynsworth not only appeared before the committee and answered every single question put to him, but openly and publicly announced his availability to return at the request of any single Senator for further interrogation and on any and all matters concerning his nomination. It will be recalled that one of the most serious questions concerning Justice Fortas was an arrangement with American University, funded by former clients of his firm, where Justice Fortas received substantial fees for a short seminar. This information was not volunteered by Mr. Fortas, but came from independent sources and was substantiated by voluntary testimony by the dean of the law school at American University. The question was raised as to whether this arrangement was a setup designed as a conduit through which funds could be legitimized before being passed to the Justice. Justice Fortas was requested to return to the committee and set the record straight. For reasons best known to himself, reasons which future events would place in clearer perspective, Justice Fortas declined to return for further testimony.

Judge Haynsworth, in addition to filing with the committee all of his financial records and transactions and those of Carolina Vend-A-Matic Co., requested that the complete Justice Department files on the Darlington investigation be submitted to the committee and made available to the public. Despite charges to the contrary, the Justice Department has complied with every reasonable request made of them throughout these hearings. They have been completely open and have attempted to conceal nothing. It will be remembered that in the Fortas case requests were made or subpenas issued for a number of administration employees who declined to appear, nor did the committee see fit upon their refusal to force their exercise of Executive privilege.

As the Haynsworth nomination comes before the Senate for a final vote, there is no one who has or can deny that every fact that could possibly bear upon our consideration of this nominee has been revealed. As we approached a vote on the Fortas case, there was no doubt but that a great deal had been concealed and a general feeling that the damaging evidence against him had only scratched the surface. In any event, we approached the final vote on the Fortas case with a great deal unknown as to the true facts, whereas in this case we know what the facts are and have simply to draw our conclusions from them.

In this case no one has charged or inferred that Judge Haynsworth has, at any time, in any case, profited or hoped to profit personally from anything that he has done. In the Fortas case it was charged that Justice Fortas had courted the favor of the President with the hope of being rewarded with the office of Chief Justice and charged that, in fact, he had been. There was the further charge that Justice Fortas had in fact received what amounted to fees through the arrangement at American University and it was widely believed that Justice Fortas had received either directly or by the diversion of fees to his wife. At any rate, Justice Fortas for reasons best known to himself, but for reasons later understood more easily, declined to make any disclosure in order to set the record straight.

And might I add, Mr. President, another striking dissimilarity in these two hearings. Judge Haynsworth has from the very beginning faced an openly hostile press before these hearings even began. It was common knowledge that many representatives of the news media were out to get the nominee. Many were heard in the open hearing room refer to the judge and the President in disparaging terms before one word of testimony was even heard. In the Fortas case it was quite another thing. In the Fortas case it was not the nominee but members of the committee who were the focus of vilification and attack by the news media. This continued until it was no longer possible, in light of facts revealed, for them to maintain that posture. It was only then, at the 11th hour, that the liberal press began to hedge its bet and question the merits of the nomination.

Mr. President, the Haynsworth nomination has clearly revealed the paranoid psychology that compels the liberal establishment to try to silence every voice that is raised against them and to destroy every man who cannot be counted on 100 percent. I said a paranoid psychology. Why else would labor fear Judge Haynsworth with such intensity on the one hand while on the other hand saying that his position has been reversed in every single case that has gone to the Supreme Court by a unanimous court in nine decisions and with only one dissenting view in the other. Consider the following colloquy between Mr. Harris and Senator McCLELLAN:

> Mr. HARRIS. He voted against the union, in every case he was reversed by the Supreme Court. In every case——
>
> Senator MCCLELLAN. He was not reversed alone. There were several other judges reversed, were there not?
>
> Mr. HARRIS. He got the vote of one Supreme Court Justice, once, Justice Whittaker.
>
> Senator MCCLELLAN. Are you talking about these 10 cases?
>
> Mr. HARRIS. These 10 cases which are all the labor cases he sat on which were reviewed by the Supreme Court.
>
> Senator MCCLELLAN. According to your judgment, he was not even entitled to that, was he?
>
> Mr. HARRIS. No. [Laughter.]
>
> Senator MCCLELLAN. He just cannot do right. Very well.
>
> Mr. HARRIS. But he never got the vote of a single judge, conservative or moderate. Judge Harlan, Judge Clark, Judge White. None of them ever cast a vote with him in a single labor case.
>
> Senator MCCLELLAN. Which clearly indicates to me he is neutral, he has a mind of his own.
>
> Mr. HARRIS. I suggest it indicates two things, that he always holds against union if it is possible to do so and that judged by the standards of the Supreme Court, he was not a very good judge in labor cases because he was reversed all the time, time after time. And not on any five to four basis, either. Unanimously.

Senator HART observed during the hearings that out of 10 labor cases appealed to the Supreme Court, Judge Haynsworth "did manage to pick up one Justice's vote out of I guess 80 or 90 Warren court votes."

Mr. President, do the opponents of Judge Haynsworth have so little faith in the righteousness of the causes they espouse and the logic and reason of their position that they cannot tolerate one dissenting vote?

These hearings call to mind a quote of that great jurist, Judge Learned Hand. Judge Hand warned our people against the same kind of paranoid psychology that seeks to extinguish all dissent. Judge Hand cautioned:

> That community is already in the process of dissolution where each man begins to eye his neighbor as a possible enemy, where nonconformity with the accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists, to win or lose.

Mr. President, I have asked why the leaders of organized labor, for instance, have decided to mount such a vicious attack to silence one voice and to bar one vote from a nine-man court. There is another reason, and these labor leaders have openly acknowledged what it is. They brazenly admit in open hearings that win or lose they intend to make an

example of Judge Parker as a means of intimidating other judges who might aspire to serve on a higher court. They made no effort to conceal it. Consider, for example, the exchange between Senator ERVIN, Mr. Meany, and Mr. Harris concerning the nomination of Judge Parker, of whom even Chief Justice Earl Warren said in 1958:

No judge in the land was more truly distinguished or more sincerely loved. His contemporaries appreciated and honored this man's qualities, and in the judicial history of the nation his great reputation will endure.

The colloquy I refer to is as follows:

Senator ERVIN. Mr. Meany, you say this is the second time in history that the organizations which you represent have opposed the confirmation of a nominee for Supreme Court Justice?

Mr. MEANY. That is my opinion. As far as I can remember.

Senator ERVIN. And the other time, the same organizations opposed the nomination of Judge John J. Parker.

Mr. MEANY. That is right, 1930.

Senator ERVIN. And he was defeated by two votes in the Senate and then continued on the Fourth Circuit Court of Appeals and became one of the most distinguished jurists that North America ever has known, did he not?

Mr. MEANY. As far as I know, your statement is true. He had a change of heart. [Laughter.]

* * * * *

Senator ERVIN. That is all?

Mr. MEANY. Well, that was one of the cases.

Senator ERVIN. If he had not followed the decision of the Supreme Court, he would have been guilty of judicial insubordination, would he not?

Mr. MEANY. I am not a lawyer. I cannot say.

Senator ERVIN. Mr. Harris just explained you are supposed to follow the decisions of the Supreme Court and I think we know that.

Mr. HARRIS. I agree with you that the attack on Judge Parker on that ground was unjustified. But the federation succeeded in blocking his confirmation to the Supreme Court and, as you say, he served for many years thereafter as a prolabor judge and if we can get both of the same two results here we will be happy. [Laughter.]

It takes a peculiar kind of man, inhibited by a special kind of baseness and meanness, to brag about and see humor in the destruction of an acknowledged man of worth. I do not believe the average American citizen would laugh at this sordid testimony. It recalls a passage from Louis Nizer's book "My Life in Court" wherein he discussed the efforts of defense attorneys to laugh down a slander suit in their closing arguments to the jury. As Mr. Nizer points out:

Such an approach, however, is subject to heavy counterfire. If it is possible to demonstrate that the facts have been ignored by the defendants and that they have toyed with the truth, their frivolous approach becomes calloused and offensive. That is why witty summations, which skirt the evidence, have short lives. As soon as they are subjected to analytical sunshine, they dry up. A jury will resent levity when the truth points to tragedy.

And so, Mr. President, I believe the average American, or the forgotten American of whom we have heard so much about of late, will find Mr. Harris' "frivolous approach calloused and offensive" and will resent his sick humor "when the truth points to tragedy." They will resent and feel outraged at Mr. Harris' view of the Parker nomination as they will at his tactics and motives in the Haynsworth nomination. The American people are not amused when an honorable and decent man is subjected to a campaign of slander and abuse as an example to other inferior judges and as a warning to anyone who stands in their way. I believe this is important because if there is any moral issue involved in the Haynsworth nomination, then this is surely it.

I could not state the moral issue which is involved here any more eloquently than was done in the Parker debates by Senator Frederick Huntington Gillett, of Massachusetts, former Speaker of the House of Representatives and noted statesman:

The Senator obviously was not here when I said, some time ago, that the fact that Judge Parker, as a judge of the inferior court, had submitted to the opinion of the Supreme Court, did not at all indicate that that was his opinion, and when he is on the Supreme Bench he might take an entirely different attitude. Now, as a member of the inferior court, he is bound by the decisions of his superiors. Then he will be one of the superiors himself and independently will help make the law.

Why, judges on the Supreme Court develop and change their opinions. I have in mind two very striking illustrations, which I do not think it would be proper for me to name, of judges who, in their course of service, showed a constant trend from their attitudes when they went on the bench, one gradually seeming to become much more conservative and the other appearing to become much more radical.

Such changes we ought to anticipate, and, indeed, we ought to hope of a judge that with his impressive associations and high responsibilities he will grow and develop.

It seems to me, from all I can learn of Judge Parker, that he exceptionally meets those requirements. I appreciate that a great practical argument is used against him. How much it will influence Senators I do not know. From all over the country there have been showering in upon us letters and telegrams from organizations asking us to vote against him. That they will have weight, inasmuch as we are human and many of us candidates for reelection, is inevitable. But I should deeply regret that great organized bodies of voters should be encouraged to think that their selfish, interested wishes should decide who will go upon the Supreme Court rather than the qualifications of the candidate; that no man can be confirmed whose previous acts give them fear that he will decide cases according to his opinion of the law rather than according to popularity with them. That is a blow at the independence of the judiciary and it is a blow at the independence of the Senate.

Every lawyer or judge of an inferior court in the back of whose head lurks the not ignoble ambition that some day he may attain an eminence which will entitle him to be considered for that highest honor to a lawyer, a seat on the Supreme Court, ought not to have impressed upon his mind the suspicion, the degrading suspicion, that not talent and wisdom and courage will win the prize, but deference to the interested wishes of great organizations of voters; that the principles and conduct of the demagogue will unlock the door to the bench; and that the judicial ermine, as too often the political toga, is the reward of obedience to public clamor.

History continues to repeat itself and there are striking similarities between this controversy and the fight to stop the nomination of Judge Parker and Judge Brandeis. There is perhaps another moral issue to be drawn from these controversies. It is whether every young man who aspires to high office, whether in the world of the law or the world of politics, will necessarily conclude that the best avenue to advancement is to avoid controversy of every kind and nature, avoid every cause regardless of its merit, to drift with the tide as it ebbs and flows—in the words of Teddy Roosevelt "to take rank with those poor spirits who neither enjoy much nor suffer much because they live in the grey twilight that knows not victory nor defeat." If we are to open an era in which the politics of vendetta and reprisal are the order of the day, in which every man who has ever committed himself to any cause or idea can expect himself and his family to suffer slander and abuse of petty men, then our country will be the poorer for it and the quality of our public officials and our judges will be lower as the result of it.

This is the fear expressed by that great historian of the Senate, George H. Haynes, in his history of the U.S. Senate, wherein he commented on the significance of the Parker nomination as follows:

But the chief significance of the recent contests in the filling of vacancies upon the Supreme Bench lies not in the struggle between conservatism and liberalism, but in the group pressure which under the Senate's new procedure is likely to determine the fate of nominations. The nominee's entire record gets little chance for fair appraisal. It may prove a more difficult task in the future for the President to find strong men and able jurists, of the caliber of those who have built up the Supreme Court's prestige, who will allow their names to be placed in nomination, if they must first be subjected to an inquisition in committee hearings as to their past records, pertinent or not pertinent to Supreme Court service, as to their personal investments, and as to the opinions which they hold upon complicated and controverted economic and social questions likely to be involved in litigation before the Court, and then must have their nominations made the subject of bitter debate on the floor of the Senate, where racial, sectional, and political considerations may bulk so big that questions of the nominee's character and fitness are half forgotten. Yet it is upon the Senate's verdict as to the nominee's character and fitness that the nation's ultimate reliance must be placed.

Now, Mr. President, Judge Haynsworth's adversaries have sent investigators into South Carolina for weeks poring over this man's life and have investigated his every act with a vengeance. They have interrogated everyone in sight about his life as a man, his career as a lawyer and his tenure as a judge. They have relentlessly sought some incident in his personal or private life or some flaw in his character upon which to destroy him. They have pored over his tax returns, his financial records, the 300 or so cases in which he participated, and have interrogated him at length in search of something with which to discredit him.

And what have they found? Presenting the case against Judge Haynsworth

at its worst the Washington Post of October 9 said:

And so fairly or not, his has become the center of yet another nasty public row, which can do nothing good for the already tarnished reputation of the Supreme Court, however it may be resolved.

Based upon this specious argument the Post suggested that the nominee withdraw for the good of the Court and the country.

The junior Senator from Michigan was quoted in the Evening Star of October 8 as having concluded:

However unfair and however unjust, Judge Haynsworth is not free from suspicion.

The New York Times says:

None of his alleged misdeeds has turned out to be more than an unperceptive man's neglect in which there was neither profit nor, it would seem, the expectation of profit . . .

Another Senator, announcing his vote against confirmation, is quoted as saying:

I believe Judge Haynsworth is an honest man.

Another Senator is quoted as saying he will vote against Judge Haynsworth "in the firm belief that he is an honest judge who has not benefited personally or financially from any of his decisions."

Says another Senator:

However unfair and however unwarranted, Judge Haynsworth is not free from suspicion.

Many Senators announcing their intention to vote against the nominee have cited as their reason his insensitivity to appearances. No one thus far has suggested than any single act in this man's life has been improper, or has been done with the hope or expectation of personal profit or gain whatsoever. The individual views of several Senators acknowledge "that standard is a most exacting one and it is not necessarily a personal reflection on a nominee's accomplishments or integrity if the Senate should find that he fails to meet it." The individual views of another Senator acknowledge that "these views do not suggest that Judge Haynsworth decided cases in a manner designed to enhance his financial interest. Such a charge would be untrue."

And might I add, Mr. President, in my opinion had such a charge been at all reasonable, that charge would have been made.

And so, in a nutshell, the case against Judge Haynsworth, put in the very worst light, boils down to the charge that he has been insensitive to appearances.

Mr. President, I have been in the Senate for many years. I have listened to the arguments furnished on many matters of the most serious nature. But I have never heard the opponents of any nomination rest their case upon such a specious foundation. Had I not heard it, I would not have previously thought that any Senator would consider an argument worthy of the Senate's attention that says, in essence: "Fair or unfair, true or false, when a man is relentlessly attacked by selfish interest groups his nomination should be withdrawn or rejected for the sake of national unity."

The last time anyone had the nerve to present such an argument to the Senate was in the case of Louis D. Brandeis. And once again we seem to hear voices from the past. Listen to the words of Senator John D. Works stating his reasons for opposing the Brandeis nomination:

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

If it were Mr. Brandeis alone that is to be concerned, and it should be believed that this reputation is undeserved and unjust, it should have no weight; but the effect of such an appointment on the court is of much greater importance. To place a man on the Supreme Court Bench who rests under a cloud would be a grievous mistake. As I said in the beginning, a man to be appointed to the exalted and responsible position of justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not his confirmation would be a mistake. It is argued against him that he is not possessed of the judicial temperament. There is just ground for this objection. As some of his friends said he is a radical, and for that reason he has offended the conservatives. That may be no cause of reproach but the temperament that has made him many enemies and brought him under condemnation in the minds of so many people would detract from his usefulness as a judge. . .

And consider the views of Senator W. E. Chilton, concurred in by Senator Duncan W. Fletcher:

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

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

Also consider the views of Senator Thomas J. Walsh:

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

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

It is not charged that he is corrupt, at least by any one not moved by reckless malevolence. The accusations, if they may be so called, relate entirely to alleged disregard of ethical standards in his professional relations. Singularly enough, there is very little opportunity for dispute in respect to the facts constituting the incidents which the committee deemed worthy of its notice.

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

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

As we saw in the Brandeis nomination, the exact argument was made by those seeking to bar him from the Court. And the same devastating rebuttal was offered in reply to them as I offer now in reply to those who fight this nomination.

In conclusion let us analyze the coalition of interests that have made common cause against this nomination. The labor bosses and their allies are against him because they say he is not prolabor. The Negro leaders and their allies say they are against him not because he is anti-Negro but because he has been reluctant to break new constitutional ground in their behalf as a circuit judge. Some are against him because of a sectional hatred that has divided our Nation and poisoned our national life throughout its history. A few—yet powerful and influential men—are against the nominee because they consider this seat as having been established by historical precedent as belonging to one religious faith and, thus regard the nominee as a trespasser and interloper. Still others oppose Judge Haynsworth to avenge Justice Fortas and settle a score, not realizing that vengeance breeds vengeance and the settling of one score opens new scores to be settled. Still others feel they must appear consistent with their opposition to Justice Fortas and find it easier to oppose Judge Haynsworth than to explain the differences in these two cases, even though by doing so they leave a stigma upon the reputation of a decent, honest man.

Now, Mr. President, as the vote on this nomination draws near I would like to recall a story recounted by a young Senator from Massachusetts in a book entitled "Profiles in Courage." This young Senator recounted how Lucius Q. C. Lamar, of Mississippi, was called upon to choose between political expediency and political popularity on a crucial Senate vote. Senator Lamar had even been directed by strongly worded resolutions of the State legislature to work for the

Bland Silver Act and the people of my State had flooded him with letters supporting that position. As the Senator from Massachusetts recounted in the book:

He felt that on this issue it was of particular importance that the South should not follow a narrow sectional course of action.

This young Senator then recounted the speech which Lamar made on the floor of the Senate in defense of his position. It was certainly one of the most powerful and courageous speeches this Chamber ever heard, but more than that, it sets the standard that every Senator should strive for. Senator Lamar said:

Mr. President, between these resolutions and my convictions there is a great gulf. I cannot pass it. . . Upon the youth of my state whom it has been my privilege to assist in education I have always endeavored to impress the belief that truth was better than falsehood, honesty better than policy, courage better than cowardice. Today my lessons confront me. Today I must be true or false, honest or cunning, faithful or unfaithful to my people. Even in this hour of their legislative displeasure and disapprobation, I cannot vote as these resolutions direct.

My reasons for my vote shall be given to my people. Then it will be for them to determine if adherence to my honest convictions has disqualified me from representing them; whether a difference of opinion upon a difficult and complicated subject to which I have given patient, long-continued, conscientious study, to which I have brought entire honesty and singleness of purpose, and upon which I have spent whatever ability God has given me, is now to separate us; . . . but be their present decision what it may, I know that the time is not far distant when they will recognize my action today as wise and just; and, armed with honest convictions of my duty, I shall calmly await the results, believing in the utterance of a great American that "truth is omnipotent, and public justice certain".

In conclusion, Mr. President, I ask that each Senator set a standard for himself which is no less than that which Senator Lamar set for himself. I therefore urge confirmation of this nomination.

Mr. BENNETT. Mr. President, when the clerk comes to my name on the question of approving the nominaton of Judge Clement F. Haynsworth to the Supreme Court, I will vote with a loud and clear "yea."

I cannot escape the feeling that there is a good deal of political maneuvering beyond the charges and countercharges made against the judge.

I think it is unfortunate that many of those leading the fight against Judge Haynsworth have not come forward to announce they are doing so because he is a southern conservative who just might help change the hitherto liberal-leaning makeup of the Supreme Court.

Another argument used against Mr. Haynsworth's confirmation has been the claim that he has voted against organized labor on several occasions, and therefore, should be disqualified from the Supreme Court. This is a disturbing argument. Are those who oppose him on these grounds saying indirectly that to qualify as a justice of the Supreme Court, a man must always have ruled a certain way? In this case it must be favorable to labor. Whatever happened to the time-honored doctrine of judicial balance and independence?

Equally disturbing is the fact that the antilabor bias charged to Judge Haynsworth has not been clearly established. It is bad enough to charge he is antilabor and thus give a special interest group a veto over a Supreme Court nomination, but to make the charge falsely is highly unfortunate. I strongly urge my colleagues in the Senate to reexamine the excellent and well-documented rebuttal of the AFL–CIO appraisal of Judge Haynsworth by Senators HRUSKA and COOK.

I take the liberty of citing again their very helpful and informative summary:

SUMMARY: JUDGE HAYNSWORTH'S LABOR RECORD—A REBUTTAL TO THE AFL–CIO APPRAISAL

I. *The Ten Supreme Court Reversals:* No objective evaluation can conclude that Judge Haynsworth is "anti-labor" as compared with the Supreme Court. Three of the cases involved changes of Congressional and/or Supreme Court policy *subsequent* to the Fourth Circuit's opinion. Two further cases were not "labor-management" cases. In one of the cases, the Supreme Court explicitly stated that its disagreement with the Fourth Circuit was "not large as a practical matter." In *none* of the reversals did the Supreme Court purport to reverse an "anti-labor" decision.

II. *The Divided Fourth Circuit Cases:* The AFL–CIO fails to mention one decision in which Judge Haynsworth dissented *in favor of the union*. The AFL–CIO *falsely labels* as "anti-labor" three cases in which the Fourth Circuit substantially *enforced* NLRB orders in favor of the Union, and four additional cases which are neutral decisions of procedure and evidence issues.

III & IV. *Judge Haynsworth's Undisclosed Pro-Labor Record:* The AFL–CIO completely fails to examine a large body of pro-labor cases in which Judge Haynsworth participated. These include at least *eight* pro-labor opinions *written* by Judge Haynsworth, and an *additional thirty-seven* pro-labor opinions in which Judge Haynsworth *concurred* but did not write an opinion.

The failure of the AFL–CIO to examine this aspect of Judge Haynsworth's labor record is inconsistent with their stated goal of obtaining an "objective" appraisal of Judge Haynsworth's labor views.

V. *The Fourth Circuit's Labor Record:* The suggestion that the Fourth Circuit, and Judge Haynsworth in particular, has consistently opposed the NLRB's efforts to secure worker's rights is demonstrably false.

The Fourth Circuit completely or substantially *enforced* 93 per cent of the NLRB petitions before it in 1968–69, as compared with only 81 per cent for all circuit courts during 1963–68.

I now turn to a few of the specific charges made against Judge Haynsworth by his opponents. To me, these show that opposition to the judge is a smokescreen. It has been argued that on November 13, 1963, the fourth circuit court voted 3 to 2, Haynsworth voting with the majority, to allow the Deering-Milliken Textile Corp. to close one of its plants to avoid unionization there. Because the judge had a one-seventh ownership interest in Carolina Vend-A-Matic Co., then doing $100,000 worth of business with Deering-Milliken, opponents claim he should have disqualified himself from the case. The answer to that charge is plain. Mr. Haynsworth had no duty to disqualify himself, and his role was cleared by his colleagues on the fourth circuit court and by the Justice Department. Even more amazing about the charge is that it fails to take into consideration the fact that Mr. Haynsworth, by voting with the majority, was actually voting against the economic interests of Carolina Vend-A-Matic. To close down the plant would have reduced the vending business available to the Carolina Vend-A-Matic Co.

Another charge was that Judge Haynsworth had committed his personal credit on behalf of Vend-A-Matic in amounts up to $501,987. It was alleged that some of this was done after he became a judge in 1957. The truth of the matter seems to be that Judge Haynsworth never endorsed more than $55,550 for Vend-A-Matic. This is quite a bit less than $501,987. Further, the credit endorsement occurred on February 19, 1957, before Mr. Haynsworth went on the bench, and not after.

Opponents have claimed that the judge had a conflict of interest in 1959 and again in 1961 in cases involving Cone Mills, which also did vending business with Vend-A-Matic.

This trade amounted to $97,367 in 1959, and $174,314 in 1961. Aside from the fact that Judge Haynsworth was not required by law or judical ethics to disqualify himself, it must have been a surprise to those making the charge to learn that in both cases Mr. Haynsworth voted against Cone.

Other charges against Judge Haynsworth included his decisions involving Kent Manufacturing Co. and the Monsanto Chemical Corp. In both cases, it was charged the judge had heard cases while having a related financial interest in the companies involved. Both charges were dropped and the smokescreen cleared a bit when opponents had to admit that the Kent Manufacturing Co. involved in the case was a Maryland fireworks firm and not the Kent Manufacturing Co. of Pennsylvania, which had a subsidiary doing business with Venda-A-Matic. Opponents were so careless in their charges about Monsanto, a company in which Mr. Haynsworth held stock, in that they claimed Monsanto was subsidiary of Olin Mathieson Co. The fact is that Monsanto and Olin are totally unrelated, as pointed out again by the distinguished Senator from Kentucky. Again, the smokescreen was diluted.

I now turn briefly to the question of integrity and judicial ethics. After all of the evidence was in and the hearings were completed, the American Bar Association Committee on the Federal Judiciary met again on October 12, 1969, and reaffirmed its confidence in the nominee. As also pointed out by Senators HRUSKA and COOK, all the other judges of the fourth circuit court of appeals have affirmed their complete faith and confidence in Judge Haynsworth's ability and integrity.

I accept the assessment of Judge Walsh of the ABA, who directly confronted the issue of whether or not Mr. Haynsworth should have participated in the Darlington case in 1963. Judge Walsh said:

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.

Similar questions have been raised by opponents concerning the judge's participation in cases involving subsidiary companies in which he owned an interest. Why, they have asked, did he not avoid any kind of suspicion? Again the facts, as supplied by Senators HRUSKA and COOK, show that the "law requires that when a judge is not legally disqualified he must sit." As I understand the facts, Mr. Haynsworth was not legally disqualified in cases involving subsidiaries.

Mr. President, for myself, I am satisfied that Judge Haynsworth's record, actions, integrity, and honor are quite different than alleged by his opponents.

I call upon my Senate colleagues to reevaluate the available information.

Mr. METCALF. Mr. President——

The PRESIDING OFFICER (Mr. DOLE in the chair). The Senator from Montana.

Mr. METCALF. Will the Senator yield?

Mr. BENNETT. I am happy to yield to the Senator from Montana.

Mr. METCALF. In my discussion of Judge Haynsworth, I did not go into the question of ethics and disqualification very much. But I have sat on an appellate court, and I feel, and I ask the Senator from Utah whether he does not agree with me, that the canons of the bar association, which say that a judge should not only consider whether or not he is legally disqualified, but whether he has the appearance of disqualification, is the so-called sensitive area we are entering into.

We are not indicting Judge Haynsworth; we are not impeaching Judge Haynsworth; we are not prosecuting Judge Haynsworth. We are just asking, should this man, who has failed to react with sensitivity to the appearance of an interest, be elevated to the Supreme Court of the United States?

Mr. BENNETT. The Senator from Utah is not an attorney; therefore, he is not an authority on the canons of ethics of the bar. The Senator from Montana states he is not indicting the judge, and he is not doing a lot of other things to the judge. What is going on here reminds me of the old story of the fisherman who, having caught a fish, and the fish was squirming in his hands, said to him, "Don't worry, little fish. All I am going to do is gut you."

It seems to me that this proceeding is destroying Judge Haynsworth.

Mr. METCALF. We are not gutting Judge Haynsworth. We are not destroying him. I think that Judge Haynsworth can go back home and grow his camellias and, as chief judge of the fourth circuit, hand down his opinions for or against civil rights or for or against labor, as his conscience dictates. Nobody is criticizing that. We simply do not want to elevate him to the Supreme Court of the United States.

Mr. BENNETT. Does the Senator say he is not sufficiently sensitive, but he is perfectly willing to let him be insensitive on the fourth circuit court; that it requires a special kind of sensitivity for the Supreme Court?

Mr. METCALF. There is an appeal from the fourth circuit to the Supreme Court of the United States; but if we confirm his nomination we elevate him to a court from which there is no appeal.

Mr. BENNETT. This will not be the first time that a man has sat on the Supreme Court whose sensitivity has been questioned in this body.

Mr. METCALF. There is no question about that. I am grateful to the Senator for yielding.

Mr. BENNETT. I am happy to yield. But the Senator from Utah, for one, does not feel that this judge is so insensitive that this opportunity should be denied him.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BENNETT. I yield.

Mr. COOK. Mr. President, I was very interested in the question just asked, because, as Members of the Senate, we create the laws by which these judges must sit.

Mr. BENNETT. The Senator is correct.

Mr. COOK. And we sit here and talk about insensitivity and talk about the understanding that determines what we must do. Does not the Senator feel that we as Senators have an obligation to put into operation the theories or suggestions that we might have?

Mr. BENNETT. That is our obligation and duty.

Mr. COOK. Mr. President, I should like to read to the Senate what the law is, because I was interested in the question just asked.

The law states:

> Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest.

There are those that say that this insensitivity should go to any interest at all. Yet, that is not the law. Does the Senator agree?

Mr. BENNETT. Mr. President, as I have indicated, I am not a member of the bar. So my impression is that of a layman.

Mr. COOK. Mr. President, I was interested in the question asked by the Senator from Montana because somehow or other the code of judicial ethics applies to Judge Haynsworth, but the law established by the Congress of the United States does not when it seems to fit their convenience.

I raise that point with the distinguished Senator because we talk about insensitivity and when we discuss the impartiality that is supposed to be exhibited by a judge. I listened intently to the remarks of the distinguished Senator from Montana the other day, and he discussed this very thing, the fact that there must be this impartiality, that he must sit and not show any partiality whatsoever. However, the only thing that was wrong in the judgment of the Senator from Montana was that in the eyes of the Senator from Montana, Judge Haynsworth was an antilabor judge and reflected it in decisions.

The only thing I reiterate to the Senator from Utah is that we seem to be getting into the situation in the minds of some Senators of the old preacher who had two wives. He lost one and then married another one. He wrote in his will, "Bury me between them, but if you don't mind, tip me a little toward one of them."

When we discuss the question of sensitivity, I wonder if we are willing to make a judgment based on the law or on some other means.

Mr. BENNETT. Mr. President, the Senator from Utah feels a little like a tennis ball in a match.

Mr. METCALF. Mr. President, will the Senator lean this way a moment?

Mr. BENNETT. Mr. President, I will yield a minute and then will finish my statement.

Mr. METCALF. Mr. President, the only point is that if the question involved the impeachment of the judge, the reading of the law would be the only thing I would be concerned with. I would certainly concur with the distinguished Senator from Kentucky. However, we have canons of judicial ethics, and we have other criteria that are above and beyond and over the law. And those canons of judicial ethics are the criteria for the determination of whether a judge has the excellence and the superiority that should elevate him to be one of the nine members of the Supreme Court. One of the canons involves the avoidance of impropriety. And this is the canon that Judge Haynsworth has failed to observe. And this is the canon concerning which, when I outlined my discussion of labor law, I said that a labor man would look at the 10 rulings against labor and none on the other side and say, "Well, here is a man who has not avoided impropriety."

This is the distinction I am trying to make.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BENNETT. Mr. President, this is the last shot and then the game is over.

Mr. COOK. Mr. President, if the Senator from Montana is saying that the judge lacked propriety in the minds of a labor man because 10 decisions went to the Supreme Court of the United States from his court and were reversed, then I must confess that I am rather surprised.

Mr. METCALF. Ten decisions of Judge Haynsworth.

Mr. COOK. Mr. President, I think when we do this, we must evaluate not only his record in the Supreme Court, but also his record at the fourth district level. And if we do not take both of them and look at the overall record, we would be doing any man a tremendous injustice, whether this judge or any other judge.

That is the problem involved in the whole matter.

Mr. METCALF. Mr. President, I thank the Senator from Utah for yielding.

Mr. BENNETT. Mr. President, I realize that other Senators have not spoken and would like to have their turn. I would like to finish my speech and get out of their way as quickly as possible.

Mr. President, to return to my speech, I call upon my colleagues to reevaluate the available information. Let us not make the mistake of judging his nomination on the basis of the initial charges, several of which were admitted to be in error. Let us refrain from calling Judge Haynsworth "antilabor" when the facts show this to be a false accusation. Let us refuse to grant a veto over Supreme Court nominations to the AFL–CIO and other special interest groups. Let us re-

fuse to sacrifice the time-honored principle of judicial independence upon the narrow philosophical ground that says to be appointed to the Supreme Court one must have voted a particular way. Let us refuse to entertain the hollow argument that because the Supreme Court overruled certain opinions by the fourth circuit court in which Judge Haynsworth participated, he is unfit to serve.

At this point, I am led to observe that propriety, like beauty, lies in the eyes of the beholder.

Following this unreasonable logic—and that does not refer to the statement I just made—certain Supreme Court Justices who are often overruled by the majority are also not fit to serve simply because they thought differently on a particular legal issue.

I suppose we should impeach the four Associate Justices of the Court who have frequently dissented in several recent criminal law cases decided by 5 to 4 majority votes. By this same reasoning, I suppose those Senators who are often found voting in the minority are also not fit to serve in this body.

This line of reasoning could go on indefinitely, but it shows, I think, the absurdity of the argument that because some Haynsworth opinions were reversed by the Supreme Court, he is unqualified to sit on that Court.

I am sure many are tempted to draw a comparison between Mr. Haynsworth and the Justice Fortas situation. Since Mr. Fortas is not really an issue here, I will not go into the details of that matter. I would, however, like to draw a brief comparison. When certain actions of Mr. Fortas were questioned, he chose to resign from the Supreme Court rather than explain them. In contrast, Judge Haynsworth has carefully and painstakingly opened his public and private record for the unprecedented scrutiny to which it has been subjected. Seldom has a public servant gone so far in defending his good name and his honor. As far as I am concerned, Mr. President, the Haynsworth record is a good one and certainly justifies Senate approval as an Associate Justice of the Supreme Court. In fact, I feel his qualifications are even better than I had earlier supposed, due to the information which has been presented to refute the unfair and inaccurate attacks, accusations, and smokescreen directed at him.

One final comment, Mr. President. I remain convinced that the Senate should vote for this nomination on its merits. I could follow the mail which I have received from Utah which is running heavily in favor of Judge Haynsworth. However, I came to my present position long before the people of Utah began to react to this matter.

On the other side of the coin, I do not consider a recent mail inquiry to five trial lawyers in the State of Utah a valid measure of the legal opinion in my State or a fair sampling of public opinion generally.

Mr. President, I shall vote to confirm the nomination of Clement F. Haynsworth to be an Associate Justice of the Supreme Court of the United States, and hope that enough of my colleagues in the Senate will join me so that the career that he has had and served with distinction in the fourth circuit may continue in the Highest Court of the land.

Mr. SPONG. Mr. President, earlier in the debate I outlined my views of the role of advise and consent with regard to nominations to the Supreme Court. I stated that I do not believe we should base confirmation or rejection upon how a judge may have ruled in certain cases in which he participated. Also, that preconceived ideas of a man's philosophical, social, and political views are an uncertain basis upon which to predict how one will perform as a Supreme Court Justice. History has demonstrated this.

I believe our examination of a nominee should be limited to his qualifications, background, experience, integrity, and temperament. Demonstrated bias toward anyone in the course of judicial performance, however, goes directly to a nominee's fitness. Lack of prejudice is essential to our very concept of justice.

Earlier this week, the statement of G. W. Foster, Jr., professor of law at the University of Wisconsin, beginning at page 602 of the hearings on the nomination of Clement F. Haynsworth, Jr., was made a part of the record of these debates. Professor Foster has had intimate connection with the formulation of HEW standards, as well as long experience in interpreting judicial decisions involving desegregation of schools. It is appropriate that his views should have been made a part of this debate. His statement to the committee ended as follows:

To sum up: Judge Haynsworth is an intelligent, sensitive, reasoning man. He does not fit among that small handful of front-running federal judges who have consistently made new law in the racial area. He has earned a place, however, among those who serve in the best tradition of the system as pragmatic, open-minded men, neither dogmatic nor doctrinaire. His decisions, including those in the racial area, have been consistent with those of other sensitive and thoughtful judges who faced the same problems at the same time. And it simply cannot be said that his record in the racial field marks him as out of step with the directions of the Warren Court.

Thus the question for me is not whether I would have made another nomination for the Supreme Court. It is rather the question whether Judge Haynsworth possesses the qualities required to become a fine Justice of the Supreme Court. My view is that he will make a first-rate Associate Justice.

I hope this Committee—and later, the Senate itself—will support the nomination of Judge Clement Haynsworth to the Supreme Court of the United States.

A statement was also submitted to the Judiciary Committee by Charles Alan Wright, professor of law at the University of Texas. This statement, in my judgment, is a brilliant and detailed analysis of much of Judge Haynsworth's judicial career.

I ask unanimous consent that the statements of Charles Alan Wright, beginning on page 591 and ending at page 602 of the hearings before the Judiciary Committee on Judge Haynsworth's nomination, be printed in the RECORD and made a part of this debate.

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

STATEMENT OF CHARLES ALAN WRIGHT

My name is Charles Alan Wright. I am Charles T. McCormick Professor of Law at The University of Texas. I come to support the nomination of Judge Haynsworth to the Supreme Court.

For more than twenty years my professional specialty has been observing closely, and teaching and writing about, the work of federal courts. From 1950 to 1955 I was a member of the faculty at the University of Minnesota Law School and I have been at The University of Texas since that time. I was a visiting professor at the University of Pennsylvania Law School in 1959–60, at the Harvard Law School in 1964–65, and at the Yale Law School in 1968–69. I regularly teach courses in Federal Courts and in Constitutional Law, a seminar in Federal Courts, and a seminar on the Supreme Court. Since 1964 I have been a member of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and prior to that time was a member of the Advisory Committee on Civil Rules. I was Reporter for the recently-completed Study of Division of Jurisdiction between State and Federal Courts made by the American Law Institute.

My writings include a seven-volume revision of the Barron and Holtzoff Treatise on Federal Practice and Procedure. That set of books is now being supplanted by a new treatise on the same subject. Publication of the new treatise began in February of this year with my three volumes on criminal practice and procedure, and the first of the volumes on civil litigation, which I am writing in collaboration with Professor Arthur R. Miller, was published in April. In addition I am the author of a one-volume hornbook, *Wright on Federal Courts*, a second edition of which is now at the publisher's, and, in collaboration with two others, am the author of the Fourth Edition of *Cases on Federal Courts*.

With this professional interest, and with these writing commitments, I necessarily study with care all of the decisions of the federal courts, and inevitably form judgments about the personnel of those courts. We are fortunate that federal judges are, on the whole, men of very high caliber and great ability. Among even so able a group, Clement Haynsworth stands out. Long before I ever met him, I had come to admire him from his writings as I had seen them in *Federal Reporter*.

Some of the criticisms of Judge Haynsworth that I have read in the press seem to me to fail to take into account the difference between the role of a Justice of the Supreme Court and that of a judge of an inferior court. In the first place, the nature of the work is different. The Supreme Court today is necessarily a public law Court, with almost all of its time devoted to momentous cases involving the interpretation and application of the Constitution and the statutes of the United States. In a court of appeals, such as the Fourth Circuit, there is much more private litigation, of interest only to the parties in the case, and many more cases of a kind that the Supreme Court rarely reviews, such as the construction of a particular patent, award of compensation in an eminent domain proceeding, the niceties of the Bankruptcy Act, sufficiency of the evidence in a personal injury case, and the meaning of state law in a diversity case. To form a judgment about Judge Haynsworth based only on his opinions in the comparatively few cases in which he has participated that are of the sort he is likely to hear on the Supreme Court is to ignore the vast body of his work and thus to risk forming a mistaken impression of his judicial qualities and of his conception of the role of a judge. To avoid falling into that same error myself, I have gone back in the last several weeks and looked at every opinion in which he has participated, opinions cover-

ing a span of 12 years and 167 volumes of *Federal Reporter*.

Second, it must be remembered that the function of a lower court judge is to apply the law as the Supreme Court has announced it, except for those rare instances in which there is solid reason to believe that the Supreme Court itself would no longer adhere to an old decision. He cannot disregard an authoritative Supreme Court precedent no matter how deeply he may feel that the highest tribunal has erred. At the same time, as Learned Hand once observed, he must be slow to embrace "the exhilarating opportunity of anticipating a doctrine which may be in the womb of time, but whose birth is distant * * *." [*Spector Motor Service* v. *Walsh*, 139 F. 2d 809, 823 (2d Cir. 1944) (dissenting opinion).] The example of John J. Parker shows what a tragic mistake it can be to suppose that the opinions of a conscientious and law-abiding lower court judge necessarily reflect his own understanding of the Constitution and the laws. Even those who think, as I emphatically do not, that it is proper to assess a judge on the basis of whether the results he has reached are in accord with one's own preferences should be careful, in reviewing the record of a lower court judge, to consider particular results in the context of what the law, as the Supreme Court had announced it, was at the time the case came down.

Let me give one example of the point I have just made. In 1960 Judge Haynsworth joined with Judges Sobeloff and Boreman in a short per curiam opinion. A plaintiff was arguing that state law denying an illegitimate child the right to inherit from his father was a denial of the equal protection of the laws to illegitimate persons. The court said that this argument was "so manifestly without merit" that it did not present a substantial federal question and the federal courts had no jurisdiction. [*Walker* v. *Walker*, 274 F. 2d 425 (4th Cir. 1960).] The decision seems strange, and probably wrong, when read today. In the light of the Supreme Court's decision that it is a denial of equal protection to refuse to allow an illegitimate child to recover for the wrongful death of its mother, the argument made to the Fourth Circuit in 1960 today certainly presents at the least a substantial federal question. But the Supreme Court decision did not come down until 1968 [*Levy* v. *Louisiana*, 391 U.S. 68 (1968)], and it is difficult to criticize lower court judges for failing to anticipate, eight years in advance, a Supreme Court decision that, when it finally came down, was criticized by three members of the Supreme Court as a "constitutional curiosit[y]" achieved only by "brute force." [*Id.* at 76.] I suggest the same point is equally applicable in other areas of the law.

There are judges who have been great essayists. We remember persons such as Justice Cardozo and Judge Learned Hand as much for their contributions to literature as for their contributions to law. Judge Haynsworth is not of this number. Very rarely does he indulge himself in a well-turned epigram or in quotable rhetoric. Instead his opinions are direct and lucid explanations of the process by which he has reached a conclusion. He faces squarely the difficulties a case presents but he resists the temptation to speculate about related matters not necessary to decision. There is one case in which, though affirming a decision, he wrote for more than a page about the "slovenly practices in offices of District Attorneys which come to our attention much too frequently" in connection with the drafting of indictments [*United States* v. *Roberts*, 296 F. 2d 198, 201–202 (4th Cir. 1961)], but in this instance he was expressly authorized to speak for all of the judges of the Fourth Circuit, and not merely those on the panel, and the warning he uttered was a useful one in reducing the opportunity for attack in future criminal cases. On reading Judge Haynsworth's opinions I am reminded as Justice Jackson's classic advice to district judges about Judge Learned Hand and his cousin, Judge Augustus Hand. Justice Jackson said; "Always quote Learned and follow Gus." [Quoted in Clark, *Augustus Noble Hand*, 68 HARV.L.REV. 1113, 1114 (1955)]. If Judge Haynsworth's opinions are not quotable, they are easy to follow.

It would be very hard to characterize Judge Haynsworth as a "conservative" or a "liberal" —whatever these terms may mean—because the most striking impression one gets from his writing is of a highly disciplined attempt to apply the law as he understands it, rather than to yield to his own policy preferences. Thus in one case he felt compelled to hold that sovereign immunity barred any relief for a wrong committed by the National Park Service. In doing so, he wrote: "If some of us, appraising the policy considerations, were inclined to assign a more restricted role to the doctrine of sovereign immunity in this area, we could not follow our inclininations when the Supreme Court, clearly and currently, is leading us in the other direction." [*Switzerland Co.* v. *Udall*, 337 F. 2d 56, 61 (4th Cir. 1964).] When the Board of Supervisors of Prince Edward County made midnight disbursements of tuition grants so that the money would be gone before the Fourth Circuit had an opportunity to rule on the legality of this action, Judge Haynsworth thought that their conduct was "unconscionable" and "contemptible," but, unlike the majority of his court, he could not find it "contemptous and punishable as such" since they had violated no court order in distributing the funds. [*Griffith* v. *County School Board of Prince Edward County*, 363 F. 2d 206, 213, 215 (4th Cir. 1966) (dissenting opinion).] Many lawyers would agree.

Judge Haynsworth shows a considerable respect for precedent, and has felt bound by decisions that he thought incorrect [*Eaton* v. *Grubbs*, 329 F. 2d 710, 715 (4th Cir. 1964)], but he insists that precedents be used with discrimination. In his first dissenting opinion he objected that the majority had applied language of other cases out of context and said "at least, if disembodied language is to be applied to a dissimilar question, it should not be regarded as controlling." [*Cooner* v. *United States*, 276 F. 2d 220, 238 (4th Cir. 1960) (dissenting opinion). See also *United States* v. *Bond*, 279 F. 2d 837, 848 (4th Cir. 1960) (dissenting opinion).] In a well-known later case he objected to the majority's reliance on the old and discredited rule that law officers may seize contraband or the instrumentalities of a crime but may not seize evidence of the crime, saying that "the language the Supreme Court has employed must be read in the light of what it has held." [*Hayden* v. *Warden, Maryland Penitentiary*, 363 F. 2d 647, 657 (4th Cir. 1966) (separate opinion).] He went on to make the argument that since the standards for use of confessions are being stiffened, the police must rely increasing on scientific investigation of crime, and that they cannot do this if they are denied access to evidence that may be subjected to scientific analysis. The view he took there was vindicated when the case reached the Supreme Court, and that Court discarded the "mere evidence" rule. [*Warden, Maryland Penitentiary* v. *Hayden*, 387 U.S. 294 (1967).]

In another case he held, contrary to an old Supreme Court decision, that habeas corpus would lie to attack a sentence that the prisoner was to serve in the future. He said: "This Court, of course, must follow the Supreme Court, but there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case." [*Rowe* v. *Peyton*, 383 F. 2d. 709, 714 (4th Cir. 1967).] His prediction that the old case was so eroded that it would no longer be followed was proved accurate when the Supreme Court unanimously affirmed his decision. [*Peyton* v. *Rowe*, 391 U.S. 54 (1968).]

In that same habeas corpus case he showed, as he has throughout his judicial career, an awareness that law is not static and that changing times may require different solutions for problems. He pointed out how the nature of habeas corpus has changed since the Great Writ was first developed and said: "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." [383 F. 2d at 713–714.] This has been a consistent theme in Judge Haynsworth's opinions. In his first year on the bench, in a case holding that a medical examiner's certificate showing the percentage of alcohol in a defendant's blood was admissible, he wrote that the Confrontation Clause of the Sixth Amendment was not intended "to serve as a rigid and inflexible barrier against the orderly development of reasonable and necessary exceptions to the hearsay rule." [*Kay* v. *United States*, 255 F. 2d 476, 480 (4th Cir. 1958). Only last year, in an important opinion for his court adopting a new test of insanity, he emphasized the need for "judicial reassessment of notions too long held uncritically and of a verbal formalism too long parroted." [*United States* v. *Chandler*, 393 F. 2d 920, 925 (4th Cir. 1968).

The same respectful but discriminating approach Judge Haynsworth shows in the use of precedents is evident when the problem is one of construing a statute. He does not make a fortress of the dictionary. He insists, instead, on construing statutes in a fashion that will "effectuate the apparent purpose and intention of the Congress" [*Crosse & Blackwell Co.* v. *F.T.C.*, 262 F. 2d 600, 605 (4th Cir. 1959), and has refused "to adopt a literal interpretation of this statute without regard to its purpose or the extraordinary result to which it would lead." [*Alvord* v. *C.I.R.*, 277 F. 2d 713, 719 (4th Cir. 1960). See also *Baines* v. *City of Danville*, 377 F. 2d 579, 593 (4th Cir. 1965), *affirmed*, 384 U.S. 590 (1966).]

Another consistent theme in Judge Haynsworth's writings is his belief that it is not the function of an appellate court to make findings of fact. Both in civil and in criminal cases he shows great faith in the jury system. In an extremely important decision earlier this year he said that "faith in the ability of a jury, selected from a cross-section of the community, to choose wisely among competing rational inferences in the resolution of factual questions lies at the heart of the federal judicial system." [*Wratchford* v. *S. J. Groves & Sons Co.*, 405 F.2d 1061, 1065 (4th Cir. 1969).] This is merely the latest expression of an attitude he has had as long as he has been on the bench. [See, *e.g.*, *Dixon* v. *Virginia Ry. Co.*, 250 F.2d 460, 462, (4th Cir. 1957).] He has been quick to hold that there must be a new trial if there was any possibility that an improper influence might have been brought to bear on the jury. [*Holmes* v. *United States*, 284 F.2d 716 (4th Cir. 1960); *Thomas* v. *Peerless Mattress Co.*, 284 F.2d 721 (4th Cir. 1960); *United States* v. *Rogers*, 289 F.2d 433 (4th Cir. 1961); *United States* v. *Virginia Erection Corp.*, 335 F.2d 868 (4th Cir. 1964).] Long before the Supreme Court came to a similar conclusion [*Burton* v. *United States*, 391 U.S. 123 (1968), he showed a proper skepticism about the efficacy of instructions cautioning a jury that a confession is admissible against one defendant but not against another and called for the routine adoption of practices that would give

greater protection to the codefendant. [*Ward* v. *United States*, 288 F.2d 820 (4th cir. 1960).] He has recognized, too, that jurors can be swayed by prejudice, and has held that when Negro defendants were on trial counsel must be given an opportunity to explore whether any members of the jury panel belonged to organizations that might suggest prejudices against Negroes. [*Smith* v. *United States*, 262 F.2d 51 (4th Cir. 1958).]

The jury occupies a significant constitutional role in our system, but even when it is a judge rather than a jury who has found the facts, Judge Haynsworth has thought that great weight should be given to the findings and that the appellate court should not substitute its own view of the facts for that taken by the district judge. [*Hall* v. *Warden, Maryland Penitentiary*, 313 F.2d 483, 497 (4th Cir. 1963) (dissenting opinion); *United States* v. *Ellicott*, 336 F.2d 868, 872–874 (4th Cir. 1964) (dissenting opinion).]

Finally, Judge Haynsworth respects the place of the states, and of the state judiciaries, in our form of government. Indeed he has been reversed by the Supreme Court for deferring too much to the state courts. [*Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F.2d 332 (4th Cir. 1964), *reversed*, 377 U.S. 218 (1964).] At the same time he has insisted on the independence of the federal courts. In an important decision he wrote that a state may not "deny the judicial power the states conferred upon the United States when they ratified the Constitution or thwart its exercise within the limits of congressional authorization." [*Markham* v. *City of Newport News*, 292 F.2d 711, 713 (4th Cir. 1964).] This was in keeping with his voiced "concern for the perpetuation of an independent federal judicial system * * *." [*Wratchford* v. *S. J. Groves & Sons Co.*, 405 F.2d 1061, 1966 (4th Cir. 1969).]

History teaches us that it is folly to suppose that anyone can predict in advance what kind of a 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 assessing 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 shown in twelve years on the circuit court bench that he possesses all of these qualities in great measure. I hope that he will be quickly confirmed.

Thank you.

SUPPLEMENTAL STATEMENT OF CHARLES ALAN WRIGHT

On September 3d I sent to the Judiciary Committee copies of the prepared text of the testimony I expected to give in the hearing then scheduled for September 9th. The postponement of the hearing because of the regrettable death of Senator Dirksen and the delay in my own appearance before the Committee has made it possible for me to give further study to the cases in which Judge Haynsworth has participated and analyze in closer detail his philosophy in particular areas of the law to the extent that this is disclosed by his votes and his opinions. My attention has centered on the areas of criminal procedure and freedom of expression.

I continue to believe, as my original statement indicates, that it is impossible to know in advance what the voting record will be of any appointee to the Supreme Court and that it is especially treacherous to attempt to make such an advance assessment on the basis of what a man has done as a judge of a lower court prior to appointment to the Supreme Court. On many issues the record will be silent simply because the lower court judge has never been confronted with those issues. For one example, the meaning of the Establishment and Free Exercise Clauses of the First Amendment has never, so far as I can find, come up in any case in which Judge Haynsworth has participated. There are other important areas of the law of which this is equally true. Even where a lower court judge has been confronted with a particular issue he has done so as a judge writing within the framework of relevant Supreme Court decisions and not as a free agent.

For these reasons the remarks that follow are a description of the record of Judge Haynsworth. They are not an attempt to predict the record of Justice Haynsworth.

Few, if any, areas of the law are the subject of more controversy today than that of criminal procedure. It is an area of special interest to me because, as I noted in my original statement, earlier this year I published a three-volume treatise on federal criminal procedure. In the Preface to that treatise I said: "I freely confess to one bias. I admire and respect the Supreme Court of the United States." [1 Wright, *Federal Practice and Procedure: Criminal* viii (1968).] It is with that bias that I reviewed the criminal cases in which Judge Haynsworth has participated.

The overall impression that I get from these cases is that of an intensely practical approach to criminal procedure. This approach is hardly surprising in a judge who has expressed in many ways and in many contexts the thought that "Theoretical abstractions are of no help. Our conclusion must be founded upon practical considerations." [*United States* v. *Southern Ry. Co.*, 341 F. 2d 669, 671 (4th Cir. 1956).] 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, saying that this is "too high a price to pay for indulgence of a sentimentalism." [*United States* v. *Slaughter*, 366 F. 2d 833, 847 (4th Cir. 1966) (dissenting opinion).] Let me give illustrations of the cases that have led me to these conclusions.

One area of potential abuse in criminal procedure, in which there is a very real danger of convicting the innocent, is where several defendants are tried at the same time. There is substantial risk that the guilt of one defendant will rub off on another and that the jury will not make an independent evaluation of the evidence against each defendant.

In 1968 the Supreme Court reduced a part of this risk when it ruled that two defendants cannot be tried together if one has made a confession implicating the other unless precautions have been taken to protect the right of confrontation of the defendant who has not confessed. [*Bruton* v. *United States*, 391 U.S. 123 (1968).] Eight years before that decision Judge Haynsworth had written of the need for precautions of this kind and had said that "in the normal case, such a precaution should be taken routinely." [*Ward* v. *United States*, 288 F. 2d 820, 823 (4th Cir. 1960).] Even prior to that case Judge Haynsworth had concurred in one of the leading opinions on joinder of defendants, *Ingram* v. *United States* [272 F. 2d 567 (4th Cir. 1959).] The holding in *Ingram* is that joinder of defendant is not permissible unless the requirements of the Rules of Criminal Procedure on joinder are satisfied, and that "it is not 'harmless error' to violate a fundamental procedural rule designed to prevent 'mass trials.'" [*Id.* at 570–571.] The *Ingram* decision seems to me demonstrably sound and I regret that the Second Circuit, in an opinion by Judge Friendly, has reached a contrary result [*United States* v. *Granello*, 365 F. 2d 990 (2d Cir. 1966). See 1 Wright, Federal Practice and Procedure: Criminal 327–329 (1969).]

The right to a speedy trial is one of the important protections in criminal procedure, secured by the Sixth Amendment. For many years this right had been effectively denied to many defendants because the cases held that a state was under no obligation to try a defendant who was in a federal prison or the prison of another state on some other charge. The Supreme Court announced a different rule earlier this year, in a case in which I had the honor to be appointed by the Court as counsel for the indigent prisoner. [*Smith* v. *Hooey*, 393 U.S. 374 (1969).] It ruled that a state must make a good faith effort to have a defendant confined elsewhere returned for trial on the charges pending in the state. Judge Haynsworth had joined in an opinion a year earlier anticipating the result the Supreme Court was later to reach [*Pitts* v. *North Carolina*, 395 F. 2d 182 (4th Cir. 1968)], and only a few days before the Supreme Court decision he wrote the opinion for an en banc court liberalizing the use of habeas corpus, despite some serious technical difficulties, in order to provide a remedy for state prisoners who wish to enforce their right to be tried by another state. [*Word* v. *North Carolina*, 406 F. 2d 352 (4th Cir. 1969).]

This term the Supreme Court also put teeth in the requirements of Criminal Rule 11 with regard to guilty pleas, by holding that the judge must personally address the defendant and determine that the plea is being made voluntarily and with an understanding of the nature of the charge. [*McCarthy* v. *United States*, 394 U.S. 459 (1969).] This came as no new doctrine in the Fourth Circuit, where the court, speaking through Judge Haynsworth, has long recognized a similar doctrine and held that Rule 11 "requires something more than conclusionary questions phrased in the language of the rule. It contemplates such an inquiry as will develop the underlying facts from which the court will draw its own conclusion." [*United States* v. *Kincaid*, 362 F. 2d 939, 941 (4th Cir. 1966).]

One of the major decisions of the final decision day of the Warren Court was *North Carolina* v. *Pearce* [395 U.S. 711 (1969)], severely restricting the power of a judge to give a defendant who has had a first conviction set aside a more severe sentence after a second conviction on the same charge. The decision there affirmed by the Supreme Court was one in which Judge Haynsworth had joined [*Pearce* v. *North Carolina*, 397 F. 2d 253 (4th Cir. 1968)], and indeed another decision in which he concurred, holding that the same rule applies even when the second sentence is imposed by a jury rather than by a judge [*May* v. *Peyton*, 398 F. 2d 476 (4th Cir. 1968)], speaks to a question on which the Supreme Court is still silent and may well go beyond what the Supreme Court will require.

Judge Haynsworth's concern for the sentencing process is evident in still another case. The usual rule is that an appellate court may not consider the length of a sentence provided that it is within statutory limits. The Senate has passed a bill that would change this rule but to date it remains the rule. It would seem to follow that the length of a sentence within statutory limits may not be challenged collaterally by a motion under 28 U.S.C. § 2255. But the Fourth Circuit, in an opinion in which Judge Haynsworth joined, held that this rule must yield where there are exceptional circumstances, and that there were such circumstances, and § 2255 relief was available, where the judge had given the maximum sentence authorized by statute under the mistaken impression that he had no discretion to give a lesser sentence. [*United States* v. *Lewis*, 392 F. 2d 440 (4th Cir. 1968).]

In 1966 the Fourth Circuit, sitting en banc, held unanimously that the method by which the police had had the victim of a crime identify the voice of a suspect was so suggestive that to allow evidence of the identification into evidence was a denial of due process. [*Palmer* v. *Peyton*, 359 F.2d 199 (4th Cir. 1966).] That decision was cited approvingly by the Supreme Court a year later [*Stovall* v. *Denno*, 388 U.S. 293, 302 (1967)], and the Court has subsequently set aside a conviction on this ground. [*Foster* v. *California*, 394 U.S. 440 (1969).]

Judge Haynsworth has taken a generous view of the right to bail. Years ago he joined in an opinion holding that "normally bail should be allowed pending appeal, and it is only in an unusual case that denial is justified." [*Rhodes* v. *United States*, 275 F.2d 78, 82 (4th Cir. 1960).] More recently he wrote an opinion holding, over vigorous dissent, that a federal court had properly released Rap Brown on his own recognizance from state custody on an extradition warrant. [*Brown* v. *Fogel*, 387 F.2d 692 (4th Cir. 1967).]

Judge Haynsworth has detected violations of due process both where counsel was not provided an indigent for more than three months after his arrest [*Timmons* v. *Peyton*, 360 F.2d 327 (4th Cir. 1966)], and where defendant was brought to trial three and a half hours after indictment and there was insufficient time for appointed counsel to investigate the case. [*Martin* v. *Commonwealth*, 365 F.2d 549 (4th Cir. 1966).] He also voted to grant habeas corpus on the ground that the prosecuting attorney in a state case had had a conflict of interest since at the same time he was prosecuting the defendant he represented the defendant's wife in a divorce proceeding. [*Ganger* v. *Peyton*, 379 F.2d 709 (4th Cir. 1967).]

One of Judge Haynsworth's opinions reverses a criminal conviction because the judge had given an unbalanced version of the "Allen charge"—or "dynamite charge" as it is known in my part of the country. [*United States* v. *Smith*, 353 F.2d 166 (4th Cir. 1965). See also *United States* v. *Rogers*, 289 F.2d 433 (4th Cir. 1961).] The case is particularly interesting because there had been no objection to the charge in the district court, as is normally required for the appellate court to consider the point, but the danger that even the pure "Allen charge" will coerce a divided jury into convicting a person is so great [2 Wright, *Federal Practice and Procedure: Criminal* § 902 (1969)] that Judge Haynsworth concluded that a one-sided version of that charge was "plain error" that the appellate court might notice on its own motion.

Senator Tydings has called attention earlier in these hearings to Judge Haynsworth's splendid opinion in *United States* v. *Chandler* [393 F. 2d 920 (4th Cir. (1968))], in which he rejected an antiquated test of mental responsibility and adopted for his circuit a new test more consonant with modern psychiatric knowledge.

There is an interesting passage in one of Judge Haynsworth's earliest opinions in which he wrote: "However compelling our conviction that Call has been guilty of wrongdoing, we may not affirm his conviction as a co-conspirator unless the evidence is reasonably susceptible of the inference that he knew of the conspiracy." [*Call* v. *United States*, 265 F. 2d 167, 172 (4th Cir. 1959).] The principle that a defendant may not be convicted because he is a bad man, but only if he committed the crime for which he is indicted, is one of great importance.

Judge Haynsworth has done much to remove shackles on the writ of habeas corpus and to make it freely available to those who claim that they have been denied their constitutional rights. At page 6 of my original statement I have discussed his best known case in this area. *Rowe* v. *Peyton* [383 F.2d 709 (4th Cir. 1967), affirmed 391 U.S. 54 (1968)], in which he correctly anticipated that the Supreme Court would no longer follow its earlier precedent holding that a prisoner in custody under one sentence could not challenge another sentence he was to serve in the future. In his opinion in that case he combines great scholarship with the practical approach that is a major theme in all of his opinions. A formalistic approach to statutory requirement that a prisoner be "in custody" would harm both the prisoner and the state. "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 many years is, indeed, justice denied to the prisoner and, in an even larger degree, to Virginia." [383 F.2d at 715.]

But *Rowe* stands far from alone. Judge Haynsworth has written that the statutory requirement that state remedies be exhausted does not bar relief when the state court has decided the identical substantive point in a case involving another prisoner and pursuit of the state remedies, therefore, would be futile. [*Evans* v. *Cunningham*, 335 F.2d 491 (4th Cir. 1964).] He had held that petitions by prisoners are not to be read with a hostile eye and that "claims of legal substance should not be forfeited because of a failure to state them with technical precision." [*Coleman* v. *Peyton*, 340 F.2d 603, 604 (4th Cir. 1965).] The district court, on habeas corpus, is not bound by a wholly conclusionary finding by the state court [*Outing* v. *North Carolina*, 344 F.2d 105 (4th Cir. 1965)] nor may it accept the historical facts as found by the state court if the state court had no adequate basis for its findings. [*McCloskey* v. *Barlow*, 349 F.2d 119 (4th Cir. 1965).] In many ways the most interesting of the Haynsworth opinions on habeas corpus, other than the *Rowe* case, *is White* v. *Pepersack* [352 F.2d 470 (4th Cir. 1965).] A state court defendant, charged with first degree murder, had taken the stand and admitted the killing but testified to facts that would, if believed, show that it was not premeditated and that he could be convicted only of some lesser offense. The district court held that defendant's admission was tantamount to a plea of guilty and barred him from seeking habeas corpus on the grounds of an illegal search, and involuntary confession, and use of perjured testimony. The Fourth Circuit held to the contrary. In his opinion for the court, Judge Haynsworth wrote that defendant's testimony was surely not a plea of guilty to first degree murder and pointed out that if the state court had found the defendant guilty of second degree murder and imposed an appropriate sentence defendant himself might well have accepted his punishment as proper. Judge Haynsworth then said:

Extended judicial inquiry, with all of its expense and delay, is the natural product of overconstruction of a defendant's admissions and the imposition of an inappropriate sentence. The flood of postconviction cases in state and federal courts will be stemmed only if justice is made to shine more brightly in the trial courts.

[*Id.* at 473] The decision is reminiscent of an earlier one in which he had criticized slovenly practices in drawing indictments on the part of some United States attorneys and pointed out that the consequence of such practice is "the needless expenditure of much time and effort by [the United States Attorney], by defendants and their counsel and by the courts. Here, as in most situations, much waste could be avoided by an initial exercise of reasonable care." [*United States* v. *Roberts*, 296 F.2d 198, 202 (4th Cir. 1961).]

It seems to me clear that Judge Haynsworth has clearly shown his unwillingness to tolerate procedures in criminal cases that taint the factfinding process or that cast doubt on the fairness of the proceeding or that unreasonably clog claims of constitutional right. In one case he wrote:

Current astuteness in the protection of individual rights is not at odds with the interests of a society which places high values upon liberty and justice and freedom and fairness. It is the cornerstone of such a society.

[*Smallwood* v. *Warden, Maryland Penitentiary*, 367 F. 2d 945, 952 (4th Cir. 1966) (dissenting opinion).] Judge Haynsworth's whole record on the bench of the court of appeals demonstrates that that remark is not empty rhetoric but a statement of deeply felt conviction.

Some of the rules that the Supreme Court has laid down in criminal cases are not concerned with assuring a correct result or with preserving fairness in the proceeding but are intended to deter practices by those responsible for law enforcement that have been found to be inconsistent with the values of our free society. Judge Haynsworth has not been unmindful of this function of the courts. He had been on the bench barely a year when he joined in an opinion in which the court gave a broad reading to the then-recent decision in *Mallory* v. *United States* [354 U.S. 449 (1957)], and said:

The teaching of the Mallory case is that insistence on strict compliance with Rule 5(a) is necessary to discourage police from the use of third degree methods, and that only in that way will the opportunity and the temptation be denied them. Unnecessarily prolonged detention before bringing the accused to a Commissioner or other judicial officer, to give police opportunity to extract a confession, is odious to our federal criminal jurisprudence * * *. [*Armpriester* v. *United States*, 256 F. 2d 294, 296 (4th Cir. 1958).]

He wrote for his court in holding that the *Miranda* rules apply to custodial questioning even though the defendant was not formally under arrest. A dissenter argued that the majority was giving an overdrawn reading to *Miranda* and that the decision was "indeed a blow to law enforcement," but Judge Haynsworth said: "If the arresting officer's failure to make a formal declaration of arrest were held conclusive to the contrary, the rights afforded by Miranda would be fragile things indeed." [*United States* v. *Pierce*, 297 F. 2d 128, 130 (4th Cir. 1968).]

One other case about which Senator Tydings has already commented shows Judge Haynsworth's sensitivity to the role of the courts in deterring improper law enforcement practices. The case is *Lankford* v. *Gelston* [364 F. 2d 197 (4th Cir. 1966)]. The court en banc held unanimously, in a fine opinion by Judge Sobeloff, that an injunction should issue to prevent the Baltimore police from making blanket searches on uncorroborated anonymous tips. Most of the homes searched were occupied by Negroes. The court took note of the deteriorating relations between the Negro community and the police in Baltimore and said that "it is of the highest importance to community morale that the courts shall give firm and effective reassurance, especially to those who feel that they have been harassed by reason of their color or their poverty." The court took note of the serious problems of law enforcement, but it said:

Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the law, the difficulties of law enforcement are multiplied. [*Id.* at 204.]

I spoke at the outset of the very practical approach Judge Haynsworth takes to problems of criminal procedure. Law enforcement is a deadly serious matter and of great

importance to all parts of society. It is not a game in which the police are to be called "out" for failure to touch every base.

The *Hayden* case, discussed at page 6 of my original statement, illustrates this. There Judge Haynsworth indicated his disagreement with the majority of the court in its adherence to the old rule that "mere evidence" may not be the object of a lawful search, and the Supreme Court, in reversing the decision, agreed with him. [*Hayden* v. *Warden, Maryland Penitentiary,* 363 F. 2d 647, 657–658 (4th Cir. 1966) (separate opinion), reversed 387 U.S. 294 (1967).] The "mere evidence" rule was an outdated relic of a former era. It stemmed from property law conceptions about search and seizure while today the Fourth Amendment is recognized as protecting an interest in privacy rather than interests in property. As a practical matter, the rule was a needless hobble on the police while at the same time it gave no substantial protection to the right of the people to be secure from unreasonable searches. Police could, and did, seize much evidence on the ground that it was a fruit of the crime, or contraband, or an instrumentality of crime, and thus properly the subject of a search. Only occasionally did a criminal defendant receive an unexpected windfall when a court was unable to bring particular evidence into one of these categories and was forced to exclude it. [See 3 Wright, *Federal Practice and Procedure: Criminal* § 664 (1969).] The rule had no reason for existence today and Judge Haynsworth was right, as the Supreme Court held, in believing that the time had come to discard it.

The practicality of his approach is evident also in a dissent he wrote in a case in which the majority held that a confession was involuntary. [*Smallwood* v. *Warden, Maryland Penitentiary,* 367 F.2d 945 (4th Cir. 1966).] Judge Haynsworth thought that the circumstances in the case were far milder than in any case in which the Supreme Court had found a confession involuntary, but his principal argument was that it was pointless to test a 1953 confession by 1966 standards. The practices the police followed were practices that the Supreme Court in 1953, and for some years thereafter, approved. The police at that time could not have anticipated the change in standards that was later to evolve. Nor would setting the prisoner free in 1966 assist the police today in understanding their duty. The later Supreme Court decisions, and *Miranda* in particular, inform the police more authoritatively than would a decision of the Fourth Circuit. All of these considerations led Judge Haynsworth to say:

It is not fair to the states or to the public to vacate judgments as old as this one on the basis of evolving constitutional standards which could not have been reasonably anticipated by the police at the time they acted. [*Id.* at 952.] His view did not prevail in that case, but even those of us who welcome most enthusiastically the developments of the last decade in the law of confessions must concede that there is much more to Judge Haynsworth's position.

In appraising his decisions in confession cases, it is necessary to keep in mind the point that I developed at pages 7–9 of my original statement about Judge Haynsworth's reluctance to substitute his view of the facts for those of a jury or a district judge. This is a consistent thread in his confession opinions. It appears perhaps most clearly in a decision he wrote in 1967 upholding a determination that a confession was voluntary. [*Outing* v. *North Carolina,* 383 F.2d 892 (4th Cir. 1967).] The case was obviously a close one. Judge Kaufman wrote a 26 page dissent, but the Supreme Court, unanimously so far as it appears, refused to review the case. [390 U.S. 997 (1968).] Judge Haynsworth said that if the district judge had drawn an ultimate inference that the confession was coerced the court might well have sustained him. But the district judge found that the confession was not coerced and this finding was neither clearly erroneous as an inference of fact not influenced by an erroneous view of law. Since this ultimate inference was a permissible one, the majority of the court felt that it should accept. I think that here, as in other areas of the law, Judge Haynsworth shares an attitude expressed by Judge Chase, of the Second Circuit, some years ago when he said: "Though trial judges may at times be mistaken as to facts, appellate judges are not always omniscient." [*Orvis* v. *Higgins,* 180 F.2d 537, 542 (2d Cir. 1950) (dissenting opinion).] Since this has been for many years my own view [see Wright, *The Doubtful Omniscience of Appellate Courts,* 41 Minn. L. Rev. 751 (1957)], I cannot find in it any ground for criticism of Judge Haynsworth or for believing that he is tolerant of coercive police practices.

In conclusion, I would like to turn away from criminal law and address myself briefly to the vitally important freedoms of expression protected by the First Amendment. I am one of those who believe that these have a "preferred position" in our constitutional scheme and that they are of special significance at a time when many groups in our country are unhappy with the established order and wish to air their grievances. Judge Haynsworth has had very little occasion to address himself to the issues these freedoms pose and the decisions are too few to form any solid judgments.

I can find only eight cases involving any significant question of freedom of expression in which Judge Haynsworth has participated. Four of these are obscenity cases, a class of litigation that is perhaps sui generis, and that is not only immensely difficult in itself but is even more difficult for a lower court judge to try to understand the rules, such as they are, that the Supreme Court has laid down. In two cases he wrote for a unanimous court holding particular magazines obscene and was reversed by the Supreme Court. [*United States* v. *392 Copies of Magazine Entitled "Exclusive,"* 373 F. 2d 633 (4th Cir. 1967), reversed 389 U.S. 50 (1967); *United States* v. *Potomac News Co.,* 373 F. 2d 635 (4th Cir. 1967), reversed 389 U.S. 47 (1967).] The reversals in each instance were per curiam decisions in which the Supreme Court relied on its Delphic opinion in *Redrup* v. *New York* [386 U.S. 767 (1967)], which came down after Judge Haynsworth's decisions. In a third case he was part of a 5–2 majority of the Fourth Circuit holding that obscenity cannot be determined on a per se basis that any collection of photographs of nudes is obscene if, in some of the pictures, the pubic area is exposed. [*United States* v. *Central Magazine Sales, Ltd.,* 381 F. 2d 821 (4th Cir. 1967).] Finally he joined in a 2-1 decision that if material has been found by the district court not to be obscene, it should be admitted through customs and its release should not be held up pending appeal. [*United States* v. *Reliable Sales Co.,* 376 F. 2d 803 (4th Cir. 1967).]

The other four cases are of more general importance. Judge Haynsworth was a member of a three-judge district court that held unconstitutional on grounds of vagueness a North Carolina statute limiting the kinds of persons who may speak on state university campuses. [*Dickson* v. *Sitterson,* 280 F. Supp. 486 (M.D.N.C. 1968).] Professor Van Alystne, who is to testify in support of Judge Haynsworth, appeared in the case as amicus curiae and is the leading expert in the country on that particular field of the law. He is better qualified than I am to tell you of the significance of the decision. Judge Haynsworth was a member of a panel of his court upholding suspension of students at Bluefield State College for taking part in a disruptive demonstration. [*Barker v. Hardway,* 399 F. 2d 638 (4th Cir. 1969).] The Supreme Court refused to review the decision. Justice Fortas, who had been spokesman for the Court one week before in the *Tinker* case [*Tinker* v. *Des Moines Independent Community School District,* 393 U.S. 503 (1969)], in which it was held that school students cannot be disciplined for wearing black arm bands to express their disapproval of the Vietnam war, wrote an opinion concurring in denial of certiorari in the Bluefield State case. He said that "the petitioners here engaged in an aggressive and violent demonstration, and not in peaceful, nondisruptive expression, such as was involved in *Tinker.*" [*Barker* v. *Hardway,* 394 U.S. 905 (1969) (concurring opinion).]

In *United Steelworkers of America* v. *Bagwell* [383 F. 2d 492 (4th Cir. 1967)], Judge Haynsworth wrote the opinion holding unconstitutional a city ordinance prohibiting distribution of circulars about union membership without a prior permit from the chief of police. The decision on the merits is unexceptionable. The path was clearly marked by Supreme Court precedents. What is more interesting is the enthusiastic acceptance the court gave to the principle of *Dombrowski* v. *Pfister* [380 U.S. 479 (1965)] that in some cases in which First Amendment rights are involved the usual rules barring a federal court from interfering with a state's enforcement of its criminal laws no longer apply. One like myself who has doubts about whether the protection *Dombrowski* gives to cherished First Amendment rights is not outweighed by its cost in Federal-state relations must note with interest Judge Haynsworth's willingness to apply, if not indeed to extend, *Dombrowski.*

Indeed Judge Haynsworth may have partially anticipated *Dombrowski* in a well-known case arising out of demonstrations by Negroes in Danville, Va. The case is a complicated one, involving a number of different issues, and several different appeals disposed of under a single title. Many demonstrators were arrested in Danville for violation of a state court injunction and local ordinances. Some of these persons attempted to remove their cases to federal court. Others went directly to federal court and sought to enjoin the pending state court prosecutions as well as future arrests. The case, which produced one per curiam opinion and two opinions by Judge Haynsworth for the majority of the Fourth Circuit, established four things. First, the court held that the Anti-Injunction Act of 1793, 28 U.S.C. § 2283, did not bar it from issuing a temporary injunction restraining state court prosecutions in order to preserve the status quo while it determined whether grant of a permanent injunction would fall under any of the exceptions to the Act. [*Baines* v. *City of Danville,* 321 F. 2d 643 (4th Cir. 1963); *Baines* v. *City of Danville,* 337 F. 2d 579, 593–594 (4th Cir. 1964).]

This was a creative interpretation of the Anti-Injunction Act and is surely sound. [See American Law Institute, *Study of the Division of Jurisdiction between State and Federal Courts* 307 (Official Draft 1969).] Second, the court held that the circumstances did not permit removal of a criminal prosecution from state to federal court under 28 U.S.C. § 1443, which allows removal of certain civil rights cases. [*Baines* v. *City of Danville,* 357 F. 2d 756 (4th Cir. 1966).] This holding was affirmed by the Supreme Court. [*Baines* v. *City of Danville,* 384 U.S. 590 (1966).] Third, the court held that the Civil Rights Act, 42 U.S.C. § 1983, does not expressly authorize a stay of state proceedings and that the Anti-Injunction Act therefore barred an injunction against prosecutions already pending in the state court. [*Baines* v. *City of Danville,* 337 F. 2d 579, 586–594 (4th Cir. 1964).] The Supreme Court denied certiorari on this aspect of the case [*Chase* v. *McCain,* 381 U.S. 939 (1965)], and the question remains an open one in the Supreme Court. [See *Cameron* v. *Johnson,* 390 U.S. 611, 613 n. 3 (1968).] Finally, and most importantly for

present purposes, Judge Haynsworth held that the rule of comity by which federal courts do not ordinarily interfere with the states in the enforcement of their criminal laws is not absolute, and that the district judge should enjoin further arrests under the ordinances and the injunction "if he finds that in combination they have been applied so sweepingly as to leave no reasonable room for reasonable protest, speech and assemblies, and thus, in application, are plainly unconstitutional." [*Baines* v. *City of Danville,* 337 F. 2d 579, 594–596 (4th Cir. 1964).] *Dombrowski* demonstrates that Judge Haynsworth was right in going that far in allowing the federal court to give relief, although under *Dombrowski* a federal injunction against future prosecutions is also permitted if the challenged laws are unconstitutional on their face.

There is a passage in one of these opinions in which Judge Haynsworth speaks to the meaning of the First Amendment.

"Whatever constitutional basis there may be for the substantive demands of the demonstrators, they have, unquestionably, rights of free speech and assembly guaranteed by the First Amendment, and recognition of those First Amendment rights is required of Danville by the Fourteenth Amendment. Those First Amendment rights incorporated into the Fourteenth Amendment, however, are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their rights, the enjoyment of which is equally as precious. It is thus plain, for instance, that while Negroes, excluded because of their race from a privately operated theater, have a right to protest their exclusion and to inform the public and public officials of their grievance, they do not have the right, by massive occupancy of approaches to the theater, to exclude everyone else from it, or to coerce acceptance of their demands through violence or threats of violence.

"It is well established that public officials, charged with the duty of maintaining law and order, may enforce laws and injunctions reasonably necessary for that purpose, but injunctions and statutes which exceed the necessities of the situation cannot be lawfully enforced if they infringe upon constitutional rights. What is required is mutual accommodation of the rights of the public and those rights of protestants which are guaranteed by the First Amendment. [*Id.* at 586–587.] Later Supreme Court decisions, notably Justice Goldberg's opinion for the Court in *Cox* v. *Louisiana* [379 U.S. 536, 554–555 (1965)], demonstrate that the quoted passage from Judge Haynsworth's opinion represents sound First Amendment philosophy.

The record of the nominee on freedom of expression is scantier than his record on criminal procedure but from his decisions in that area of the law there is no reason to doubt his devotion to the great protections of the First Amendment.

I end as I began. I cannot predict the votes of Justice Haynsworth. The cases I have reviewed in this statement demonstrate, I believe, that in the areas of criminal procedure and freedom of expression the record of Judge Haynsworth on the Fourth Circuit has been a constructive and forward-looking one. But I support his nomination, not because his views on these subjects or others are similar to mine, but because his overall record shows him to have the ability, character, temperament, and judiciousness that are needed to be an outstanding Justice of the United States Supreme Court.

Thank you.

Mr. HOLLINGS. Mr. President, at this point in the debate, I think it would be appropriate also to include in the RECORD the statements of William Van Alstyne and Coming B. Gibbs, Jr. I ask unanimous consent that they be printed in the RECORD.

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

STATEMENT IN COMMENT ON APPOINTMENT OF JUDGE CLEMENT HAYNSWORTH TO THE SUPREME COURT OF THE UNITED STATES

It is not surprising that a Supreme Court appointment from the South, by a President who campaigned with some degree of criticism of the Warren Court, should attract a measured amount of liberal skepticism. The degree of reaction to Judge Clement Haynsworth's nomination, however, may be quite unworthy of some of the truly fine people who have too quickly given it currency. In those areas of statutory interpretation and constitutional adjudication where the issue is so unsettled that judicial discretion must necessarily play a major role, Judge Haynsworth's record cannot be seen as illiberal.

In Hawkins v. North Carolina Dental Society, Judge Haynsworth authored the court of appeals opinion which desegregated the North Carolina Dental Association, rejecting its claim that it was not subject to the equal protection clause of the 14th Amendment. He joined as well in North Carolina Teachers Association v. Asheboro City Board of Education, reversing a lower federal court which had upheld the displacement of Negro teachers who had lost their jobs to whites when schools were integrated. He also shared the court's decision in Newman v. Piggy Park Enterprises, applying the Civil Rights Act against a claim that insufficient food was sold for consumption on the premises to bring the business within the statute.

In the field of criminal justice, he authored an extraordinarily careful opinion in Rowe v. Peyton, extending the right of prisoners to have their convictions reviewed on habeas corpus—a new development later affirmed by the Supreme Court. He joined in Crawford v. Bounds to protect defendants in capital cases from being sentenced by death-prone juries from which all expressing any reservation to capital punishment had been excluded—a new development also subsequently affirmed by the Supreme Court in a related case. In Pearce v. North Carolina, he applied a constitutional principle newly developed at the federal level in his own circuit to protect defendants from harsher sentences following retrial—again in advance of the Supreme Court which affirmed the decision several months later.

In respect to First Amendment rights, he joined in the first federal decision which struck down a state law restricting the right of university students to hear guest speakers on campus—a principle later expanded by a half-dozen other federal courts and indirectly approved by the Supreme Court in a related case just this year.

On occasion when his opinion has differed conservatively from that of more liberal jurists, it has not been without care or reason. Thus, his conclusion in Baines v. City of Danville that only an extraordinary kind of civil rights case could be removed from a state court to a federal court was accompanied by a painstaking analysis with which a majority of the Supreme Court subsequently agreed in Peacock v. City of Greenville. Similarly, his conclusion in Warden v. Hayden that an otherwise constitutional search is not unreasonable because its object is only to secure evidence of a crime was also subsequently shared by a majority of the Supreme Court.

I do not submit that these decisions warrant that Judge Haynsworth will be a "liberal" justice. His record on the court of appeals does not—and in the nature of things could not—enable us to predict his votes in the substantially different role of associate supreme court justice. They do indicate, however, that he is an able and conscientious man who will approach his duties on the Supreme Court with a spirit of open-mindedness as well as an appreciation of the difficulties of the judicial process.

WILLIAM VAN ALSTYNE.

GIBSON, GIBBS AND KRAWCHECK,
Charleston, S.C., September 5, 1969.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: So that the Committee may know something of the person making this statement, I have included the following introductory comments.

My name is Coming B. Gibbs, Jr. I am a former law clerk to Judge Clement F. Haynsworth, and I am currently practicing law in Charleston, South Carolina as a member of the three man firm of Gibson, Gibbs & Krawcheck. I graduated from St. Marks School in 1954, from Princeton University in 1958 and the University of South Carolina Law School in 1961. From September, 1961 until September, 1962, I was law clerk to Judge Haynsworth. After active duty in the United States Army, I returned to Charleston and practiced law with my father, and, sometime after his death, formed a partnership with Charles M. Gibson and Leonard Krawcheck.

My law practice has been general in character. Together with a fairly active civil and criminal trial practice. I have among my clients the Intern··ional Longshoremen's Association which I have been representing in litigation concerning attempted organization of warehouse workers of the South Carolina State Ports Authority. With one of my partners, I represented two Catholic Priests charged with contempt of court because of picketing during the recent hospital strike in Charleston. I, with several other lawyers, organized an O. E. O. funded Legal Services for the Poor corporation, which has been operating successfully for several years, and which, despite initial opposition from a segment of the Charleston Bar, has now been generally accepted as a permanent and valuable addition to the local legal profession. I currently am chairman of its Board of Directors.

I was active in the organization of the Charleston Young Democrats, and during the 1964 Presidential campaign I was co-chairman of the Charleston County Johnson-Humphrey effort. I have been active in the Democratic party and in bi-racial matters, among other things participating with a group of lawyers in preserving Negro participation in the Y.W.C.A. I am currently the Secretary-Treasurer of the Charleston County Bar Association and a member of its executive committee.

The foregoing is included here to give this Committee an understanding of a little of my background, and to show something of the great effect a close relationship with Judge Haynsworth had upon a young man with a traditional and conservative background in Charleston, South Carolina.

Judge Haynsworth's qualifications as a Justice of the United States Supreme Court are to me clear and free from doubt. His academic background and history show him to have been a brilliant and conscientious student. As a lawyer, he became senior partner in the largest and most prestigious firm in our state. His decisions as a Court of Appeals Judge are public record and will be discussed by lawyers far more eminent than me.

My thought is that I could be of assistance to the United States Senate in enabling them to understand a little of the personality and character of Judge Haynsworth, without specifically discussing his thoughts and conversations as they related to specific cases pending before the Court of Appeals.

Perhaps his most impressive quality to one who knows him is his compassion. His regard for the individual, in cases involving human rights, civil or criminal, is deep.

On the bench, in a Circuit noted for close scrutiny, sometimes acerbic, of counsel's argument, he has universally been kind and gentle. This winter I was in his Court and young counsel violated almost every rule of proper appellate argument, including not addressing himself to the Court's questions and ignoring the time limit. After a time, Judge Haynsworth with a smile sat back and let the young man finish reading his set speech.

Combined with his kindly and compassionate nature is a considerable sense of humor, mostly dry, but occasionally quite robust. To work with him, he was thoughtful, kindly and considerate. Good work and good ideas were praised and the bad were gently corrected.

For one who has worked with him daily for a year to read, as I have in the press, that he is a racist, is ludicrous. He epitomizes our common law heritage that each man is equal before the law. Without going into specifics, in all the school cases which came before him when I was his clerk, he conscientiously endeavored to apply to complex records the rules laid down by the United States Supreme Court as he understood them.

The similar charge that he has an anti-union bias is also, to me, equally false. During the period I worked for him he had before him many cases involving labor organizations and in all our vigorous give and take, no such thing was manifested.

The one year that I spent as his clerk was the most important educational experience of my life. I learned from him the true meaning of intellectual and legal integrity. He equipped me with, I hope, the ability and certainly the self-confidence, to take part in South Carolina in sometimes unpopular and controversial causes. From him, I was equipped to attempt to cut new ground in our law and to join with a few older lawyers in similar efforts. I believe these other lawyers felt I had been equipped by Judge Haynsworth to work with them.

Speaking for myself, and I think for my colleagues at the bar in South Carolina whose practice has gravitated as has mine, there would be no hesitancy in bringing any matter before Judge Haynsworth. His decisions have and will reflect the thoughtful consideration of a good human being and good lawyer, applying justice with a compassionate heart and an even hand.

I recommend him to you as a man, as a lawyer and as a future great Justice of our Supreme Court.

With best wishes, I am,

Your very truly,

C. B. GIBBS. Jr.

DESIGNATION OF PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW—ORDER FOR DIVISION AND CONTROL OF REMAINING TIME

Mr. BYRD of West Virginia. I ask unanimous consent that, when the Senate convenes tomorrow, there be a period, not to exceed 30 minutes, for the transaction of routine morning business as in legislative session, and that all time thereafter until 1 o'clock, the time set for the vote on the nomination, be equally divided and controlled by the majority and minority leaders, or Senators designated by them.

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

The unanimous-consent agreement was subsequently reduced to writing, as follows:

Ordered, That on Friday, November 21, after the Senate convenes that there be a period of 30 minutes for the transaction of routine morning business as in legislative session, and that the time thereafter until 1 o'clock be equally divided and controlled by the majority and minority leaders or persons designated by them.

Mr. HRUSKA. Mr. President, in its issue of today, November 20, 1969, the Wyoming State Tribune, of Cheyenne, Wyo., printed an editorial the text of which I ask unanimous consent to have printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, it is a very splendid editorial. One can gather that it subscribes to the views of the senior Senator from Nebraska that Judge Haynsworth ought to be confirmed. However, here is a part of the editorial which I think is very significant:

So now we get down to the real issue in the Haynsworth case which really does not have anything to do with his identity with litigants and possible conflicts of interest which have been raised by people who have their own and not inconsiderable conflicts of interest themselves; the real issue is that Haynsworth is not a judicial activist of the stripe of former Chief Justice Earl Warren or Justice William O. Douglas or the other majority members of the Supreme Court.

If Haynsworth is confirmed, they fear there may be an entirely new political cast to the Supreme Court, a potentially conservative one that will not seek to make law or to usurp the functions of Congress as the Warren majority has consistently done, but which may render decisions in accordance with a stricter interpretation of the Constitution and legal precedent.

It is altogether a conflict between liberal and conservative judicial philosophy and it may as well be branded as such.

EXHIBIT 1

EDITORIAL FROM THE CHEYENNE, WYO., STATE TRIBUNE, NOVEMBER 20, 1969

The Senate votes at 1 P.M. eastern standard time tomorrow on confirmation of Judge Clement Haynsworth, Jr., as President Nixon's appointee to the Supreme Court. It is our hope that Judge Haynsworth will be confirmed, first because he has been made a target of forces which oppose his views on the basis that he is a conservative, whereas they are liberals, and secondly, because insufficient reasons have been raised against the appointment. It also is our hope that both of Wyoming's Senators will vote for Judge Haynsworth's nomination. Senator Clifford P. Hansen already has indicated he will support, and vote for, the nomination. Senator Gale McGee has not yet given any definite indication how he will answer the roll call.

Although Haynsworth is a nominee of a Republican President, he is a member of the Democratic Party himself, and he receives substantial support from many Democrats and considerable opposition from many Republicans in the Senate, including the Assistant Leader, Senator Robert Griffin of Michigan.

Thus this is not a matter of partisan politics, but a philosophy; and since Griffin is a co-author of the Landrum-Griffin labor law of some years ago, it seemingly does not stand as a matter of broad labor concern despite the announced opposition to Haynsworth by a substantial segment of the organized labor movement in this country—not the rank and file, but the leaders.

The issue of racism also has been raised against Judge Haynsworth by the NAACP and other organizations, but during Senate debate on the issue on November 14, Senator Marlow Cook of Kentucky noted that a Greenville, South Carolina lawyer who has specialized in representing both organized labor and the NAACP told the Senate Judiciary Committee in testimony on the nomination: "Judge Haynsworth, in my opinion, has one of the best legal minds, the most incisive legal minds that I have run into."

Despite efforts to convey the impression that Judge Haynsworth has violated the code of judicial ethics, for which there is no definite evidence whatsoever, the plain fact is that the opposition to his confirmation is based in what his opponents have actually charged against him—political bias. Here, for example, is the indictment lodged by Senator Jacob Javits, a Republican, of New York: "It is my intention to vote against the confirmation. I will do so because I have found, on reviewing the written opinions of Judge Haynsworth, particularly in racial segregation cases, that, without any derogation of him personally, his views on the application of the Constitution to this most critical Constitutional question of our time are so consistently out of date, so consistently insensitive to the centuries-old injustice which we as a nation have caused our black citizens to bear, that I could not support the introduction of Judge Haynsworth's judicial philosophy into the nation's highest court."

That, summed up, is the real reason why the bitter fight is being made against Haynsworth: His judicial philosophy does not accord with the activist concept that has been enunciated on the Supreme Court of the United States during the past one and one-half decades under the stewardship of another Republican like-minded to that of Senator Javits of New York, namely now-retired Chief Justice Earl Warren of California.

So now we get down to the real issue in the Haynsworth case which really does not have anything to do with his identity with litigants and possible conflicts of interest which have been raised by people who have their own and not inconsiderable conflicts of interest themselves; the real issue is that Haynsworth is not a judicial activist of the stripe of former Chief Justice Earl Warren or Justice William O. Douglas or the other majority members of the Supreme Court.

If Haynsworth is confirmed, they fear, there may be an entirely new political cast to the Supreme Court, a potentially conservative one that will not seek to make law or to usurp the functions of Congress as the Warren majority has consistently done, but which may render decisions in accordance with a stricter interpretation of the Constitution and legal precedent.

It is altogether a conflict between liberal and conservative judicial philosophy and it may as well be branded as such.

As for Senator McGee, he has assiduously sought to project a conservative political image in recent months; in keeping with this image, if it is a real one, we do not think it would be inconsistent for him to join Cliff Hansen in voting for Haynsworth's nomination.

ORDER OF BUSINESS

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quroum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. COOPER. Mr. President, the decision I have made to vote against the nomination of Judge Clement F. Haynsworth to be an Associate Justice of the Supreme Court is a difficult one.

I recognize the constitutional author-

ity and the responsibility of the President to select and nominate an appointee of his choice. I have wanted very much to support President Nixon. I have not wanted to be unfair to Judge Haynsworth. I have thought some of the accusations and attacks were unfair. They have caused me to search the record and to examine closely the validity of my own reasoning.

Many other considerations have run through my mind; that the Senate seeks to apply to the Court, standards that it does not apply to itself; that I might be arbitrary in placing my judgment above that of able and conscientious Members of the Senate.

I have received many communications from Kentucky and other States. I have been glad to have their expressions of interest and opinion, for they are an important part of the governmental process.

Many who are friends of Judge Haynsworth spoke in the warmest terms of his ability and integrity. Other letters were directed to his views—philosophical, economic, and social.

I have not made my decision on this factor, for I have found no bias or extremism expressed in his judicial record.

I would like to see the court more balanced.

I have come to my decision upon other factors. My decision is based on the cases reviewed in great detail in the hearings of the Committee on the Judiciary and in the debate—upon the issue as to whether Judge Haynsworth should have disqualified himself under the statute and the applicable canons of judicial ethics.

At this point, I include them in the RECORD:

28 U.S.C. 455 provides as follows:

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

Canon 4—Avoidance of Impropriety.—A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

Canon 26—Personal Investments and Relations.—A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his succession to the Bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship warp or bias his judgment, or prevent his impartial attitude of mind in the administration of judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

V. Canon 29—Self-Interest.—A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation on the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

I hold that under the Federal statute, the language of the canons, and the purposes and principles upon which the statute and the canons are based, Judge Haynsworth was required to disqualify himself in the cases which I will discuss briefly.

In making this statement, I do not impugn the honesty of Judge Haynsworth, for no evidence can be found of dishonesty or of any motive on his part toward enrichment.

I do not rely on a judgment of insensitivity. The basic principle and purpose of the law and canons, which have been placed in the RECORD, coupled with the circumstances of his financial interest, required, in my judgment, his disqualification; and his judgment, experience, and knowledge of the law, as a capable judge, should have directed him to do so.

I refer first to the Brunswick case. It has been discussed in a great deal. I will not again relate to the Senate all the facts of the case.

Judge Haynsworth purchased 1,000 shares of stock, valued at approximately $16,000, after the three-judge panel, of which he was a member, had agreed unanimously upon an opinion. It is fair to say that the members found no difficulty in arriving at their opinion, because the facts and the law, in their judgment, were clear.

However, after this opinion had been reached by the three-judge panel, and before it was made public to the litigants, and before the possibility of petitions for rehearings and actual rehearings had been exhausted, Judge Haynsworth purchased the stock to which I have referred. In fact, a petition for a rehearing was filed after Judge Haynsworth had purchased the stock, and he denied the petition. I do not challenge the substance of his denial.

The applicable Federal statute in this case is this:

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

Judge Haynsworth testified in the course of the hearings that his interest in Brunswick was substantial, and that if he had owned the stock prior to assuming jurisdiction of the case, he would have disqualified himself.

Judge Winter, one of the judges on the panel, when questioned on this subject before the Committee on Judiciary, testified as follows in answer to a question directed to him by Senator Hart: I refer to page 241 of the hearings:

Senator HART. Now, would you regard it as proper on your part to have purchased the Brunswick Corp. stock before the release of the opinion?

Judge WINTER. Before the release of the opinion? I think, sir, if I had been in that situation, I would have avoided buying the stock until after the opinion had been filed and the matter had been disposed of. I do not think, however, that I would have been legally disqualified, since a decision had been reached in the case in my mind, since the nature of the decision was not one which could have affected the value of the stock one way or the other.

I do not think I would have been legally disqualified from doing it. But I think that had I been fully conscious of this case, I certainly would have avoided buying the stock.

That is the opinion of a member of the panel upon which Judge Haynsworth sat, and it speaks for itself.

Judge Haynsworth testified that his stock interest in Brunswick was substantial. He stated that at the time he purchased the stock he did not recall or think of his participation in the Brunswick case, but at the time the formal opinion was forwarded to him for his concurrence, he recalled his purchase. In that connection, he said, as quoted on page 271 of the hearings:

The next time, of course, that the case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder.

My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage. Now, it does occur sometimes, as was brought out from Judge Winter, that when an opinion is assigned to a judge for a number of reasons he may change his view.

This may be the result of something he found in the record of which we were not aware. It may be the result of some research he did in his library to bring out some point that we were not aware of, were not fully appreciative of, and the case then reverts to the conference stage. It goes back for a brand new, fresh viewpoint. That happens now and then, not with great frequency but it does occur.

Nothing of the sort occurred in this instance. If it had occurred, I would have gotten myself out. Indeed I would not only have gotten myself out, I would have gotten Judge Winter out and Judge Jones, because if I was not qualified to sit in this case, I had conferred with them and if it was wrong for me to be in, it was wrong for them to be in it, so I would have gotten all three out and the case would have been set to be reheard before three new judges.

The point has been made in this debate, and correctly, that the case had not been concluded. As Judge Haynsworth said, while it was unlikely, there was a possibility of petitions for rehearings being filed and actual rehearings, and in the course of further proceedings it might occur that new material had been found which would change the decision of the judges.

So I say flatly that Judge Haynsworth was under a duty to disqualify himself, under the Federal statute. A purpose of the statute is to protect individual judges, and to protect other members of a panel such as the one on which Judge Haynsworth sat in the Brunswick case.

Judge Haynsworth said if he had thought it was improper for him to sit, he would have notified the other members of the panel, Judge Winter and Judge James, so they could have "gotten out." But he did not do so. He did not give them the chance to advise him and to de-

termine whether they should sit further in the case.

A just purpose of the statute is to protect litigants. Much has been said about the standards that judges should establish for themselves and their subjective judgments about them. I submit that little has been said in the debate about litigants before the courts and their protection. The law and the canons are intended to assure justice to litigants in their causes. No substantial interest of a judge shall stand in the way of justice or cause any substantial doubt of bias in the minds of litigants. A substantial interest of a judge does stand in the way of justice and causes litigants to doubt that justice has been rendered in their causes.

It is upon these tenets, and they are quite simple, that observance by the courts is demanded if justice is to be done, that the people may believe justice is done, and upon which the confidence of the people in the courts resides.

The Carolina Vend-A-Matic case presents a technically different case, but substantially the same issues as in the Brunswick case. It is differentiated from the Brunswick case because Carolina Vend-A-Matic was not a party litigant in the case of Darlington Manufacturing Co., against NLRB, et al., in which Judge Haynsworth participated. But Judge Haynsworth had a very substantial interest in Carolina Vend-A-Matic, which was a customer of Deering Milliken, which owned the controlling interest in Darlington.

Again, I do not impugn the honesty or motives of Judge Haynsworth. I argue that the principles of the Federal statute, even though not technically applicable in this case, and of the canons and their purpose, should have required Judge Haynsworth, with a substantial interest in Carolina Vend-A-Matic, to have disposed of his stock under the precept of canon 26 or to have disqualified himself in the Darlington case.

It seemed reasonable to believe Judge Haynsworth should have considered that the textile companies, which are important business interests in his circuit, would be apt to be involved in litigation, and he should have followed the injunction of canon 26 and disposed of his interest in Carolina Vend-A-Matic.

There is no express statement in the canons, and it is argued that as the Federal statute of disqualification did not apply, no responsibility attached to Judge Haynsworth. I believe the principle implicit in both the Federal statute and the canons required Judge Haynsworth to sell his stock or to disqualify himself in the Darlington case.

Objectivity and commonsense, especially to a judge, would have pointed the way to disqualification, to assure the litigants that the court was without bias and that equal justice under the law was being rendered.

I do not think it important that the question of his interest was not raised. The point is that the litigants did not know about his interest. It was never disclosed. In such cases, justice might not be rendered, and of great importance, litigant could believe that justice had not been rendered to them.

It may be said that the standards on which I base my decision should not apply to this nominee as they are standards which did not prevail at the time the cases to which I have referred were before him. I answer by saying that the standards were applicable at the time.

What is at issue is whether judges will observe them, and I am confident that the overwhelming majority do; and what is at issue is whether the Senate will apply strictly the standards of the statute and the canons.

Mr. President, I make another point. The cases have been argued as if they were the only cases of interest to the courts, the litigants, and the people. I make the point that if the practice of failure to disqualify became a common practice in the Federal courts, if Judge Haynsworth or other judges should pursue this practice, without disclosing to litigants their interests, or without disclosing to fellow judges an interest, we would come to a situation where the courts would lose confidence and respect, and where litigants would despair of receiving equal justice under the law.

Mr. President, last year the nomination of Justice Fortas to be Chief Justice of the United States was sent by President Johnson to the Senate.

The cases of Justice Fortas and Judge Haynsworth are in no way similar. There is no question in my mind about the motives of Judge Haynsworth, and about his honesty. But we are not dealing with subjective intent; we are dealing with the objective conduct of judges and courts, because only the objective action can be known by litigants and by the people of the United States.

As a result of the interest in and demand for stricter standards for members of the Court, it has been urged in Congress and throughout the country that higher standards, or at least clearer standards, should be established. Some have urged, including Members of Congress, that Congress should enact a code of standards or ethics. I believe it would be better if the courts would develop and prescribe their standards. The courts are experienced and better qualified from practice to comprehend the more difficult situations which must be dealt with. I also believe it would be better for the courts to prescribe their standards because of the constitutional separation of the legislative and judicial branches. But the Senate has a responsibility to apply strictly the existing standards in its process of considering the confirmation of judicial appointees. This will help achieve the purpose which I believe the Senate desires and the people desire. This process is of particular importance with respect to nominees to the Supreme Court—a coequal brand of the Government, a court with constitutional authority to reverse the enactments of the Congress and the decisions of the President, and to pass final judgment upon the rights of all citizens.

We can help protect the members of the judiciary, assure, so far as is humanly possible, litigants from bias, faith and confidence in our courts, and maintain the ancient principle upon which the continuanoe of our system of government at last must rest: that citizens, great or small, can believe that equal justice under law is rendered to them.

Mr. JAVITS. Mr. President, will the Senator from Kentucky yield?

Mr. COOPER. I yield.

Mr. JAVITS. Mr. President, for the many years that I have served in the Senate, and the many that I sat next to the Senator from Kentucky, he has been regarded almost as a model of probity and of understanding, as well as of parliamentary ability, in this Chamber. I believe that history will record that his words spoken tonight will substantiate that concept in which his colleagues have found such gratification in respect to the Senator from Kentucky in all the years that I have served here.

There are many things I would say of personal gratification for the position, and the arguments to sustain it, which the distinguished Senator from Kentucky has taken. But that would only derogate from what I hope history will record as the imperishable reputation for the highest kind of decency of which a Senator is capable, as shown by JOHN SHERMAN COOPER of Kentucky.

Mr. BAYH. Mr. President, in my own feeble way, I should like to echo the comments of our articulate colleague from New York.

The Senator from Kentucky has been one Member of this body to whom I have always looked for advice and counsel. If the Senator from Kentucky had looked at the facts of this case and had decided contrary to the position he has taken, it would in no way have lessened my admiration for him.

As the Senator from Kentucky spoke, I thought, of the standard of conduct which he himself followed when he was a judge and which he has, indeed, stamped indelibly upon this body as a standard of conduct toward which all of us should strive. I must say that he moved me greatly.

Mr. President, I concur not just in what the Senator from Kentucky said about the difficult decision that each of us is asked to make, but I also believe that this body should take heed from what the Senator from Kentucky said about this case and about the very unfortunate set of circumstances that, indeed, led to the vacancy which we now seek to fill. I hope we will look in that mirror of self-conscience and conclude that it is not enough to require a high standard of conduct for a nominee to the Highest Court of the land. Before this Congress is finished I hope we also seek to set the same standard for ourselves.

The Senator from Kentucky has been one of the leading advocates of disclosure of financial relationships of Members of Congress. I salute him for it.

Out of this whole cauldron of discussion, disagreement, and debate in the finest sense, we can, at long last, set the record straight. In addition to exercising its right to advise and consent, the Senate must do more; it must set a higher standard of conduct for itself.

If the Senate will do that, then I think it will have the distinguished Senator from Kentucky (Mr. COOPER) to thank for moving us in that direction.

Mr. SPONG. Mr. President, I concur in the last thought given to the Senate

by the distinguished Senator from Indiana (Mr. BAYH).

I would hope that there will not be many more instances of deliberation by this body when it will be called upon to sit in judgment upon others, when we have failed in our own standards to adopt the principle of full financial disclosure.

I would hope that, regardless of how the vote turns out tomorrow, the Senate, before the end of this term of Congress, will turn its attention to the problem and will adopt for itself a higher standard insofar as financial disclosure is concerned.

I thank the Senator from Indiana for making this suggestion, and I agree with it.

Mr. HRUSKA. Mr. President, some very kind and generous compliments have been paid to the distinguished senior Senator from Kentucky (Mr. COOPER) and I want to associate myself with all of them.

However, Mr. President, I believe, to leave the RECORD concerning the nomination as it is, on the basis of the comments made by our esteemed colleague, would not be doing a favor to the Senate or to the public.

The record in this case will show that great consideration and study of the Brunswick case have been given in great detail. This includes study of the statute which the Senator quoted and also canons 26 and 29.

I should like to refer to the record in that connection.

Judge Winter, who is a judge on the Fourth Circuit Court of Appeals, was one of our witnesses, and at page 252 of the testimony, after all of the circumstances of the purchase of stock by Judge Haynsworth, after the decision had been made in the Brunswick case, he was asked by the Senator from Indiana (Mr. BAYH):

Judge Winter, if you had been made aware that Judge Haynsworth had purchased the stock as he did in the latter part of December, what action, if any, would you and Judge Jones have taken?

Judge Jones was a district judge sitting as the third of the circuit judges participating in the decision on the Brunswick case.

The answer by Judge Winter reads:

I think that I would have called the matter to Judge Haynsworth's attention, that this was a case in which the opinion had not been announced, but I think that I would have left the decision of what part he should play in it entirely up to him, because I think matters of personal disqualification are peculiarly a matter for personal decision.

Then the question was asked, with reference to the Brunswick case:

Senator HART. You think that it was not apt to be a litigant since it already had been a litigant?

Judge WINTER. What I am saying was that——

Senator HART. That made it less likely?

Judge WINTER. Its days of a litigant in the eyes of the decisional process were at an end because its rights had been adjudicated.

Senator ERVIN then asked a question:

Senator ERVIN. Now certainly this 0.0005 proportionate ownership of the Brunswick Corp. by Judge Haynsworth could not have given him any very substantial interest in the outcome of that case, could it?

Judge WINTER. Sir, I think the arithmetic of it would show that it was not certainly a big interest in the absolute sense, and I would not quarrel. I do not know whether Judge Haynsworth was aware that he had this or whether he had not.

Senator ERVIN. Yes.

Judge WINTER. I have not attempted to talk to him or to find out about it. But let me put it this way. If he concluded that that was not a substantial interest I would not have questioned his judgment for a moment, or if he had concluded that it was a substantial interest, but nevertheless it was not improper for him to sit, I would not have quarreled with him for a moment.

Mr. President, that is very important, because the language of the statute puts the burden on the judge as to whether or not he should disqualify himself in a case. I read the text of title 28, United States Code, 455:

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion—

The judge's opinion—

for him to sit on the trial, appeal, or other proceeding therein.

Mr. BAYH. Mr. President, will the Senator yield at that point?

Mr. HRUSKA. I am happy to yield.

Mr. BAYH. Does the Senator feel that Judge Winter's determination, or indeed Judge Haynsworth's determination is really the important question? The question is whether we, as individual Members of the Senate, believe that the judge's judgment, in not disqualifying himself when he had a substantial interest, as he admitted to the committee, was good or bad.

Mr. HRUSKA. But the judge did not say he had any interest at all at the time of the decision. The Senator from Indiana jumps over that part. Judge Haynsworth did say that when he realized that the case was still pending, he wished he had never heard of the Brunswick case. Nevertheless, the letter to the Senator from Virginia, from Mr. Frank, said he supposed different people could conclude differently as to what could have been done. It was necessary to balance the cost of the argument on a perfunctory case with the other cases involved. "While I think this is a matter of practical judgment, I do not believe that it rises to the level of ethics."

We can put all kinds of construction on this case, but here is perhaps the outstanding authority on the subject of qualification and disqualification of justices, John Frank. And we have the judgment of fellow judges of the Fourth Circuit Court of Appeals on this subject. I say that is as good an interpretation of the application of the statute as anything.

If we want to change the scope of the title 28, section 455, that is something else again. If we want to say that, regardless of the size of the interest the judge is disqualified, that is something else again. But let us not make a bill of attainder out of this principle, without a rule or canon or statute.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. COOPER. I appreciate the questions the distinguished Senator is raising. I considered them, and I came to the conclusion that the Federal statute required his disqualification in the Brunswick case. He did have a substantial interest which he admits. He did not disqualify himself. He did not disclose his interest. When he realized that he had purchased the stock, he did not dispose of the stock. He did not consult with his fellow judges to determine the effect upon them and the case.

As the Senator has said, Judge Winter stated that if he had known Judge Haynsworth had the stock, he would have gone to him and talked to him about it.

Why would he have done so? Because he was troubled, just as I am troubled, just as we are troubled. There is no question here of a bill of attainder. The law was the law at the time. He should have disqualified himself. It is not a bill of attainder. We are not setting new standards. I hope we are requiring that standards be observed by judges.

I make one further point. I did not make it very clear in my written statement. We speak of the cases as if they were the only cases which the Senate might be considering. The point is, Shall we say that this kind of reasoning about disqualification, the practice of not disqualifying one's self when there is a substantial interest, shall be the practice of other judges in other cases? Or if it is the practice, shall we approve that practice?

The Senator from Nebraska is a great lawyer. He is experienced. He has kept at his studies and is one of the most able members of the Committee on the Judiciary and in the Senate. I have not kept up my studies as I did when I was a lawyer and judge, but I have studied the issue before us.

I may have simplified the question, but I think the question is simple. It is not a question from the way the judge looks at it subjectively, and whether he thinks he should do this or not. The statute says he must do it—he must disqualify when his substantive interest is involved.

Also, as I have tried to bring out, from the standpoint of the litigant. In the Vend-A-Matic case, the question of the interest of the judge was not raised by the litigants in time and was not prosecuted——

Mr. HRUSKA. In what way? Every bit of detail on the Vend-A-Matic affairs was disclosed in the record and was discussed at length.

Mr. COOPER. I agree. I am talking about the practice of the case itself.

Mr. HRUSKA. Vend-A-Matic was never in litigation. There was no case that involved Vend-A-Matic.

Mr. COOPER. I know that. I said that in my speech.

Mr. HRUSKA. If the Senator will pardon the interruption, the statute says if he has any interest in any case. As far as Vend-A-Matic is concerned, and the entire history of the Vend-A-Matic Co., or any part ownership thereof, there was

no case in which Vend-A-Matic was involved.

If we want to stretch the statute to say in any case in which a company is involved or in any case where a company, or its customer, is also involved—that is something else again.

But Vend-A-Matic was not a party. It was not in the case by court rule, by canon, or by statute; and if we are going to try to bring it into the case, we will be, in fact, getting into the area of ex post facto application of rules. I do not see any other course.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. COOPER. Mr. President, I must finish. I know that Vend-A-Matic was not a party litigant, and I said so. I have read the record. And technically, the Federal statute does not apply. But the principle of the Federal statute applies, considering the circumstances of the case.

I believe that, although not required by statute, as the judge held a considerable, a very large interest in a customer of companies involved, the interest should have been disclosed to the litigants under the canons.

Mr. HRUSKA. If the Senator is going to stretch a statute of as great importance as this to a principle which is involved, I am glad that is made clear, but I suggest that it is a statute that has great importance, and one should be entitled to depend upon the language of that statute, and also the interpretation and application thereof according to the judicial opinion from which I read, as a part of the record.

But I turn now to the matter of the canons, specifically canon 29.

Senator TYDINGS asked Judge Winter:

I am going to refer to canon 29:

"A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved."

Do you feel that Judge Haynsworth was in violation of canon 29 when he purchased the Brunswick stock?

Judge WINTER. The way I would construe canon 29; no.

Then we get to canon 26. Senator TYDINGS asked the judge:

Let me divert your attention to canon 26:

"A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court, and after his ascension to the Bench he should not retain such investment previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should so far as reasonably possible refrain from all relations which would normally tend to arouse the suspicion that such relations would bias his judgment to prevent his impartial attitude of mind in the administration of his judicial duties."

I will ask you the same question. Do you think he was in violation of canon 26 when he made that purchase?

Justice WINTER. I do not.

Mr. President, here is a Federal judge, and he is a man who is familiar with all this. He has studied the record. This he gives as his opinion. Each one of us can have his own opinion, if he wants to, but here is a judge who gives this as his judgment, and he knows what he is talking about.

Now, if we are going to say, "Oh, but we must not have any appearance of evil, or any sort of reproach visited on someone," then indeed we will find it difficult to find any nominee for a judgeship able to comply with that kind of a test. It is a test that would elicit 100 different results within this body. That is certainly not contemplated in the statute, nor is it contemplated in any of the canons.

On the issue of substantiality, Judge Winter did take issue with the idea that there was a substantial interest, as I have already illustrated by reading the question by Senator ERVIN:

Senator ERVIN. Now certainly this 0.0005 proportionate ownership of the Brunswick Corp. by Judge Haynsworth could not have given him any very substantial interest in the outcome of that case, could it?

Judge WINTER. Sir, I think the arithmetic of it would show that it was not certainly a big interest in the absolute sense.

And he says that if the judge decided that it was not substantial in his opinion, and that there was no conflict of interest, he would respect that determination.

That is what Congress put in the law. That is what is in the law, and I think we ought to go by that law.

Mr. BAYH. Mr. President——

Mr. HRUSKA. Again, if we should decide to change the rules, that is something we can do, but prospectively, and let us change the law. But let us not impose our subjective ideas of what the principle of the law is and try to apply them to this man.

Mr. BAYH. Mr. President, will the Senator yield a moment? Or may I have the floor?

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, it seems to me there are two words which are the cause of our disagreement and differing interpretations. They are the two words "substantial interest," as used in section 455.

As one Member of this body, I can see how another Member of the body could look at those two words and come to a different conclusion as to their meaning from that of the Senator from Indiana.

But I must say I concur with the Senator from Kentucky in his determination as to what is a substantial interest. I share the concern of our good friend and colleague from Nebraska that we not, indeed, get involved in an ex post facto situation. But, in my judgment, we have ample evidence now to say that the business relationship that Judge Haynsworth had was sufficient to come under the coverage of the statute as it is now.

Let me, if I may, quote some of those who have previously been quoted. In fact, we have talked about what Judge Winter said, and we have talked about what Mr. Frank said. Before proceeding further, I think it might be helpful if we place in the RECORD at this time a letter from the dean of the Yale University Law School concerning this matter of conflict of interest. I ask unanimous consent that a letter addressed to the two Senators from Connecticut by the dean of the Yale University Law School, dated November 19, 1969, be printed in the RECORD.

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

YALE UNIVERSITY LAW SCHOOL,
New Haven, Conn., November 19, 1969.

Hon. THOMAS J. DODD,
Hon. ABRAHAM A. RIBICOFF,
Senate Office Building,
Washington, D.C.

DEAR SENATORS DODD AND RIBICOFF: Much has been said—much has been written—on the vexing question whether the Senate should vote its constitutional "consent" to the nomination of Judge Clement Haynsworth, Jr., as an Associate Justice of the United States Supreme Court.

I do not propose to burden you with an extensive review of all the issues. But permit me to add a few words on one aspect of the nomination—the question whether Judge Haynsworth has fully insulated himself from "the appearance of impropriety" (Canon 4 of the Canons of Judicial Ethics)—which seems to me in danger of being blurred out of focus for the regrettable reason that partisans on both sides have been making extreme claims which cloud the real issue.

Some of these extreme claims suggest—wholly falsely, I submit—that the question at issue is whether Judge Haynsworth is an honest and upright man.

By way of example of one such extreme claim, there was testimony before the Senate Judiciary Committee from a highly-placed labor leader which included the assertion that Judge Haynsworth "operates within that (Southern textile) conspiracy"—a shockingly scurrilous assault on Judge Haynsworth's integrity, for which, I venture, there is not an iota of evidentiary support in the record made before the Committee.

But it is the profoundly unfortunate fact that partisans on the other side have contributed to this false view of the issue. I am thinking, for example, of suggestions emanating from certain members of the House of Representatives that non-confirmation of Judge Haynsworth should trigger impeachment proceedings against Mr. Justice Douglas. Quite apart from the fact that those who have floated their suggestions have not vouchsafed any remotely plausible grounds for impeachment (and have thus gratuitously slandered a defenseless sitting Justice), it is evident that the intended import of these suggestions is to persuade the Senate that non-confirmation of Judge Haynsworth would be tantamount to an accusation that the Judge has been guilty of actual misfeasance in the performance of his judicial duties on the Court of Appeals for the Fourth Circuit.

That, however, is not the issue before the Senate. No responsible opponent of the nomination argues—or has, I believe, any basis for arguing—that Judge Haynsworth has been guilty of any actual impropriety. The single question before the Senate is, as Senator Griffin rightly phrased it, "whether he should be promoted to a place on the Nation's highest court."

Measured by that standard, the nomination should not, in my judgment, be approved, for I am not satisfied that Judge Haynsworth has demonstrated substantial sensitivity to the punctilious norms of judicial behavior we would want a Justice of the Supreme Court to adhere to.

I offer this judgment with some diffidence, for I appreciate the contrariety of perspectives from which reasonable and honorable men, including the members of the Judiciary Committee, have viewed the several questioned episodes in Judge Haynworth's judicial career which were canvassed by the Committee. Of these episodes, I wish to comment upon only one—the much-mooted *Brunswick* case. There are two aspects of this which trouble me. One is the way in which Judge Haynsworth dealt with what was, concededly, an "inadvertent error" (the pur-

chase of stock in the Brunswick Corporation while the case was pending before him)—namely, by taking no steps to undo the error. The second aspect which troubles me (and I say this with all deference) is the fact that the majority of the Judiciary Committee in effect placed its stamp of approval on Judge Haynsworth's decision not to undo the error: a dictum of the Committee which, I am afraid, can only serve to undercut the Committee's own authority and prestige insofar as the Committee has appeared to acquiesce in a standard of judicial behavior less rigorous than that which ought to apply in the courts of the United States.

With respect to the first aspect, let me say at once that manifestly Judge Haynsworth did not, by reason of purchasing stock in the Brunswick Corporation, acquire any measurable financial stake in the outcome of the pending litigation. That is not the point. The point is that Judge Haynsworth, upon realizing (on receipt of Judge Winter's draft opinion) that he had inadvertently purchased stock in a corporation which was a party to a law suit pending before him, and in order meticulously to avoid "the appearance of impropriety," ought to have taken at least one of three courses of action: (1) divest himself of the shares forthwith; (2) bring his shareholder status to the attention of the litigants' counsel and his fellow members of the panel; (3) withdraw from the panel. He took none of these courses of action. Instead he chose to stay on the panel and participate in the final disposition of the case. This choice does not, in my view, reflect that instinct for judicial decorum which I would hope to find in a man nominated to be an Associate Justice of the Supreme Court.

On the second aspect of the matter, I am distressed by the readiness of the majority of the Judiciary Committee to approve Judge Haynsworth's decision to remain on the panel:

The committee is of the opinion that because the purchase was inadvertent and because the issues in the case had been decided prior to the purchase, neither the statute nor the canons were violated. Judge Haynsworth stood to make no financial gain by reason of the stock purchase and could not have been influenced in his judicial actions. While a change in the court's opinion was technically possible prior to the issuance of the written opinion, as a practical matter the chances for such a reconsideration were nil.

Under these circumstances and in view of the nature of the case Judge Haynsworth reasonably concluded he should not disqualify himself from the case. This would have required assigning a new panel to hear the case, rescheduling oral argument, deciding the case anew and rewriting the draft opinion. As chief judge, charged with the administration of the court, Judge Haynsworth recognized this procedure would have been unduly burdensome in this case where the merits were not in doubt.

I find it difficult to concur in the proposition that, where a case is a routine one in which "the merits were not in doubt," a federal judge faced with Judge Haynsworth's problem should have "reasonably concluded" that he need not undertake either to divest, or to disclose, or to disqualify himself. As to the standard of judicial punctilio to be observed, I would have thought it common ground that no case is routine. And I am particularly surprised at the suggestion that because Judge Haynsworth was "chief judge, charged with the administration of the court," it was particularly appropriate for Judge Haynsworth to conclude that disqualification "would have been unduly burdensome." I would have hoped the Judiciary Committee would have expected a chief judge to be at particular pains to see to it that the members of his court, himself included, would avoid "the appearance of impropriety." I especially would have hoped this when the issue on which the Judiciary Committee was to counsel the Senate was whether the chief judge "should be promoted to a place on the Nation's highest court."

Sincerely,

_____.

Mr. BAYH. In the letter, he indicates that he feels very definitely the Judge should have disqualified himself from the Brunswick case.

I also ask unanimous consent to have printed in the RECORD once again, if I may do so without belaboring the printer, a letter from David Mellinkoff, professor of law, University of California at Los Angeles, dated October 20, 1969, addressed to the Honorable James O. Eastland, with copies to myself and other Senators, in which he shares the same concern about the Judge's having a substantial interest.

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

UNIVERSITY OF CALIFORNIA,
LOS ANGELES,
Los Angeles, Calif., October 20, 1969.

Hon. JAMES O. EASTLAND,
U.S. Senate, Chairman, Senate Judiciary Committee, Washington, D.C.

MY DEAR SENATOR EASTLAND: As a professor of law teaching legal ethics to future lawyers, I write to invite your further attention to what I believe to be the central issue in the consideration of the fitness of Mr. Justice Haynsworth for appointment to the Supreme Court of the United States.

Three instances of apparent conflict of interest have been given prominence in the press: the Justice's purchase of Brunswick Corporation stock before announcement of his Court's decision in favor of Brunswick; his substantial ownership of Carolina Vend-O-Matic, a company having a valuable business relationship with a successful litigant before the Court; and his small stock holdings in the W. R. Grace Co. at the time of a decision favorable to its subsidiary Grace Lines. According to report, Justice Haynsworth has explained that the Brunswick case had been decided and forgotten before he bought any Brunswick stock, and that financial interest did not influence his vote in any of these cases. As a member of the bar for 30 years I accept Justice Haynsworth's explanation.

At the same time I cannot but observe that to the unsuccessful litigant in Justice Haynsworth's Court the explanation would ring hollow. At best losing a lawsuit is a disheartening, at worst a crushing experience to anyone convinced rightly or wrongly of the justice of his cause. The disappointment is endurable only under a system of justice in which the loser knows that the process by which he lost was a fair one.

In a grosser age, when the brilliant Francis Bacon was forced from office and forced to acknowledge that as Lord Chancellor of England he had been taking gifts from litigants, he was still able to assert, ". . . I am as innocent as any born upon St. Innocent's day: I never had a bribe or reward in my eye or thought when pronouncing sentence or order." It may have been true, but it was hardly satisfying, least of all to the man who lost his case in the Lord Chancellor's court.

In a United States district court a jury awards an injured seaman $50.00 on a claim against Grace Lines he thought worth $30,000.00. Saddened, he takes his case to the United States Circuit Court of Appeals. It is not difficult to imagine the bitterness in the heart of the injured seaman when he learns that one of the judges to whom he appealed in vain to right the supposed wrong of the Grace Lines was even a small owner of the company that owns Grace Lines. By the standard of the marketplace Justice Haynsworth's stockholding was trifling. It looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him.

To avoid such avoidable strains on the legal system, it has long been a maxim of the law that courts shall not only do justice but that they shall seem to do justice. This ancient wisdom finds expression in the Canons of Judicial Ethics of the American Bar Association providing that a judge's conduct should not only be "free from impropriety" but from "the appearance of impropriety." (Canon 4). The importance of the appearance of things is stressed again and again (Canons 13, 24, 26, 33), culminating in the injunction that "In every particular his conduct should be above reproach." (Canon 34).

These Canons apply to judges at every level. They apply most stringently to the men who are to grace the court which sets an example of right to the rest of the nation. I hope, Senator, that you will consider the nomination of Mr. Justice Haynsworth in this light. If you do, I believe you will come to share my conclusion that his confirmation would not promote that necessary public respect for our system of justice which each of us in his own way seeks to preserve.

DAVID MELLINKOFF,
Professor of Law.

Mr. BAYH. Inasmuch as Mr. Frank has been quoted as saying that the judge did not have a substantial interest in Carolina Vend-A-Matic, I should like to call the attention of the Senate to what Mr. Frank——

Mr. HRUSKA. Mr. President, will the Senator yield? Is it suggested that I said the judge did not have a substantial share in Vend-A-Matic?

Mr. BAYH. No. Heavens, no; the Senator has been very meticulous about this, and if I inadvertently inferred that, I apologize.

Mr. HRUSKA. I did not know to whom reference was made.

Mr. BAYH. I was not quoting the Senator from Nebraska. I was quoting Mr. Frank, when he said—I tried to get him to say something else, but he refused, and I disagreed——

Mr. HRUSKA. I did not realize the Senator was quoting.

Mr. BAYH. I was quoting Mr. Frank.

Mr. HRUSKA. Very well.

Mr. BAYH. Mr. Frank said consistently that in his judgment, Judge Haynsworth did not have a substantial interest in the Darlington case; but the Senator from Kentucky brought up the question of Brunswick, which is relevant to the Grace Lines case and the Maryland Casualty cases.

Mr. Frank said, when I asked him, as shown on page 127:

How large is a substantial interest?

I think that generally the better view, Senator, but not the only view, is that if there is any interest it ought to be regarded as a disqualifier. But the word "substantial" is used here to cover the marginal situation of the small stockholders, let us say, in a corporation, somebody has a few shares of GM, that sort of thing. I have given an illustration in one footnote of a case of a district judge in the second circuit who had, as I said, 20 shares on 13 million and felt, thought it wasn't enough.

In my report in 1947, 33 State and Federal courts felt if there was any holding of stock they thought it should disqualify. Two courts thought if the holding was very small they felt it should not disqualify, and you heard

Judge Haynsworth state that was the view of the fourth circuit.

Again, later on, as I tried to develop this more fully, Mr. Frank said:

Senator, in the overwhelming majority view, and there is a citation here of the most recent ALR note, shareholding would be enough. Any. But it is not quite unanimous.

In going now to what Judge Winter had to say about this matter, I point out that on page 260 of the hearings, the Judge said:

Well, I think the rule of thumb is that if he has knowledge, he ought not to sit in the case unless there is some exceptional circumstance, and the parties or the counsel for the parties agree that he should sit. I have reference to this fact, Senator. We, of course, live in a metropolitan State, and the Court of Appeals of the Fourth Circuit is a metropolitan court. I mean it is a multijudge court.

In other words, even in the fourth circuit, which holds the minority view that if one has some stock, he may sit, that judge should disclose his holdings. And Judge Haynsworth did not disclose.

Mr. HRUSKA. Mr. President, on the contrary, that is not what Judge Winter testified. He was asked this question by the Senator from Indiana himself:

If you had been made aware that Judge Haynsworth had purchased the stock, what action, if any, would you and Judge Jones have taken?

The answer implied that Judge Winter would have left the decision to him because the statute requires that those matters of personal disqualification are purely a matter for a person's judgment. And that is why we have in the statute not only the words "substantial interest," but also the words, "in his opinion."

Judge Winter's testimony is clearly relevant together with the testimony of Judge Haynsworth when he said:

The (first) time, of course, that the case entered my mind was when I received the proposed opinion from Judge Winter. At that stage, I realized that it had not been completely disposed of, and at that time I thought what I should do. I had now become a stockholder. My conclusion was that I should endorse it since Judge Winter had written an opinion precisely as we had agreed, since Judge Jones concurred, since no one had any doubt about it, and nothing else occurred to return the case to the discussion stage . . .

It does occur, as brought out by Judge Winter, when an opinion is assigned to a judge, that for a number of reasons he may change his opinion. But no such thing happened here. When the decision was finally made, he was not a stockholder.

Mr. BAYH. Mr. President, I suggest to the Senator that either he and I respectfully disagree with one another or Judge Winter is saying one thing in response to my question and another thing on page 260 in response to my question and another thing on page 260 in response to a question from the Senator from Maryland (Mr. MATHIAS).

When it states that the judge should disclose his holdings and get approval from counsel, it seems to me the very least Judge Haynsworth should have done was to disclose his interest in Brunswick.

Let me deal with one or two other aspects of the matter and then I will let the Senator pursue this in any direction he wishes.

Looking at the words "substantial interest," I think that we in Congress have been negligent. And I hope that after this is over, we will clarify this statute so there will be a uniform interpretation throughout the country.

I call attention to page 37 of the report from the Senate Judiciary Committee, to an article written by Judge Simon Sobeloff in the Federal Bar Journal in which he talked about conflict problems. Inasmuch as Judge Sobeloff's name has been drawn into this matter and inasmuch as he was chief judge of the fourth circuit. I think what he has to say has some relevance. Judge Sobeloff said:

One can readily see that if a judge serves as an officer or director of a commercial enterprise, not only is he disqualified in cases involving that enterprise, but his impartiality may also be consciously or unconsciously affected when persons having business relations with his company come before him.

It seems to me this condemns Judge Haynsworth's unfortunate relationship with Carolina Vend-A-Matic.

I also would like to make one concluding observation to reinforce the position of the Senator from Kentucky (Mr. COOPER) as to his definition of substantial interest.

I think most of us who have had some experience in the legal profession realize that the cold words of the code mean nothing until they are put into practice.

I think the best way to interpret what substantial interest means is to look at what the courts have said about the interpretation of substantial interest. And the court has spoken last year in the case of Commonwealth Coatings Co. against Continental Casualty Co. about this very thing. In that particular instance, there was an arbitration in which an arbitrator had a 1-percent interest with one of the litigants, whereas in the Darlington case, there was a 3-percent involvement. In the Commonwealth Coating case, the relationship had not existed for at least a year, whereas in the Carolina Vend-A-Matic-Darlington situation the relationship was an ongoing thing.

I would like, if the Senator from Nebraska will bear with me, to read into the RECORD at this time what really convinced me that the judge had a substantial interest.

This is a direct quote from the opinion in the Commonwealth Coating Company v. Continental Casualty Company case. It says:

It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed business relationships, to suspect him of any improper motives.

This points out that it makes no difference that Judge Haynsworth was not trying to feather his own financial nest or improve his stock benefits. I do not think that at all. The case continues:

But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close financial relation that had existed between them for a period of years.

Then, in what I feel is very significant language, the Court stated:

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.

Further—and I feel that this is what the Senator from Kentucky (Mr. COOPER) was striving for—in concluding that case, after talking about the arbitration ruling, after bringing the canons of ethics into a case before the Supreme Court, and quoting from canon 33 extensively, the Court said:

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased, but must avoid even the appearance of bias.

Although I am sure all Senators do not concur in the view of this relative neophyte member of the bar, the Carolina Vend-A-Matic relationship concerns me.

Mr. HRUSKA. The Senator from Indiana was quoting from the Supreme Court decision in the Coating case. Professor Frank clearly distinguished that case. That case involved an arbitrator who was a part owner of a business that had provided consultation to one of the parties on a matter that was at issue in the proceedings. That was not the case with Judge Haynsworth.

Mr. BAYH. With all due respect, if the Senator from Nebraska will read my colloquy with Mr. Frank, he will see that Mr. Frank was basing his interpretation on the fact that he thought the Court's decision rested on arbitration rule 18.

Mr. HRUSKA. That is correct.

Mr. BAYH. If the Senator from Nebraska will read further, he will find that the Court said that the final determination did not depend on arbitration rule 18; it also quoted from canon 33, and stated, as I said earlier, that it was deciding the case on a broader principle, deciding it on something more than arbitration rule 18.

Mr. HRUSKA. I agree that the Senator is trying to do that.

Mr. BAYH. I am not, but the Court did.

Mr. HRUSKA. The fact remains that rule 18 of the American Arbitration Association is highly significant but not controlling. But, regardless, it is still a case in which arbitration is involved and not a judicial matter.

Let us get back to the matter of Judge Sobeloff.

Mr. BAYH. May I repeat that the Court goes so far as to say:

We have no doubt that if a litigant should show—

Not that an arbitrator but—

that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would have been subject to challenge.

It seems to me that the Court is saying that if this case had involved a judge, the judge would have had to disqualify himself.

Mr. HRUSKA. In the first place it

is dictum. In the second place, to be applicable, the facts would have to be the same as in this case, and the facts in the Vend-A-Matic case are not the same as in this case.

Let us get back to the quotation from Judge Sobeloff. This is what I mean by bill of attainder, Mr. President. Here is a quotation from a law journal, written for the Federal Bar Journal, in 1964, in which Judge Sobeloff makes a comment on canon 24. The application of that law article is now sought to be imposed upon Judge Haynsworth.

Mr. BAYH. Will the Senator tell me when canon 24 was first adopted as part of the canons of ethics? Is that ex post facto? It was adopted in 1924.

Mr. HRUSKA. The article is certainly ex post facto, and the Senator is relying on the article which goes beyond the canon and beyond the statute.

On page 3 of the committee report we have a telegram signed by Judge Sobeloff, as the first of six judges of the Fourth Circuit Court. That telegram is specific, and he knew all the facts involved. The telegram reads:

> Despite certain objections that have been voiced to your confirmation, we express to you our complete and unshaken confidence in your integrity and ability.

If Judge Sobeloff felt that Judge Haynsworth was guilty of violating all these canons and showing insensitivity, he would not have given him this clear expression of confidence in his integrity and ability.

Mr. BAYH. Will the Senator yield? I want to make the RECORD clear.

I think the Senator has raised a good point relative to the ex post facto matter. But I am looking at those canons of ethics which were on the books before I was born.

Mr. HRUSKA. I would not be prepared to say. I do not think the canons of ethics were in existence.

Mr. BAYH. I think they were adopted in 1924. I stand corrected, if someone can say differently. I merely mentioned Judge Sobeloff's interpretation because it seems to me——

Mr. HRUSKA. And then sought to apply it.

Mr. BAYH. It seems a reasonable interpretation. If Judge Sobeloff was a reasonable man in 1964, he probably was a reasonable man when he was sitting as chief judge of his court.

Mr. HRUSKA. Yet, the application of general language in a law article to a situation as serious as this seems to me to be a little out of order.

Mr. President, let me point out that there is some law on this subject in the Fifth Circuit Court, and the Senator from Kentucky (Mr. COOK), cited it in his brief, on November 14, in the RECORD, at page 34270. There we have the case of Austral Oil Co., Inc., against Federal Power Commission. The Fifth Circuit, in a ruling issued in October, although transferring the case to another panel for rehearing, unequivocally held that Chief Judge Brown and Judge Jones were not disqualified for any reason to sit on the case, despite the fact that both judges had considerable stock interests in several of the parties. Judge Brown individually owned stock valued at $36,400 in three of the litigants as of the date of the hearing and was a trustee of several trusts holding oil company stocks worth approximately $500,000. It goes more into that situation.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. HRUSKA. I quote now from the ruling of the Fifth Circuit:

> The judges of the panel to which this case was assigned are not disqualified by prejudice, neither are they disqualified by interest, whether individual, fiduciary, or otherwise.

There is another case, Kinnear-Weed Corp. against Humble Oil. That was a patent infringement case that commenced in 1953, and it involved a claim for $285 million in damages, plus interest, against Humble. The trial judge owned not only 100 shares of Humble stock worth approximately $10,000 but also 25 percent of the stock of a company—and was an officer and director in a company—which, during the time the judge sat on this case, averaged almost 16 percent of its business with Humble. Second, he was a plaintiff in a contested lawsuit against Humble in which he received $409.24 out of the final settlement. Third, he executed certain oil leases with Humble.

As for the stockownership in Humble, the Fifth Circuit Court, in an en banc ruling written by Chief Judge Brown, held:

> This tiny fractional interest in the equity ownership of this huge industrial enterprise does not amount, either as a matter of fact, or law, or both, to a substantial interest by the trial judge in the case or a prohibited connection with a litigant.

Other cases were cited in the very well-prepared and documented remarks of the Senator from Kentucky (Mr. COOK).

This is the law. This is not a quotation from a law school article or a bar journal. There is the law as announced by the Fifth Circuit Court of Appeals.

Mr. BAYH. Will the Senator from Nebraska point out one Supreme Court case to me in the Senator from Kentucky's brief or, indeed, in the brief that was prepared by the Assistant Attorney General, Mr. Rehnquist. The Senator from Nebraska is doing an excellent job of citing law in the Fifth Circuit, but I want to know what the law in the United States is. The Senator talks about this Fifth Circuit case.

Mr. HRUSKA. Two cases.

Mr. BAYH. He omits to say that after the Fifth Circuit held this way, two of the judges involved decided they would remove themselves voluntarily.

Mr. HRUSKA. But the decision and the ruling was that there was no disqualification.

Mr. BAYH. That is the Fifth Circuit.

Mr. HRUSKA. If the Supreme Court authority is a case of arbitration which refers only in a very tangential way to this situation, I do not think it would make sense. It is only dictum. The situation is not parallel, and there is no similarity in the facts.

Mr. BAYH. I have before me approximately five pages, a relatively short decision, made in the October term of last year—it is about a year old—written by Justice Black.

It is very easy for the Senator from Nebraska to suggest that part of the case which proves my point is dictum. The Senator from Indiana takes the opposition. I think I should ask unanimous consent that Commonwealth Coatings against Continental Casualty be printed in the RECORD in toto so that everyone can make this determination for himself.

Mr. HRUSKA. I think that would be splendid. I join in the request.

The PRESIDING OFFICER (Mr. SPONG in the chair). Is there objection?

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

SUPREME COURT OF THE UNITED STATES
No. 14.—October Term, 1968

COMMONWEALTH COATINGS CORP., PETITIONER, v. CONTINENTAL CASUALTY CO. ET AL.

(On Writ of Certiorari to the United States Court of Appeals for the First Circuit)

[November 18, 1968]

Mr. Justice Black delivered the opinion of the Court.

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 a dispute through arbitration.

The petitioner, Commonwealth Coatings Corporation, a subcontractor, sued the sureties on the prime contractor's bond to recover money alleged to be due for a painting job. The contract for painting contained an agreement to arbitrate such controversies. Pursuant to this agreement petitioner appointed one arbitrator, the prime contractor appointed a second, and these two together selected the third arbitrator. This arbitrator, the supposedly neutral member of the panel, conducted a large business in Puerto Rico, in which he served as an engineering consultant for various people in connection with building construction projects. One of his regular customers in this business was the prime contractor that petitioner sued in this case. This relationship with the prime contractor was in a sense sporadic in that the arbitrator's services were used only from time to time at irregular intervals, and there had been no dealings between them for about a year immediately preceding the arbitration. Nevertheless, the prime contractor's patronage was repeated and significant, involving fees of about $12,000 over a period of four or five years, and the relationship even went so far as to include the rendering of services on the very projects involved in this lawsuit. An arbitration was held, but the facts concerning the close business connections between the third arbitrator and the prime contractor were unknown to petitioner and were never revealed to it by this arbitrator, or by the prime contractor, or by anyone else until after an award had been made. Petitioner challenged the award on this ground, among others, but the District Court refused to set aside the award. The Court of Appeals affirmed, 382 F. 2d 1010 (C. A. 1st Cir. 1967), and we granted certiorari, 390 U.S. 979 (1968).

In 1925 Congress enacted the United States Arbitration Act, 9 U.S.C. §§ 1–15, which sets out a comprehensive plan for arbitration of controversies coming under its terms, and both sides here assume that this Federal Act governs this case. Section 10, quoted below,

sets out the conditions upon which awards can be vacated.[1] The two courts below held, however, that § 10 could not be construed in such a way as to justify vacating the award in this case. We disagree and reverse. Section 10 does authorize vacation of an award where it was "procured by corruption, fraud, or undue means" or "where there was evident partiality . . . in the arbitrators." These provisions show a desire of Congress to provide not merely for any arbitration but for an impartial one.

It is true that petitioner does not charge before us that the third arbitrator was actually guilty of fraud or bias in deciding this case, and we have no reason, apart from the undisclosed business relationship, to suspect him of any improper motives. But neither this arbitrator nor the prime contractor gave to petitioner even an intimation of the close financial relations that had existed between them for a period of years.

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge. This is shown beyond doubt by *Tumey* v. *Ohio*, 273 U.S. 510 (1927), where this Court held that a conviction could not stand because a small part of the judge's income consisted of court fees collected from convicted defendants. Although in *Tumey* it appeared the amount of the judge's compensation actually depended on whether he decided for one side or the other, that is too small a distinction to allow this manifest violation of the strict morality and fairness Congress would have expected on the part of the arbitrator and the other party in this case. 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 . . ."[2] For in *Tumey* the Court held that a decision should be set aside where there is "the slightest pecuniary interest," on the part of the judge, and specifically rejected the State's contention that the compensation involved there was "so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty . . ."[3]

Since in the case of courts this is a *constitutional* principle, we can see no basis for refusing to find the same concept in the broad statutory language that governs arbitration proceedings and provides that an award can be set aside on the basis of "evident partiality" or the use of "undue means." See also *Rogers* v. *Schering Corp.*, 165 F. Supp. 295, 301 (D.C.D.N.J. 1958). It is true that arbitrators cannot sever all their ties with the business world, since they are not expected to get all their income from their work deciding cases, but we should, if anything, be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review. We can perceive no way in which the effectiveness of the arbitration process will be hampered by the simple requirement that arbitrators disclose to the parties any dealings that might create an impression of possible bias.

While not controlling in this case, Rule 18 of the American Arbitration Association is highly significant. It provides as follows:

"Section 18. Disclosure by Arbitrator of Disqualification—At the time of receiving his notice of appointment, the prospective Arbitrator is requested to disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the Tribunal Clerk shall immediately disclose it to the parties, who if willing to proceed under the circumstances disclosed, shall, in writing, so advise the Tribunal Clerk. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of this Rule."

And based on the same principle as this Arbitration Association rule is that part of the 33d Canon of Judicial Ethics which provides:

"33 Social Relations.

". . . [A judge] should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct."

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies must not only be unbiased but must avoid even the appearance of bias. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably be thought biased against one litigant and favorable to another.

Reversed.

Mr. BAYH. Mr. President, I would like to make one last point. I hope my friend from Nebraska will consider it further because I have great confidence in his legal judgment. However, I do not see a great distinction between the facts of Carolina Vend-A-Matic and Commonwealth Coatings. I have never been able to persuade the Members of this body of the real concern I have for the relationship of the judge to Carolina Vend-A-Matic. It goes right to the similarity, not the disparity but the similarity, between Commonwealth Coatings and the Darlington Mills case.

Mr. HRUSKA. Mr. President, will the Senator yield for a little interpolation?

Mr. BAYH. I yield.

Mr. HRUSKA. Is the Coatings case not a good example of the ex post facto situation? Here are events 6 and 7 years ago; and here is a case being quoted from the Supreme Court which was decided last year. What power of clairvoyance are we going to ask a nominee to have? Will he have to be able to predict what the Supreme Court will be saying 5 years from now, and will he have to comply with that ruling?

Here is a case decided in 1968 and an effort is being made to make it apply to a decision and conduct that happened 6 years ago. I would say it would be highly unfair to expect Judge Haynsworth to know what the Supreme Court would do 5 years hence. And in my judgment that is what he is asked to do.

Mr. BAYH. I would not expect a judge in 1953 to be able to determine what the Supreme Court is going to do in 1968. I do not think the Senator and I can tell what they are going to do today or tomorrow.

Mr. HRUSKA. The Senator is correct.

Mr. BAYH. I think that a judge, with his standing on the circuit court, should be able to know what the Supreme Court said in the case of Tumey against Ohio in 1927. That was a landmark case on which Commonwealth Coatings was based, and that case provided the precedent for the Court to say in 1968:

We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had unknown to the litigant any such relationship the judgment would be subject to challenge.

That is from the Tumey case in 1927.

Mr. HRUSKA. What kind of case was it? What were the facts? Did that not have to do with stock ownership in one of the parties litigant?

Mr. BAYH. In Tumey?

Mr. HRUSKA. Yes.

Mr. BAYH. No.

Mr. HRUSKA. What was the situation?

Mr. BAYH. It had to do with a justice-of-the-peace situation as to which the court said, "The payments received were very small"——

Mr. HRUSKA. That is right.

Mr. BAYH. And the Tumey case and the Commonwealth Coatings case are the law of the land, not just the law of the Fifth Circuit Court of Appeals. They say if you have the slightest interest——

Mr. HRUSKA. In the case.

Mr. BAYH. In the case.

Mr. HRUSKA. Exactly. As to Vend-A-Matic, its customer was the litigant. Vend-A-Matic was not a party in the case.

Mr. BAYH. The Senator looks at this matter one way, and I look at it another way. The Commonwealth Coatings case is exactly the same.

Mr. HRUSKA. I refuse to subscribe to a case which has to do with an arbitration situation and apply it to a case having to do with stockholders.

Mr. BAYH. Is it the only ground for the Senator's opinion that this ruling was in an arbitration case? I am willing to concede the Tumey case was a justice-of-the-peace case, and Commonwealth Coatings was an arbitration case. It is difficult, if not impossible, to find a case that is on all fours with every situation.

However, in Commonwealth Coatings, the Court said:

We have no doubt that if a litigant could show that a foreman of a jury or the judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.

The Court speaks unequivocally on this, and not just about arbitration.

Mr. HRUSKA. What is the date of that decision? Can the Senator inform me of the date of the decision?

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[1] "In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

"(a) Where the award was procured by corruption, fraud, or undue means.

"(b) Where there was *evident partially* or corruption in the arbitrators, or either of them.

"(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of *any other misbehavior by which the rights of any party have been prejudiced.*

"(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

"(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators."

[2] 382 F. 2d, at 1011.

[3] 273 U.S., at 524.

Mr. BAYH. What decision is the Senator referring to?

Mr. HRUSKA. The decision in the case of Commonwealth Coatings against Continental Casualty Co.

Mr. BAYH. It is a 1968 decision.

Mr. HRUSKA. October 1968.

Mr. BAYH. Yes.

Mr. HRUSKA. Mr. President, I suggest again this is an odd procedure. It is not called an ex post facto rule but it has every badge of it. Here there is the attempt to apply a Supreme Court decision which was rendered in 1968. The decision cannot be over 1 year old and there is an attempt to apply this ruling to events that happened 6 years ago. That does not seem very fair under this system of jurisprudence that we have developed in this country in the last 200 years.

Mr. BAYH. May I suggest the Senator has the right to interpret in this way but the Senator has no desire to pose this retrospectively. I think that if, indeed, the Commonwealth Coatings case was the law of the land in 1968 then Tumey against Ohio was the law of the land in 1963 and 1964.

Another matter that concerns me is that we are asking the Senate to confirm the nomination to the Supreme Court of a judge who, with eight other judges, will determine what the law is going to be tomorrow or the next day.

Mr. HRUSKA. The Senator is correct.

Mr. BAYH. As I mentioned to the Senator from Nebraska earlier, the second day of the hearings, after we had had a lengthy session—and the Senator is always very helpful in sitting through all these sessions—I had a speaking engagement in Chicago.

I got the last seat in the plane; it was near those facilities located in the back of planes. I sat next to a young lawyer from Chicago who had been before the Court that day. He had led a petition for certiorari in a case involving two supreme court judges of Illinois who were directors in banks and had significant stockholdings in banks. These judges had held that in drafting a will a bank has no fiduciary relationship to a senile, elderly lady. The question is whether the Court will grant certiorari and hear that case. The Court is going to determine what is ethical conduct.

At page 99 of the hearings, after expressing my concern about Judge Haynsworth's past relationship with Carolina Vend-A-Matic, I asked him:

> Senator BAYH. Now, you have been quoted, and I wonder if it is accurate, that if you had the *Darlington-Deering Milliken* case to do over again, that you would still feel that you did not have a sufficient conflict of interest.
>
> Judge HAYNSWORTH. Even if I knew at the time all that I know about it now, I would feel compelled to sit. (Hearings, p. 99.)

In other words, he said, "I would do the same thing today and tomorrow."

Mr. HRUSKA. What thing?

Mr. BAYH. Maintain a relationship——

Mr. HRUSKA. What did he do?

Mr. BAYH. He felt the relationship not only was proper and I feel he was sincere in this, but he felt in light of all the discussion it still was proper.

Mr. HRUSKA. That latter part is a little gratuitous supposition on the part of the Senator from Indiana. The testimony, as I remember it, had to do with reaffirmation by the judge, that if he had to decide whether to sit again while he owned Vend-A-Matic stock, he would do the same thing, and he did. Why not? There is no rule of court. There is no statute. There is no canon. There is no decision that says he could not do it and do it legally and without fear of being criticized for doing anything improper. Why should he not say that?

Mr. BAYH. Of course, this has been a difficult situation.

Mr. HRUSKA. It surely is difficult. Let us have some authority for these conclusions, instead of having the "appearances" or statements such as we do not want to trust him with this responsibility. Why not? What law, what decision, what canon, what court case? That is what we want to know.

Mr. BAYH. I have gone through this and, in my judgment, the judge was in violation on the Tumey case, reiterated and reinforced by Commonwealth Coatings. The law of the land now is Commonwealth Coatings. Is there any question in the mind——

Mr. HRUSKA. Insofar as it goes, but it does not decide all questions.

Mr. BAYH. The law of the land is Commonwealth Coatings——

Mr. HRUSKA. In arbitration cases.

Mr. BAYH. Well, that is the Senator's interpretation.

Mr. HRUSKA. On the contrary.

Mr. BAYH. My attention goes to the fact that the Court talked about the foreman of the jury and judge in a court. Now I am concerned about tomorrow and what happens. We cannot relive the Darlington case, but I am concerned about what is going to happen to the Illinois case, and I am concerned that we not put a judge on the bench, whoever he is, who will reverse the decision of Commonwealth Coatings, or who will weaken the standard established—a rather high standard which I admire.

Yet, as I look at page 99, it seems to me that Judge Haynsworth, by saying that if he had this to do all over again he would still feel compelled to sit, indicates that the judge in Illinois faced with the bank stock situation would also be compelled to sit. He would not establish the standard that I think should be established for the judiciary throughout this country.

Mr. HRUSKA. I would respectfully disagree with the Senator from Indiana when he goes so far as to say that Judge Haynsworth would reverse this situation in Illinois. There is no foundation for that. That is pure conjecture. The decision cannot rest upon the Commonwealth Coatings case, on an arbitration case. When we look back at our law school notes we will find that reference to this sort are dictum. Then look at the Tunney case. It deals with a justice of the peace who has a direct stake in the fine he will levy. That is not the situation in the Vend-A-Matic case. The Coatings case was rendered 5 years after the acts of which the Senator is complaining.

Mr. BAYH. Another difficulty that concerns me, and I am sure that the Senator from Nebraska is deeply troubled about my convictions on this matter.

Mr. HRUSKA. The Darlington case was in the same connection, a part of the study of the American Bar Association Committee on Judicial Selection, and after the record was in, and all the testimony was in, they reconsidered and reaffirmed their proposition that Judge Haynsworth was not only not disqualified to sit but that he had a duty to sit.

It can be argued that we, as Senators, should come to a different conclusion, that we should decide that it is enough that he has been charged with something.

But here is a very splendid committee, almost two decades old, which is always kept up to date by eminent and distinguished lawyers. That was their decision.

If we use Tumey or a lot of other stuff, there will be no nominee who we can be assured will ever be satisfactory. He cannot meet the requirements that he be immune from charges or that he be immune from attack on any question.

Mr. BAYH. Mr. President, I must say that the fact the American Bar Association endorsed Judge Haynsworth, in my judgment, is a significant factor on his behalf.

I was disturbed, however, when about one-third concluded they would not recommend Judge Haynsworth. I think, according to Judge Walsh, there has been only one other occasion like this in 18 years where there has not been a unanimous endorsement. So I think, perhaps, this is evidence that reasonable men, educated in the law, can look at the facts that we have been discussing here somewhat heatedly and come to different conclusions.

Mr. HRUSKA. Now we will require unanimous decisions, and, I presume, from the Supreme Court, too. Two-to-one decisions in a committee of 12.

Horrendous thought, that it is not unanimous.

So, we want not only perfection on the part of a nominee and an immunity from being even charged with something, but now we want people who will be approved unanimously.

I suppose the next demand will be that this body of 100 Senators will have to be unanimous concerning a candidate to the Court, before he will be allowed to reach this pinnacle of perfection.

I believe, really, that that is asking just a little too much.

Mr. HOLLINGS. Mr. President, I have listened for the past hour with interest to this debate. I know that the Presiding Officer looks weary, as do the clerks at the desk. We have heard enough. I wish, at this particular time, for the Senator from South Carolina, who has been critical of the leadership on the opposite side of the aisle, affirmatively to recognize the erudition, the tremendous detail and attention, done with brilliance, which has been given to the Haynsworth matter which the distinguished Senator from Nebraska (Mr. HRUSKA) has more than ably led.

Unfortunately, as I mentioned 2 days ago, there is no debate. The RECORD will show that the distinguished Senator from Nebraska is in the Chamber, the dis-

tinguished Senator from Indiana, the distinguished Senator from West Virginia, and the undistinguished Senator from South Carolina.

With two people in the press gallery, with everybody waiting around for the last 2 hours to go home, with every Senator for the last 2 weeks having made up his mind, suffice it to say that we could continue to try to make it look like we are making a record.

I have outlined the matter as clearly as I am able. When it comes to the matter of stocks and the law, let us not confuse it. There is no question what the law is on Carolina Vend-A-Matic. If we go to Brunswick and listen to the difference of opinion, there is a difference. One is an arbitration case. Tumey is a completely different case. In light of the Tumey case came the Carolina Vend-A-Matic case. Unanimously, said the American Bar Association, under the law and under the canons that we promulgated, we give Judge Haynsworth the highest recommendation.

That was Judge Walsh's testimony in the record, as sustained by Judge Winter when he was asked about the case, as sustained by Dean Foster in his particular opinion, and also by Mr. Frank, a leading authority on disqualification.

So the four Senators on the floor can argue until the day is long and the night is past, but the best authorities have all outlined the law of the case.

When it comes to the facts and doing what he did before, the judge said that under the law, faced with the same circumstances, he would do the same thing. This was an allusion to the questioning of him that "I hate to embarrass you." "Embarrass?" said Judge Haynsworth? "Not at all. Under the same circumstances, under the same law, I would do the same thing." That is absolutely clear.

What about the stockholding evidence? He showed what he thought was the proper practice when we look at the best holding in his portfolio. It so happens that the distinguished Senator from Delaware (Mr. WILLIAMS) does not think a judge should have money, but he looks at this as gainful employment, whether he is going to get enough pension, whether he is going to get annual leave, whether he is going to have enough time to spend with his family. That has nothing to do with the Supreme Court. It so happens that Judge Haynsworth, when first appointed, was a successful businessman and attorney and had practically, for all intents and purposes, a portfolio of half a million dollars, which has now grown to $1 million, but he lost another half million by doing what he thought he should do.

Mr. HRUSKA. Mr. President, if the Senator will yield, when he assumed the judgeship in the fourth circuit, he got the magnificent salary of $22,500.

Mr. HOLLINGS. Twenty-two thousand five hundred dollars; and yet in 1953, when they finally decided that a judge should not be an officer or director, the distinguished chairman of the House Judiciary Committee, EMANUEL CELLER, proposed a bill 2 years ago, and it failed in the House. This is beyond the statutes and the law of the land. It says, "You should not be an officer or director." So said the Judicial Conference. Judge Haynsworth sold his stock, at a loss of half a million dollars. They said, "You should not own that is to be involved." Everybody knows that when he heard the Brunswick case, he did not own any Brunswick stock. Thereafter, he did buy stock.

Carolina Vend-A-Matic never had a vending machine at Darlington Manufacturing Co., in Darlington, S.C.

I will state that again for the RECORD. In Grace Lines, he owned no stock in a party litigant. To have the portfolio he had, and have no one of them as a party litigant before him showed what Judge Haynsworth thought and what he did. He led the way.

So when my distinguished friend comes now and says, "I am afraid if we get this man on the Supreme Court he will pass laws so that everybody can own all kinds of stocks and wheel and deal and feather his own nest."

The Senator from Indiana, to my shock and surprise, said he did not think he was trying to feather his own nest. He entered the bill of particulars over a month ago. He could not wait for the Judiciary Committee to file its report. He said this debate is an important thing and we ought to carry it on on the floor and we ought not to carry it on in the committee. He did not wait for his own committee's report, the majority report, and he could not wait to get in his own minority views; but in the news, in the headlines, on the TV screen, we saw the bill of particulars charging crimes, 37 violations of the canons, and at least four violations of the statute.

I heard my friend mention a while ago that the Congress was negligent. Why did he not put that in the bill of particulars?

I introduced a bill on that subject. There are cosponsors of it. The RECORD shows the Senator from Indiana did not join in it. I put that bill in to try to clarify the matter. I thought the better view was that one should not hold any stock and that that should be the law, and that we should not leave it in the judge's discretion, in this nebulous way. But they have not joined in that proposal.

So now, as we go into the last hours, we are going to have it brought up that a great debate ensued, by which minds were made up. It is not that at all.

After he makes all the charges and says that he solicited business and charges him with soliciting business and charges him with giving out favorable opinions and judgments and decisions to his customers and to his own stockholders, now maybe it is that we were just a little negligent and men who are honest and candid are bound to differ in that contest.

Let me simply say that this has not been a credit to the Senate, for the main and simple reason that this man was tried before he came. He was indicted and tried before he even came to Washington. When he answered, he was blamed for the appearances of answering charges. The conclusion of the opposition was that it was bad for the U.S. Supreme Court to have a judge appointed to the highest Court of the land, who has sought to defend himself and who is being charged with things that, right or wrong, have the appearance of being bad, "and, therefore, I am going to vote against him."

That is what we are talking about. The more we talk, the more we prove that the appearance is bad.

Mr. BAYH. Mr. President, I have not had nearly the experience of my distinguished colleague from South Carolina, who was a very successful member of the bar of his State as well as Governor of his State. As a distinguished Member of this body, I am proud to serve with him. In fact, I did not go back to law school until 1957, and did not graduate until 1960. So I am really wet behind the ears as far as the legal practice is concerned. But I remember very well a professor we had talking about trial tactics and debating tactics. He said, "If you approach a case and you have the law on your side, you pound the law; and if you approach a case and you have the facts on your side, you pound the facts. But if you don't have either the facts or the law, you pound the table."

The Senator from South Carolina, I think, has done an excellent job of following that rule. I know he is doing what he thinks is right, and I would not for a moment suggest otherwise, because he is a man of the highest character. But it appears to me that when we have a nominee who has faults, or when we have a nominee whose ideas or actions have been examined, those favoring the nominee decide to vilify the press or attack the Senator from Indiana. I accept this as part of the strategy.

I have not said we should, and I think it would be rather ludicrous, but I suppose we could, if we were not careful, get ourselves in a position where, as the Senator from Nebraska and the Senator from South Carolina suggested, set a standard that was so high that no one could meet it.

Here is one member of the bar, and one Member of this body, who would never want that to happen. I want to have a successful lawyer as a judge. I would like to have a man who had a good judicial record.

I am concerned, not about Judge Haynsworth's being a wealthy man or accruing a great deal of material wealth as a member of the bar, but the fact that once he was put on that high court, he did not sever his business relationships.

Nobody forced the man to serve on the court. That is one of the highest honors. I do not think it is asking too much to suggest, that if you are going to be a Federal judge with a lifetime appointment and all of the emoluments that the Senator from Delaware pointed out with some degree of particularity, yesterday, that you go just a little bit farther than the average person would go, so that you will give the appearance of justice as well as provide justice yourself.

I admit that the bill of particulars did have some errors in it, for which I have publicly apologized. In fact, I even sent a letter to the Senator from South Carolina as soon as two errors

became evident to me, openly admitting them. I sent that same letter to every Member of this body, and I apologized publicly; but I do not recall ever suggesting that Judge Haynsworth involved himself in decisions with the intention and purpose of increasing or improving his stock portfolio or feathering his own nest, to use a cliche that I mentioned a moment ago. I have never said that. I have done quite the opposite.

Each of us is going to make his own determination on this matter. The Senator from Nebraska and the Senator from South Carolina are going to make a different determination from the Senator from Indiana. Each of us is going to decide whether or not Judge Haynsworth has maintained that standard of conduct, that standard of ethical propriety, and, indeed, to quote a half dozen canons of legal ethics, that appearance of propriety that we feel is important for one of the nine members of the Supreme Court of the United States.

I, for one, do not believe that Judge Haynsworth has met that necessary standard. I am fully convinced that the Senator from South Carolina and the Senator from Nebraska deeply believe that he has.

Mr. HRUSKA. Mr. President, I wonder where the end is, if we are going to ask judges to not possess anything that will be a basis for conflict of interest charges or the appearance of conflict. Where are we going with it? Are we going to ask them to be men of no property, and to dispose of all of their assets? Are we going to ask them to sell their stocks and their bonds and buy Government bonds?

Had a Senator done that 12 years ago, and all his money was converted from personal holdings to U.S. Government bonds, one of the major decisions that such a Senator would have to make is whether or not the interest limitation of 4.25 percent on long-term Government bonds would be increased or not; and by his vote, he would place his whole standing in jeopardy because of conflict of interest.

Are we going to ask judges not to own anything? If so, when will we start applying this rule? Are we going to ask them to be devoid of any basis for concern? Shall we turn our attention to the other members of the circuit courts of appeals in America? Shall we turn our gaze over to the white marble palace right across the parkway here which houses those nine justices and ask them, "Have you any holdings? If so, tell us what they are, and how long you have owned them. Did you ever sit in cases having to do with those corporations, or the people with whom they deal?"

Talk about ex post facto and bills of attainder, Mr. President. We had better think prospectively and not retrospectively, and decide in our own minds whether, when something like this arises, we have to be, all of a sudden, insistent upon a pattern of conduct that has never been applied before.

I hope we get our thinking straight on this thing, and not end up with judgments which are not founded on relevant propositions.

Mr. HOLLINGS. Mr. President, the issue between the Senator from Indiana and the Senator from South Carolina at the moment is feathering the nest. The Senator from Indiana says he does not recall ever charging the judge with trying to feather his nest. He says he has made no personal attack. If there is no personal attack, I am attacking the facts, and I will stand here until we never get to a vote, and just hold the floor, if I have to, to clarify these facts, because we will not yield on these. They are either true or false.

Here are the facts as of October 8, over a month ago, as stated by the Senator from Indiana. This is too important a matter, you know, to wait until you get on the Senate floor; so we got it off the Senate floor. This was delivered to every Member of the Senate, all the reasons, all in heavy type headlines, and the substance in the headlines came from this language:

> Judge Haynsworth was an organizer and founder of Carolina Vend-A-Matic, with an original investment of so and so. He was vice president and a director. His wife was in it, and everything else, and though he claimed he was an inactive officer, here is the testimony which leads me to believe he was an active officer——

Mr. BAYH. Mr. President, will the Senator yield? If the Senator is going to quote, I suggest he quote it all, and not just a part of it.

Mr. HOLLINGS. The Senator from Indiana can get the floor later and quote it all. I do not want to quote it all; it bores me to death. We have heard it over and over again. But I will refer to it again specifically, and he can quote it all. This is on page 1 of a statement by Senator BIRCH BAYH, Democrat, of Indiana, on October 8, 1969, where, on that occasion, at the beginning of the charge, he charged as I have just related, and thereafter, on the second page, page 2:

> In 1957, after Judge Haynsworth assumed the bench, the gross sales of CVAM and its subsidiaries increased tremendously. Gross sales increased only slowly from $169,000 and some odd in 1951 to $296,000 some odd in 1956. But in 1957—

Says the Senator from Indiana, who has made the attack on Judge Haynsworth, and now, when we answer it, says it is personal on him—it is on these facts that I am attacking him.

> The year Judge Haynsworth assumed the Federal bench, sales jumped to $435,000-some-odd and continued a precipitous climb, reaching $3,160,665 in 1963, the last full year in which Judge Haynsworth owned a major share of the company.

Then, if one did not understand it, the Senator from Indiana drew a picture for him. He showed the chart and the record which shows that it went up gradually in 1951, 1952, and 1953, almost horizontally across until Clement F. Haynsworth assumed the judgeship in 1957. And the line goes off the page in the diagram.

Then, referring still to Senator BAYH's charge, exactly what he says, word for word, under IV on page 7, Canon 25 is cited, and reading after citing the canon:

> Judge Haynsworth's financial interest and active participation in the affairs of CVAM constituted a clear breach of this standard. The remarkable rise in gross sales of CVAM after he assumed the Federal bench justified the suspicion that the prestige of his office was used to promote his own interests—

I am still quoting from Senator BAYH:

> as well as those of his fellow stockholders. In addition, his practice of taking part in cases involving customers of CVAM furnishes further grounds for the belief that his office was used to promote patronization of a business in which he had a substantial interest.

That is my answer to the charge of feathering his own nest which the Senator from Indiana said he never had in the back part of his mind.

I saw it in every headline. I saw it on every television broadcast. I had to listen to it for the last 6 weeks. It is now too late.

The distinguished Senator from Virginia (Mr. SPONG) is presiding, and the Senator from Indiana and the Senator from West Virginia (Mr. BYRD) and the Senator from Nebraska (Mr. HRUSKA) are present. Here we are. And we are not going to change each other's minds. I do not want the record to say—I do not know how many weeks from now—that we engaged in a heated debate and went right down to the wire and no one is about to make a vote count. I do not want to do it. I do not want to reveal confidences. It has long since been decided. I think it comes with ill grace. I do not know about the politics. However, there is the record on feathering his nest.

It would be unheard of for me to stand by mute and not contest it. It would be unconscionable. I had to rise and correct the record.

That is what the Senator from Indiana charges the judge with.

Mr. BAYH. Mr. President, the hour is late. Any Senator who has heard or read the very articulate 2-hour statement given yesterday or the day before by the Senator from South Carolina can determine whether it was a personal attack. I take him at his word that it was not. Others interpret it differently.

As far as the vote count is concerned, I do not know what the Senator from South Carolina has determined the vote will be. I do not know. I think it is very much up in the air.

The Senator from Kentucky (Mr. COOPER) came over here, and I had not the slightest idea which way he was going. The Senator did not tell me. And frankly the tallies that I had seen had him listed the other way.

I think it is interesting for the Senator from South Carolina to suggest now that we are debating this after every Senator has made up his mind. That statement will come as news to half a dozen Senators that I do not think have made up their minds as yet. This has not been an easy decision for the Senate.

I think there are at least half a dozen Senators that have not made up their minds.

The Senator from South Carolina gives me a great deal of credit with relation to the news media. I would like to show the Senator some of the clippings from South Carolina and Indiana and other places and the scurrilous things

that have been printed about me. The word has been heard.

I do not think that Members of the Senate make their determinations on the basis of one sheet of paper or on the allegations of one Senator. I would be mighty proud if I thought I could send one sheet of paper to the other 99 Members of the Senate and have them fall into line without listening to the opposition.

They have listened to the Senator from South Carolina, and they have listened to the President of the United States when he branded me, other Senators, and everyone who opposed him as character assassins. Presidential assistant, Clark Mollenhoff, expanded the President's attack on me in a very distasteful manner.

The fact of the matter is that the relationships described are accurate. The Senator from South Carolina cannot deny the facts of the judge's relationship with Carolina Vend-A-Matic.

It seems to me to be a little unfair——

Mr. HOLLINGS. Will the Senator yield at that point?

Mr. BAYH. Let me finish and then I will be glad to yield.

Mr. HOLLINGS. I was going to ask a question.

Mr. BAYH. I yield for a question.

Mr. HOLLINGS. Does the Senator from Indiana think that Judge Haynsworth solicited business for Carolina Vend-A-Matic?

Mr. BAYH. No; I do not. The Senator is reading from material. Frankly, I do not have a copy of it. It is easy to read part of it without reading all of it.

As I said yesterday or the day before—we have had so much debate that I find it difficult to put one day in its proper perspective—I think it is patently unfair to read one part of a document and not read it all.

I know every document I sent out stated something similar to this sentence. I quote from a document in which I said:

> The question is not whether Judge Haynsworth is dishonest, but whether he has shown the temperament necessary to sit on the highest judicial council.

I am talking about what the average man on the street can have in his mind. I do not think the judge has ever used his position. I do not think for a moment that he got out his stock portfolio and decided how he was going to decide the Darlington Mills or the Brunswick case. However, I think that his activities flew in the face of the case law and a half a dozen of the canons of ethics that are concerned with the appearance of impropriety. It concerns me when a judge does anything, even inadvertently, that gives the appearance of impropriety.

If the Senator from South Carolina is not concerned about that, he is totally within his right.

Mr. HOLLINGS. Mr. President, I will be glad if the others make their statement and we can then hear the Senator from Indiana comment.

We now hear in the 11th hour that Congress has been negligent—that the Senator from Nebraska and I have been negligent.

We now hear from the Senator from Indiana, "I really do not think he was trying to feather his own nest." I have just cited the record on that.

We now hear from the Senator from Indiana that he did not believe the judge solicited business for Carolina Vend-A-Matic. I asked him, "Senator, do you think the judge was soliciting business for Carolina Vend-A-Matic?"

He said, "No."

On page No. 4 of Senator BAYH's bill of particulars—I cited it in toto, absolutely all of it, and put it in the RECORD. If one of the pages would be kind enough, he could get the Senator a copy of the CONGRESSIONAL RECORD for the day before yesterday. The Senator will find it quoted there.

I am reading from it, under the heading "Demonstrated Lack of Candor; Denial of Active Participation in the Business of CVAM."

> In a letter to the chairman of the Judiciary Committee dated September 6, Judge Haynsworth said:
>
> (Paragraph 12) "The specific locations of vending machines were simply not a matter of interest to me and, as stated before, I was never involved in any way in securing new vending machine locations."
>
> In testimony before the Judiciary Committee on September 16, 1969, the following exchange occurred.

Then Senator BAYH quotes from the RECORD:

> CHAIRMAN.—
>
> I do not know whether it was Senator EASTLAND or one of the other members of the Judiciary Committee.
>
> CHAIRMAN. Did you have anything to do with the preparing of bids or soliciting business for Carolina Vend-A-Matic?
>
> Judge HAYNSWORTH. Nothing whatsoever.

Mr. President, that is under the heading, in Senator BAYH's bill of particulars, of "Demonstrated Lack of Candor."

I read further from the bill of particulars:

> Senator TYDINGS. As a part of your work, or as a part of your association with Carolina Vend-A-Matic, did you formally or informally seek to obtain business for Carolina Vend-A-Matic?
>
> Judge HAYNSWORTH. Never. I did not.

That is under Senator BAYH's "lack of candor," the two answers of the judge, because Senator BAYH says "fact." What is the other, if this is fact? He has it under the heading "Demonstrated Lack of Candor." You do not use falsehoods or words of harshness, but the picture is here. He got what he thinks is fact, and I quote from Senator BAYH's bill of particulars:

> Judge Haynsworth was consistently and intimately involved with the operation of Carolina Vend-A-Matic from June 1957 until October 1963 and regularly accepted funds from CVAM during that period subsequent to a resolution by the board of directors which appears in the minute books of the corporation and states that:

Then he quoted from the minute books, which was just a couple of months after Judge Haynsworth took the bench. I will read what he says:

> It was pointed out that the main sales and promotional work of CVAM had been done by its directors who are also the officers of the corporation and that any new locations were the result of many conversations, trips and various forms of entertainment of potential customers of one or more of the directors or officers over an extended period of time. A review was had of the various locations that had been acquired during the past several years and new locations that were being considered and practically without exception, these were the result of the Board of Directors.

Now, Mr. President, we hear for the first time that Senator BAYH does not think that Judge Haynsworth had anything to do with soliciting business. So we know now that section 28–455 of the disqualification section of the code was a negligent passage of Congress that should have been beefed up and cleaned up; and I rather agree, and that is why I introduced a bill. We know now that the Senator from Indiana does not think that Judge Haynsworth was feathering his own nest.

Get that headline tomorrow. Can you see that in the Washington Post? "Senator Bayh Says Do Not Believe Judge Haynsworth Was Feathering Own Nest." Would that not be grand. You could really sell some copies of that paper down in South Carolina. And then we can see another headline: "Senator Bayh Says He Does Not Think the Judge Was Soliciting Business on the Bench."

Where do you think Herblock got the Vend-A-Matic and the "Vend-A-Justice," when everybody in America has seen justice is being sold? It is a serious matter, and this is a chief judge, and you do not charge him lightly. That is an ethic, too.

So all you have seen for weeks on end is "selling justice." Here is Haynsworth and "selling justice." Vending justice means selling justice. That is what you have going on. No wonder I feel strongly about this. It is over with, because that has been done—the headlines and the pictures.

The Senator from Indiana wants to know where the headlines are. He has not seen any in Indiana. But I know what has been said about Judge Haynsworth as a chief judge: He has been selling justice. It is in the bill of particulars, and it is unfortunate that now we have corrected at least three sections of it in the last half hour on this floor.

Mr. BAYH. Mr. President, the Senator from South Carolina is to be commended for the introduction of the measure to clarify the standard of 455. Can he advise the Senate when he introduced that measure?

Mr. HOLLINGS. On October 19, if the Senator please. It is Senate bill 2994, referred to the Senator's Judiciary Committee.

Mr. BAYH. Senator EASTLAND will be surprised to hear it referred to that way, but I appreciate the compliment.

In other words, although the Senator's interest in this matter is real, he, too, is an after-the-fact scrivener of the statute. I want to join him, if he will let me, after this colloquy, either in that bill or in a joint effort. I have been giving a great deal of thought to what we could do in order to do a better job. Frankly, the judge failed to meet the present standard required by the statute.

I want to say to the Senator from South Carolina that he did read the so-called bill of particulars correctly, and I am certain that anyone who cares to read the rather tedious and lengthy hearing record will be of the opinion that the quotations are taken accurately from the hearings. They are indeed fact.

Apparently, I have not been able to get the message across, and this is not a message that is being conveyed here at the so-called 11th hour. This is a message I have tried to convey every time I have discussed this matter, publicly or privately. I am concerned about the ethical appearance of this whole business and that all the accusations that the Senator quoted were stated and specified and enumerated in that context and only in that context.

I must say that we can either say we are concerned about appearances or we can say we are not. We can say that the Statue of Justice with her eyes blindfolded is giving us a message or it is not. But I am concerned about appearances.

I wonder, too, if anyone else who is concerned about justice had sat in that committee room and had listened to that testimony and had heard the judge talk about his relationships, and then if that person had the opportunity to look at those record books and see that the judge was present at all but one meeting that the corporation had held—only one absence in the whole period of time that the corporation existed—I wonder if that person would not be convinced. If he had looked at the record and had seen that the judge had participated in making motions; if he had heard the judge tell the Senate Judiciary Committee that, "I orally resigned as a vice president when I went on the bench in 1957 and did not realize until 1963 that that resignation had not been recorded"; and if he had then looked at the record books of the corporation and had seen that in each one of those years—1957, 1958, 1959, 1960, 1961, 1962, and 1963; at the annual meeting of the board of directors the judge was listed as present and that a unanimous ballot was cast for Clement Haynsworth, Jr., as vice president, I wonder if the average man on the street who never read a law book would not be a little concerned about the appearance of candor.

Mr. HOLLINGS. Mr. President, a member of my staff has gotten me a copy of S. 2994. I introduced the bill on October 7, 1969, and it was referred to the Committee on the Judiciary. It reads as follows:

S. 2994

A bill to amend section 455 of title 28, United States Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 455 of title 28, United States Code, is amended by adding at the end of such section the following: "Ownership by a judge of stock in a corporation which is a party litigant or which owns any interest in a party litigant shall be deemed substantial for the purposes of this section; and a judge shall abstain from participation in any case involving a party litigant in which he has any investment whatever."

That would allude to realty holdings as well as stock and corporation holdings.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. BAYH. Mr. President, could I ask unanimous consent to be listed as a cosponsor of this measure?

Mr. HOLLINGS. We are making headway. I would ask the Chair rule "without objection" now. We might get this fellow's vote.

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

Mr. BAYH. Mr. President, will the Senator yield further?

Mr. HOLLINGS. I yield.

Mr. BAYH. I do not wish to interrupt the Senator's train of thought, but I say this in all seriousness. I compliment the Senator on this matter. My staff and I have been considering the adequacy of this particular measure. I think it is a step in the right direction. Maybe that is as far as we can go. But in the event that we come to the conclusion there are other things that can be done to set a higher standard I certainly will submit that study to the Senator from South Carolina and would be honored if he would join me in introducing such legislation.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. HRUSKA. Mr. President, regarding this bill which is before the Judiciary Committee of which I am a member, I wish that the introducer of the bill, as well as his most recently acquired cosponsor, would take note of the fact that if any amendment is proposed to that bill which would make it retroactive to include the case of Judge Haynsworth, I will oppose it.

Mr. HOLLINGS. Mr. President, I think the distinguished Senator from Nebraska makes a very cogent point and that is that now, as Senators, we find an inadequacy in the law and we are introducing a measure to correct that inadequacy, but at the very same time there are those hoping to convict on the inadequacy that has just been dealt with.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. BAYH. Mr. President, to make absolutely certain there is no misunderstanding of my position, I wish to repeat once again that certainly it is possible for 99 other Members of the Senate to disgree with the Senator in good conscience. But it is my conviction, respectfully differing with my distinguished colleague from South Carolina, that the statute as is, using the words "substantial interest" as interpreted by the fourth circuit, and as interpreted by Tumey against Ohio which was decided in 1927, and which has more recently been put in focus by the Commonwealth Coatings case, sets a standard of conduct, a standard of ethical propriety which is higher than that which has been met by the judge. I say that as clarification, because I think the Senator from South Carolina raises a legitimate point raised earlier by the Senator from Nebraska (Mr. HRUSKA). We have to be careful we do not get involved in an "after the fact" situation, and I would not want to do that.

Mr. HOLLINGS. It is not just the degree to obey the statute, and that the statute does not stand alone. The practice is well settled for random selection of judges, and this woman in the dress of judges, just referred to, is very much respected in the fourth circuit, much more so, perhaps, than in the District of Columbia Circuit Court.

I would not delay the Senate at this late hour if it were not a matter of "either/or" in going higher or having a substantial or no interest, but it was in the law and stated specifically in this fashion, and that is why with all the American Bar Association and all of the Supreme Court and all of the Congresses section 455 of title 28 is still the law of the land. Because there is to be considered the random selection of panels where judges can stand by and say, "My wife has an interest," or "I have a cousin," or "My daughter's boyfriend is driving a truck," or anything to jockey around and say, "Fellows, I better not sit on this."

In the appellate court this is something not understood by the Senate, and it is not understood by too many lawyers. Unless one has handled appellate work he would not understand what I am referring to. The trial lawyer has no concern—everyone is using the word "concern"—if an appellate judge has a share of stock.

If in the case of XYZ Corporation against Jones I am taking the case on appeal and I find a stockholder of the XYZ Corporation, I await my chances; and if I get a judge who is persuaded toward my client, the injured, the working man, I keep my loud mouth shut and let the judge sit. If I get the wrong judge I raise the question.

But it is when the judge himself, with his persuasion, starts jockeying around and says he has an interest in these things and gets in on your case every time and you cannot have a high verdict affirmed in the appellate court. That is what concerns the trial attorney. This is where Judge Haynsworth was the leader—in being sensitive to this matter in the administration of justice, and as the Senator from Maryland (Mr. TYDINGS) said, "Dynamic."

That is exactly the point. It is not just the law. I admit there is concern on the House side. Representative CELLER, who is the chairman of the Judiciary Committee in the other body, has been trying in a single attempt in this direction by saying that you could not be the officer.

However, be that as it may, that is where it is said Judge Haynsworth stepped into trouble. Characterizing it in the closing hours, we have something here beyond the law; we have the ethics and every authority who testified before the Committee on the Judiciary said that he thought the law encompassed ethics.

But we have these higher standards and we are working for higher standards when we want an Associate Justice. I agree we want higher standards. I believe we have the highest standards in Judge Haynsworth and I am firmly convinced of that. That is why I want detail by detail placed in the record and every question answered in the record. That is the point on which I would like to close because I cannot stand by and have a

nebulous record blamed, or have it said that there is some other standard, for Judge Haynsworth has been "dynamic" as the Senator from Maryland said in the hearings.

AUTHORITY FOR COMMITTEES TO FILE REPORTS FOLLOWING THE ADJOURNMENT OF THE SENATE TODAY

Mr. BYRD of West Virginia. As in legislative session, I ask unanimous consent that all committees be authorized to file reports, including minority, supplemental, and individual views, following the adjournment of the Senate today until midnight tonight.

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

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in executive session, in accordance with the previous order, that the Senate stand in adjournment until 11 a.m. tomorrow.

The motion was agreed to; and (at 8 o'clock and 20 minutes p.m.) the Senate adjourned until tomorrow, Friday, November 21, 1969, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate November 20, 1969:

IN THE ARMY

The following-named persons for appointment in the Regular Army, by transfer in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294:

To be first lieutenant

Divers, Walter A., Jr., xxx-xx-xxxx

To be second lieutenant

O'Hara, Kerry L., xxx-xx-xxxx

The following-named persons for appointment in the Regular Army of the United States, in the grades specified under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be major

Busdiecker, Carl C., xxx-xx-xxxx
Campbell, Bruce B., xxx-xx-xxxx
Casey, Leonard R., xxx-xx-xxxx
De Moss, James R., xxx-xx-xxxx
Deprospero, Albert A., xxx-xx-xxxx
Jay, James W., xxx-xx-xxxx
Stice, John E., xxx-xx-xxxx

To be captain

Bell, Major H., xxx-xx-xxxx
Birt, Charles J., xxx-xx-xxxx
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CONFIRMATIONS

Executive nominations confirmed by the Senate November 20, 1969:

IN THE COAST GUARD

The nominations beginning Walter E. Mason, Jr., to be commander, and ending Jack K. Stice, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 17, 1969.

HOUSE OF REPRESENTATIVES—*Thursday, November 20, 1969*

The House met at 12 o'clock noon.

Rev. Bob Harrington, the chaplain of Bourbon Street, New Orleans, La., offered the following prayer:

Let us pray.

My dear Lord, thank You for loving us so much in spite of our actions in many cases. Help us, O Lord, to learn to love You more and serve You better in these troubled times. May I thank You personally, Lord Jesus, for allowing me to be born the first time in this great Nation under God in order that I might be born again, saved, set free through Your precious salvation for lost sinners. Help each of us this date to be most conscious of our relationship to You and our fellowship through Your love. Lord, as each of us strives to serve mankind, may we do so as You challenge us with your desire that none should perish but all should have everlasting life through faith in You.

May each of us as we raise our heads from this prayer be more like You would have us to be and less like we have been.

In Christ's name I pray. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees 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) entitled "An act making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1970, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 12 to the foregoing bill.