With the exception of the 10-month Berlin call-up of the Utah National Guard, George has been at Hillside since 1958.

George is a Warrant Officer in the Utah National Guard, where he has been a member for 22 years.

George is married and has five children, the oldest of whom was a Sterling Scholar from Skylin High School in industrial arts in 1964.

George has served in the local and state industrial arts associations as president. He is presently president-elect of the Salt Lake Teachers Association.

George received his M.S. degree from USU in 1967. His thesis was written on mass production as an instructional unit in industrial arts. He has used mass production or production technology as an instructional unit in ninth grade woods since 1965. He attended an eight-week NDEA institute on American Industry in 1967 and was a coinstructor in a workshop on Production Technology this past summer at USU.

Nominations for this honor are made from each of the twelve regions in the state. Qualifications follow specific criteria set by the American Industrial Arts Association.

George will be honored locally at the Industrial Arts Spring Convention at USU in Logan on May 8 and 9. He will be honored nationally at the April 6–11, 1970 convention of the American Industrial Arts Association at Louisville, Kentucky.

We are proud of our Salt Lake Teacher and Association officer. We congratulate the Industrial Arts Association for its excellent choice.

PEACE IS URGENT

HON. PHILIP J. PHILBIN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 16, 1970

Mr. PHILBIN. Mr. Speaker, let us continue to hold out the olive branch of peace to every nation, the Soviet Union, Red China, and all the rest, that they may be prompted to respond in truth, sincerity, and good faith to our latest of many sincere overtures of peace and friendship, and our earnest pleas to stop all bloodshed and fighting forthwith, and join as human beings for the total peace, prosperity, and betterment of the human race.

Peace as soon as we can get it must be our cry and our demand. We must seek it with all our hearts and our energies.

May God grant that our pleas and our prayers for peace are heard and answered by all the nations throughout the world, especially our enemies, and those who support and encourage them here and in the world.

May the day soon come when all nations may lay down all weapons of force, violence, and destruction forever, and blessed peace, justice, and brotherhood may come to all humankind.

SENATE—*Tuesday, March 17, 1970*

The Senate, as in legislative session, met at 11 o'clock a.m. and was called to order by Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota.

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

Almighty God, our Father who bids us come before Thee with clean hands and pure hearts, qualify us now to serve Thee. Cleanse us and make us new. Grant us the pure hearts of those who see God. Preserve us from the hypocrisy which magnifies evil so as to appear worse than we are; or the artificiality which pretends to be better than we are. Help us to ring true to what we really are—human beings saved by Thy redemptive love, forgiven when repentant—a people who walk and work conscious of Thy judgment, kept by Thy grace, aware of Thy guidance, ever striving for the establishment of that city whose builder and maker is God.

In the Redeemer's name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 17, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, March 16, 1970, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. MCGOVERN) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that pursuant to the provisions of section 2(a), Public Law 91–213, the Speaker had appointed Mr. BLATNIK and Mr. ERLENBORN as members of the Commission on Population Growth and the American Future, on the part of the House.

The message also announced that the House had passed, without amendment, the bill (S. 3427) to increase the authorization for appropriation for continuing work in the Missouri River Basin by the Secretary of the Interior.

The message further announced that the House had passed the following bills of the Senate, severally with amendments, in which it requested the concurrence of the Senate:

S. 227. An act to provide for loans to Indian tribes and tribal corporations, and for other purposes.

S. 743. An act to authorize the Secretary of the Interior to construct, operate, and maintain the Touchet division, Walla Walla project, Oregon-Washington, and for other purposes; and

S. 2062. An act to provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law, and for other purposes.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 1187. An act to amend the act of August 7, 1961, providing for the establishment of Cape Cod National Seashore;

H.R. 4145. An act to provide for disposition of estates of intestate members of the Cherokee, Chickasaw, Choctaw, and Seminole Nations of Oklahoma dying without heirs;

H.R. 12858. An act to provide for the disposition of certain funds awarded to the Tlingit and Haida Indians of Alaska by a judgment entered by the Court of Claims against the United States;

H.R. 12878. An act to amend the act of August 9, 1955, to authorize longer term leases of Indian lands at the Yavapai-Prescott Community Reservation in Arizona;

H.R. 14855. An act to amend the act of August 31, 1954 (68 Stat. 1026), providing for the construction, maintenance, and operation of the Michaud Flats irrigation project;

H.R. 14896. An act to amend the act of October 15, 1966 (80 Stat. 915), establishing a program for the preservation of additional historic properties throughout the Nation, and for other purposes;

H.R. 15143. An act to amend title 10, United States Code, to provide the grade of lieutenant general for an officer serving as the Chief of the National Guard Bureau, and for other purposes; and

H.R. 15700. An act to authorize appropriations for the saline water conversion program for fiscal year 1971, and for other purposes.

HOUSE BILLS REFERRED OR PLACED ON THE CALENDAR

The following bills were severally read twice by their titles and referred or placed on the calendar, as indicated:

H.R. 1187. An act to amend the act of August 7, 1961, providing for the establishment of Cape Cod National Seashore;

H.R. 4145. An act to provide for disposition of estates of interstate members of the Cherokee, Chickasaw, Choctaw, and Seminole Nations of Oklahoma dying without heirs;

H.R. 12858. An act to provide for the disposition of certain funds awarded to the Tlingit and Haida Indians of Alaska by a judgment entered by the Court of Claims against the United States;

H.R. 12878. An act to amend the act of August 9, 1955, to authorize longer term leases of Indian lands at the Yavapai-Prescott Community Reservation in Arizona;

H.R. 14855. An act to amend the act of August 31, 1954 (68 Stat. 1026), providing for the construction, maintenance, and operation of the Michaud Flats irrigation project; and

H.R. 14896. An act to amend the act of October 15, 1966 (80 Stat. 915), establishing a program for the preservation of additional historic properties throughout the Nation, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 15143. An act to amend title 10, United States Code, to provide the grade of lieutenant general for an officer serving as the Chief of the National Guard Bureau, and for other purposes; to the Committee on Armed Services.

H.R. 15700. An act to authorize appropriations for the saline water conversion program for fiscal year 1971, and for other purposes; placed on the calendar.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, as in legislative session, and that there be a limitation of 3 minutes on remarks made by Senators during that period.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

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

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment, as in legislative session, until 11 a.m. tomorrow.

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

(Subsequently, this order was modified to provide for an adjournment to 10:30 a.m. tomorrow.)

SENATOR PERCY AN ADDITIONAL SIGNER OF MINORITY VIEWS ON THE CREDIT CARD BILL

Mr. PERCY. Mr. President, I ask unanimous consent that my name be added as a signer of the minority views on the bill (S. 721), to safeguard the consumer by requiring greater standards of care in the issuance of unsolicited credit cards and by limiting the liability of consumers for the unauthorized use of credit cards, and for other purposes.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. McGOVERN) laid before the Senate the following letters, which were referred as indicated:

PROPOSED AMENDMENT OF THE FEDERAL CIVIL DEFENSE ACT OF 1950

A letter from the Office of Emergency Preparedness, Executive Office of the President, transmitting a draft of proposed legislation to amend the provisions of title III of the Federal Civil Defense Act of 1950, as amended (with an accompanying paper); to the Committee on Armed Services.

AUTHORIZATION OF APPROPRIATIONS TO CARRY OUT THE FIRE RESEARCH AND SAFETY ACT OF 1968

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to authorize appropriations to carry out the Fire Research and Safety Act of 1968 (with accompanying papers); to the Committee on Commerce.

RENOMINATION OF STEPHEN S. DAVIS

A letter from the Mayor-Commissioner, Executive Office, Government of the District of Columbia, transmitting, pursuant to law, the renomination of Stephen S. Davis for appointment as a member of the Board of Directors of the District of Columbia Redevelopment Land Agency, effective on and after March 4, 1970; to the Committee on the District of Columbia.

REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES FOR THE FISCAL YEAR ENDED JUNE 30, 1969

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a report on the state of the finances for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Finance.

PROPOSED AMENDMENT OF THE BRETTON WOODS AGREEMENTS ACT

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to authorize an increase in the resources of the International Monetary Fund and the International Bank for Reconstruction and Development, and for other purposes (with an accompanying paper); to the Committee on Foreign Relations.

REPORT OF NEGOTIATED SALES CONTRACTS FOR DISPOSAL OF MATERIALS

A letter from the Director, Bureau of Land Management, U.S. Department of the Interior, transmitting, pursuant to law, a report of negotiated sales contracts for disposal of materials during the period July 1 through December 31, 1969 (with an accompanying report); to the Committee on Interior and Insular Affairs.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

PROPOSED AMENDMENT OF THE MARINE RESOURCES AND ENGINEERING DEVELOPMENT ACT OF 1966

A letter from the Director, Bureau of the Budget, Executive Office of the President, transmitting a draft of proposed legislation to amend the Marine Resources and Engineering Development Act of 1966 to continue the National Council on Marine Resources and Engineering Development (with an accompanying paper); to the Committee on Commerce.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. McGOVERN):

Resolutions of the Commonwealth of Massachusetts; to the Committee on Finance:

RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO HELP PRESERVE THE TEXTILE AND APPAREL INDUSTRY IN THE COMMONWEALTH OF MASSACHUSETTS

Whereas, The textile and apparel industry in Massachusetts provides an important segment of the industrial employment in this commonwealth totaling ninety thousand jobs with each of these jobs accounting for another job according to the studies of the New England Governors Textile Committee and other authorities; and

Whereas, The establishments of this industry provide the sole or principal source of industrial employment for many of the one hundred and forty Massachusetts communities in which they are located; and

Whereas, Textile employment in the commonwealth has declined by twenty-three thousand jobs within the last ten years substantially due to the rising flood of textile and apparel imports which are setting new records each month and which are causing job losses and plant closings resulting in economic hardship to many communities dependent upon this industry; and

Whereas, The loss of said jobs which are particularly geared to the needs of disadvantaged groups are contrary to the manpower policies and programs at every level of government; and

Whereas, We recognize and endorse the commitment by the President of the United States that he would "promptly take the steps necessary to extend the concept of international trade agreements to all textile articles involving wool, man-made fibers and blends"; and

Whereas, We recognize and deplore the intransigent attitude of foreign countries which make agreements to curtail textile and apparel trade among themselves but refuse to do the same with the United States and only now under strong United States urging have they begun to discuss the matter of negotiating an agreement; and

Whereas, That there is urgent need for action to bring the uncontrolled flood of textiles and apparel to reasonable levels either by international agreement or by legislative action of the Congress of the United States; now, therefore, be it

Resolved, That the General Court of the Commonwealth of Massachusetts respectfully requests that the Congress of the United States take immediate legislative action if the steps necessary for prompt and meaningful solution through an international agreement are not promptly initiated; and be it further

Resolved, That copies of these resolutions be transmitted forthwith by the Secretary of the Commonwealth to the President of the United States; to the Secretary of Commerce, to the presiding officer of each branch of Congress and to the members thereof from this Commonwealth.

Senate, adopted, February 23, 1970.

NORMAN L. PIDGEON,
Clerk.

House of Representatives, adopted in concurrence, February 25, 1970.

WALLACE C. MILLS,
Clerk.

Attest:

JOHN F. X. DAVOREN,
Secretary of the Commonwealth.

Petitions signed by sundry citizens of the State of Alabama, relating to the appointment of qualified men to vacancies occurring on the Supreme Court and other Federal Courts; to the Committee on the Judiciary.

A resolution adopted by the City Council of East Orange, N.J., praying for the enactment of legislation providing for the use of U.S. Post Office facilities for the registration of voters; to the Committee on Post Office and Civil Service.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations, without amendment:

S.J. Res. 162. Joint resolution in recognition of the Fifth International Conference on Water Pollution Research (Rept. No. 91–742).

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

S. Res. 366. Resolution authorizing expenditures by the Select Committee on Equal Educational Opportunity (Rept. No. 91–743).

EXECUTIVE REPORTS OF COMMITTEE ON FOREIGN RELATIONS

In executive session, Mr. FULBRIGHT, from the Committee on Foreign Relations, made the following reports:

Executive I, 91st Congress, first session, Protocol to the International Convention for the Northwest Atlantic Fisheries relating to Panel Membership and to Regulatory measures, dated October 1, 1969, without reservation (Executive Rept. No. 91–16); and

Executive J, 91st Congress, first session, Convention on Privileges and Immunities of the United Nations, approved unanimously by the General Assembly on February 13, 1946, with reservations (Executive Rept. No. 91–17).

BILLS INTRODUCED

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

Mr. AIKEN (for himself, Mr. ALLEN, Mr. ALLOTT, Mr. ANDERSON, Mr. BAKER, Mr. BAYH, Mr. BELLMON, Mr. BENNETT, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of West Virginia, Mr. CHURCH, Mr. COOK, Mr. COOPER, Mr. COTTON, Mr. CURTIS, Mr. DODD, Mr. DOLE, Mr. EAGLETON, Mr. EASTLAND, Mr. ELLENDER, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GORE, Mr. GRIFFIN, Mr. GURNEY, Mr. HART, Mr. HOLLAND, Mr. HRUSKA, Mr. JAVITS, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MAGNUSON, Mr. MCCARTHY, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MANSFIELD, Mr. METCALF, Mr. MILLER, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUNDT, Mr. MURPHY, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. RANDOLPH, Mr. SAXBE, Mr. SCHWEIKER, Mr. SCOTT, Mrs. SMITH of Maine, Mr. STENNIS, Mr. SYMINGTON, Mr. TALMADGE, Mr. YARBOROUGH, Mr. YOUNG of North Dakota, and Mr. WILLIAMS of Delaware):

S. 3598. A bill to amend section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended, to authorize the Secretary of Agriculture to furnish financial assistance in carrying out plans for works of improvement for land conservation and utilization, and for other purposes; to the Committee on Agriculture and Forestry.

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

By Mr. BAYH:

S. 3599. A bill for the relief of Dr. George Yao; to the Committee on the Judiciary.

By Mr. JORDAN of North Carolina:

S. 3600. A bill for the relief of Kyung Ae Oh; to the Committee on the Judiciary.

By Mr. DOMINICK (for himself, Mr. JAVITS, and Mr. MURPHY):

S. 3601. A bill to amend section 351 of the Public Health Service Act so as to clarify the intent to include vaccines, blood, blood components, and allergenic products among the biological products which must meet the licensing requirements of this section; to the Committee on Labor and Public Welfare.

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

By Mr. McGEE:

S. 3602. A bill to preserve and protect the confidentiality of first class mail; to the Committee on Post Office and Civil Service.

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

S. 3598—INTRODUCTION OF A BILL TO AUTHORIZE FEDERAL ASSISTANCE FOR FISH AND WILDLIFE AND RECREATION DEVELOPMENT

Mr. AIKEN. Mr. President, the need for a practical, overall program for rural development is a major problem of our times.

One cause for concern is the decline that is taking place in many rural communities as large-scale commercial agriculture takes over.

On the other side of the coin, thousands of city dwellers would prefer to live in rural communities but demand modern facilities in order to live comfortably.

In 1963, the resource conservation and development program was initiated to provide for cohesive planning and specific action to attract new enterprise to rural communities.

Two years later the Water Facilities Act became law, and this has proved to be one of the most important programs we have for rural development.

Administered by the Farmers Home Administration, this act provides grant and loan money to enable rural communities to establish modern water and sewer systems.

I am especially proud of the fact that the first rural water system to be established under this law is in my home State, and one of the first 10 R.C. & D. projects in the Nation is in Vermont.

The latter started as a district embracing 23 towns in three counties and now includes 41 towns in four counties.

Today, Mr. President, I introduce a bill to make the rapidly expanding resource conservation and development program even more effective than it is now.

In any new plan to improve living in rural communities, the R.C. & D. district may well be the keystone, for it is through the district setup that we obtain a real partnership of local, State, and Federal effort for progress.

This measure would strengthen the recreation and fish and wildlife aspects of resource conservation and development projects by providing Federal cost sharing.

It would enable the Department of Agriculture to provide recreation, fish and wildlife assistance in R.C. & D. projects that is comparable to its assistance in other USDA-aided programs such as small watershed projects under Public Law 566.

Specifically, the bill would authorize the Secretary of Agriculture to share part of the cost of installing public fish and wildlife or recreation developments in R.C. & D. projects and up to half of the cost of any needed land, easements, rights-of-way, and basic public facilities.

These would need to be water-based developments, and consistent with a comprehensive statewide plan adequate for purposes of the Land and Water Conservation Fund Act of 1965.

Such assistance would be limited to not more than one development per 75,000 acres, and to cost-sharing assistance that cannot be provided under other existing authorities.

There are 49 R.C. & D. projects now in operation, and they are making important contributions to rural communities.

Nineteen are in the planning stage and 60 more areas have requested assistance in planning new districts.

For 61 of my colleagues and myself, I introduce a bill which would further broaden the impact of these projects upon rural community development.

These projects, locally initiated and carried out with help from many Federal sources coordinated by the Soil Conservation Service, are located where the effective conservation use and development of the area's natural resources can make significant contributions to the economic improvement of rural communities.

Mr. President, we need a more healthy distribution of the population between rural and urban areas, and enactment of this bill would be an important step toward that goal.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement on the need for legislation to authorize Federal assistance for fish and wildlife and recreation development in R.C. & D. projects—these are community projects—and also a copy of the bill.

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

The bill (S. 3598) to amend section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended, to authorize the Secretary of Agriculture to furnish financial assistance in carrying out plans for works of improvement for land conservation and utilization, and for other purposes, introduced by Mr. AIKEN (for himself and other Senators), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

S. 3598

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section

32(e) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C 1011), as amended, is amended by adding at the end thereof the following: "In providing assistance for carrying out plans developed under this title, the Secretary shall be authorized to bear such proportionate share of the costs of installing any works of improvement applicable to public water-based fish and wildlife or recreational development as is determined by him to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs: *Provided*, That all engineering costs relating to such works of improvement may be borne by the Secretary: *Provided further*, That when a State or other public agency or local nonprofit organization participating in a plan developed under this title agrees to operate and maintain any reservoir or other area included in a plan for public water-based fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the State or other public agency or local nonprofit organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: *Provided further*, That in no event shall the Secretary share any portion of the cost of installing more than one such work of improvement for each 75,000 acres in any development area; and that any such public water-based fish and wildlife or recreational development shall be consistent with any existing comprehensive statewide outdoor recreation plan found adequate for purposes of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897); and that such cost-sharing assistance for any such development shall be authorized only if the Secretary determines that it cannot be provided under other existing authority."

The statement, presented by Mr. AIKEN, is as follows:

NEED FOR LEGISLATION TO AUTHORIZE FINANCIAL ASSISTANCE FOR FISH AND WILDLIFE AND RECREATION DEVELOPMENT IN RC&D PROJECTS

Many RC&D projects are in low income areas and the full potential for resource development cannot be fully financed from local sources. Local sponsoring agencies fully recognize the need for and the economic impact that would result from the installation of fish and wildlife or recreational development. Despite such recognition local economic conditions and priorities for the use of local funds force project sponsors to defer considerations of installing such measures. Legislation is needed to enable the Secretary of Agriculture to provide assistance for urgently needed measures that would have significant impact in project area communities. Such legislation would:

(1) Facilitate the acceleration of installation of project measures that are truly multiple purpose, including fish and wildlife and recreational developments.

(2) Provide an opportunity for rural communities in RC&D projects to develop their recreational potentials as part of an overall package resource development plan.

(3) Provide for the inclusion of fish and wildlife and recreation in structures for far less cost during the initial planning and construction stages.

(4) Create jobs and new businesses in rural communities during and after construction.

(5) Provide rural and city residents with much needed water-based recreational opportunities.

Attached is a copy of proposed legislation which if enacted would authorize the Secretary of Agriculture to share:

1. Part of the cost of installing public water-based recreational or fish and wildlife developments.

2. Not to exceed one-half the cost of land, easements, rights-of-way, and minimum basic public facilities needed in connection with such developments.

This proposed bill would limit said cost sharing to:

1. Water-based developments.

2. Develops consistent with a comprehensive statewide plan found adequate for purposes of the Land and Water Conservation Fund Act of 1967.

3. Assistance which the Secretary of Agriculture determines cannot be provided under other existing authorities.

4. Not more than one such work of improvement for every 75,000 acres.

Question 1.—What would the proposed RC&D recreation legislation do?

1. It would enable project measures to be accelerated that are truly multiple purpose, including needed recreational and fish and wildlife developments.

2. It would provide an incentive for local sponsoring organizations to give more adequate consideration to the total management of water and the use of scarce reservoir sites for purposes of preventing floods, agricultural water management, and for recreation and fish and wildlife in a manner that will best serve the long-term interests of the community.

3. It would create jobs and new businesses in rural communities.

4. It would provide rural and city residents with much needed water-based recreational demands that are increasing much faster than the population growth.

5. It would give the Secretary of Agriculture comparable authority for installing recreational works of improvement in RC&D projects that he now has under Public Law 566, the Watershed Protection and Flood Prevention Act.

Question 2.—Would the proposed RC&D recreation legislation be compatible with the recreation provisions of PL–566?

The proposed recreation and fish and wildlife legislation would be compatible to the recreation and fish and wildlife provisions of the Small Watershed Program (PL–566). Like PL–566 the proposal would provide assistance only for water-based recreation.

The limitation in numbers of recreational developments in watershed projects, which may not exceed 250,000 acres in size, is as follows:

1. One per 0 to 75,000 acres.
2. Two per 75,000 to 150,000 acres.
3. Three per 150,000 to 250,000 acres.

The House Agriculture Committee proposed a similar limitation on recreation developments in RC&D projects. In the proposal, the developments are limited to not more than one per each 75,000 acres.

The RC&D recreation proposal also includes other restrictions not found in PL–566. These are:

1. The development must be consistent with the Land and Water Conservation Fund Act.

2. The recreation development is authorized only if the Secretary determines it cannot be provided under existing authority.

Question 3.—Why is the proposed legislation needed and where does it fit into the RC&D program?

1. Permits local communities to include recreation in their considerations for uses of land and water.

2. Multi-purpose water developments that include recreation are major features of a plan for resource development in most communities.

3. Water-based recreational developments not only fulfill local needs of outdoor enjoyment, but also provide important economic benefits to the community.

4. Provides an additional "tool" for sponsoring local organizations to use in planning for complete resource development.

5. Many communities are not financially able to meet the full costs of water-based recreational developments because of low tax base, heavy financial burdens for schools, other public facilities and services, and low income.

6. Contributes to rural development and enhancement of the rural surroundings.

S. 3601—INTRODUCTION OF BILL RELATING TO LICENSING OF VACCINES, BLOOD, BLOOD COMPONENTS, AND ALLERGENIC PRODUCTS

Mr. DOMINICK. Mr. President. I introduce for myself, Senator JAVITS, the ranking minority member of the Labor and Public Welfare Committee, and Mr. MURPHY, the administration bill to amend section 351 of the Public Health Service Act so as to clarify the intent to include vaccines, blood, blood components, and allergenic products among the biological products which must meet licensing requirements of this section.

I should like to call to the attention of my colleagues and particularly to the attention of my colleagues on the Health Subcommittee that the need for this amendment to specifically include "vaccine, blood, blood component or derivative, allergenic product," among the products in the list of licensable biologicals is in the nature of emergency legislation.

The bill is necessitated by a decision of the U.S. Court of Appeals, Fifth Circuit (*Blank* v. *United States*, 400 F. 2d 302 (Fifth Cir. 1968)) which held—reversing, in part, a conviction handed down by the U.S. District Court for the Northern District of Texas—that the products known as citrated whole blood—human—now named "whole blood—human"—and packed red blood cells—human—are not biological products within the meaning of section 351 of the Public Health Service Act and are, therefore, not subject to regulation thereunder. The rationale of the court was that, at the time the predecessor of section 351 was enacted in 1902, the product and processes involved in blood transfusion were unkown and, therefore, not within the intent of Congress. This reasoning would also cast doubt on the authority of the Secretary to issue standards for and otherwise regulate allergenic products. Unfortunately, the Department of Health, Education, and Welfare did not become aware that this specific point of the Blank decision had been affirmed until after the time for seeking review by the Supreme Court had expired.

The Blank case, while a governing precedent in the fifth circuit, is to be contrasted with an arguably similar case, involving blood plasma, in the second circuit (*United States* v. *Steinschreiber*, 218 F. 2d 426 (S.D.N.Y. 1962), 219 F. Supp. 373 (S.D.N.Y. 1963), affirmed per curiam, 326 F. 2d 759 (2d Cir. (1964)). While the Department of Health, Education, and Welfare believes their interpretation to be correct, vindication by the courts is likely to require several years, a period too long to have the authority of the Secretary to regulate under section 351 left under a cloud, and the uniform application of this section geographically impaired.

As an interim measure, the Secretary amended the manufacturing practice regulations for drugs under the Federal Food, Drug, and Cosmetic Act so as to in-

corporate by reference the standards for manufacturing, processing, packaging, and holding these biological products that were issued under section 351 of the Public Health Service Act.

The bill I introduce here is proposed in the interest of public health protection and uniformity of the law throughout the United States, and as a legislative clarification in line with what is believed to be the correct interpretation.

In addition to blood, blood components, and allergenic products, HEW is also proposing to add "vaccine" to the list of products subject to licensing to remove any doubt as to the coverage thereof, though the Blank decision does not directly bear on vaccines. "Vaccine" is a general term which covers products intended to stimulate the body to provide its own protection. Its inclusion with the others constitutes a minor remedial clarifying modification of the list of biological products now subject to licensure, and is consistent with the intent of the original "virus-toxin law" of 1902 to protect the public health through the control of biological products.

I hope the chairman will hold early hearings on this legislative proposal. The public interest requires prompt action if vaccines, blood, blood components, and allergenic products are to be among the biological products which must meet these licensing requirements.

The PRESIDING OFFICER (Mr. HOLLAND). The bill will be received and appropriately referred.

The bill (S. 3601) to amend section 351 of the Public Health Service Act so as to clarify the intent to include vaccines, blood, blood components, and allergenic products among the biological products which must meet the licensing requirements of this section, introduced by Mr. DOMINICK (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

S. 3602—INTRODUCTION OF A BILL TO PRESERVE AND PROTECT THE CONFIDENTIALITY OF FIRST-CLASS MAIL—NOTICE OF HEARINGS ON THE BILL

Mr. McGEE. Mr. President, I introduce, for appropriate reference, a bill to amend title 39, United States Code, to insure by law the absolute privacy of first-class mail unless a Federal judge has issued a search warrant under applicable Federal rules of criminal procedures to obtain the mail and provide that it be opened.

On February 2, 1970, the Postmaster General and the Secretary of the Treasury proposed changes in the present system of inspecting foreign incoming mail subject to customs inspection. Heretofore, all the Treasury Department could do under applicable postal regulations was return first-class mail to the sender, unopened. The new rule would authorize the Treasury Department to open first-class mail under certain circumstances relating to customs, searches for pornography, and searches for lottery material.

I heartily approve our Government's efforts to stamp out pornography and to enforce all other laws which may affect the postal service. However, I am convinced that enforcement of the law must stop short of opening first-class mail. That is an aspect of "big brotherism," "snooping," and "invasion of privacy" that cannot be tolerated.

My bill would put in the law a prohibition against such action unless a warrant has been issued.

Hearings have been scheduled on this bill for Friday, March 20 at 2 p.m. in room 6202 of the New Senate Office Building.

The PRESIDING OFFICER (Mr. BELLMON). The bill will be received and appropriately referred.

The bill (S. 3602) to preserve and protect the confidentiality of first-class mail, introduced by Mr. McGEE, was received, read twice by its title, and referred to the Committee on Post Office and Civil Service.

ADDITIONAL COSPONSOR OF A BILL

S. 3522

Mr. JAVITS. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Ohio (Mr. SAXBE) be added as a cosponsor of S. 3522, the Motor Vehicle Disposal Act.

The PRESIDING OFFICER (Mr. BELLMON). Without objection, it is so ordered.

ADDITIONAL COSPONSOR OF A JOINT RESOLUTION

SENATE JOINT RESOLUTION 147

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from West Virginia (Mr. RANDOLPH), I ask unanimous consent, that at the next printing, the name of the Senator from Arizona (Mr. FANNIN) be added as a cosponsor of Senate Joint Resolution 147, proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older.

The PRESIDING OFFICER (Mr. HART). Without objection, it is so ordered.

PROTECTION OF THE RIGHT OF PRIVACY RELATING TO MAIL MATTER—AMENDMENTS

AMENDMENTS NOS. 554 THROUGH 556

Mr. GOLDWATER submitted three amendments, intended to be proposed by him, to the bill (S. 3220) to protect a person's right of privacy by providing for the designation of obscene or offensive mail matter by the sender and for the return of such matter at the expense of the sender, which were referred to the Committee on Post Office and Civil Service and ordered to be printed.

EXTENSION AND IMPROVEMENT OF THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM—AMENDMENT

AMENDMENT NO. 557

Mr. WILLIAMS of Delaware. Mr. President, today I wish to discuss the manner in which the small investors in savings bonds are being treated unfairly.

For the past several years I have been trying to persuade the Treasury Department to support a savings bond program which would pay to the small investors a rate of interest more nearly comparable to that received by the large investors.

The result is that the wage earner buying the series E bonds is receiving 5 percent—it was 4¼ percent until late last year—while those investing larger amounts can obtain around 8 percent on Government issues with the same 7-year maturity date.

The same discrimination prevails in the amount of interest which the banks are permitted to pay to the depositors. The small depositors are restricted to a lower rate of interest on a savings account than are the large depositors or those able to buy the large certificates of deposit.

To emphasize this latter point I ask unanimous consent to have printed in the RECORD an announcement dated January 21, 1970, wherein the Federal Reserve and the Federal Deposit Insurance Corporation authorized a new interest rate schedule for the time deposits of various denominations.

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

NEW INTEREST RATES ON SAVINGS AND TIME DEPOSITS

The Federal Reserve and Federal Deposit Insurance Corporation have authorized an increase in interest rates payable on Time and Savings Deposits.

Accordingly, we are effecting the following changes as indicated:

Statement savings: 4½ percent per annum (effective Jan. 1, 1970) (time deposits—certificates of deposit)

[In percent]

UNDER $100,000*

Maturity:	*Interest*
30 to 89 days multiple	4½
90 days or more multiple	5
30 days to 1 year single	5
1 year single	5½
2 year single	5¾

$100,000 AND OVER

Maturity:	*Interest*
30 to 59 days	6¼
60 to 89 days	6½
90 to 179 days	6¾
180 days to 1 year	7
1 year or more	7½

*We are accepting C.D.'s in $1,000 multiples. Deposits insured up to $20,000 by FDIC.

Mr. WILLIAMS of Delaware. Mr. President, this schedule authorized interest on deposits below $100,000 at rates ranging from 4½ percent for 30 days to 5½ percent for 1 year as compared with 6¼ percent for 30 days and 7 percent for 1 year on deposits in excess of $100,000. This discrimination against the small investor is grossly unfair.

I was further concerned to read the recent announcement that the Treasury Department has now decided to carry this discrimination against the small investor even further.

According to a recent Treasury decision the minimum size of short-term Treasury bills was boosted to $10,000. Prior to this decision Treasury bills and notes could be bought in denominations of $1,000. These Treasury bills or notes bear interest from 7 to 8 percent, depending upon maturity.

It is true that the investor in savings bonds does have a guarantee as to the return of the principal; however, it is also true that in order to obtain a refund of his principal at a date earlier than the 7-year maturity he must sacrifice a substantial part of his interest.

Last year I proposed an amendment to the tax bill which would have made it mandatory that in addition to the series E bonds, the Treasury Department issue and make readily available to the small investors a new type of savings bond bearing interest at a minimum rate of 6 percent with the same guarantee as to the return of principal as now prevailing for series E bonds. The amendment provided that these 6 percent bonds be limited to $3,000 in maturity value per year, thereby restricting them to the small investors.

I am submitting, on behalf of myself and the Senator from Pennsylvania (Mr. SCOTT), a similar proposal, intended to be proposed by us, jointly, as an amendment to H.R. 14705 (the bill dealing with a modification of the unemployment tax formula), which is now pending before the Senate Finance Committee.

This amendment authorizes the issuance of these new savings bonds with maturity dates of both 10 and 20 years. On the basis of 6 percent compounded semiannually they would sell at prices of around $55 and $31 respectively.

The approval of this amendment would make it mandatory that the Treasury Department establish these new savings bonds and make them available to the small investors not later than July 1, 1970.

The amendment will be offered first in the Finance Committee, but if unsuccessful in obtaining committee approval it will be re-offered in the Senate.

This situation wherein the small investors are being paid at a substantially lower rate on their savings accounts than are the large investors can no longer be tolerated or defended.

In my opinion either the Treasury Department should abolish its savings bond program and remove from the Government payroll its high-paid executives who are now operating in every State as promotional experts or it should initiate a program which is fair to the small investors.

Not only is the approval of a realistic savings bond program, such as being proposed herein, essential from the standpoint of fairness but its adoption would also act as a major deterrent to uncontrolled inflation in that it would siphon out of the spending stream money which is now finding its way into consumer markets.

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

The PRESIDING OFFICER (Mr. BELLMON). The amendment will be received and appropriately referred; and, without objection, the amendment will be printed in the RECORD.

The amendment (No. 557) was referred to the Committee on Finance, as follows:

AMENDMENT NO. 557

At the proper place insert the following new section:

"SEC. —. (a) Section 22A(b)(1) of the Second Liberty Bond Act (31 U.S.C. 757c–2) is amended to read as follows:

"'(b) (1) Retirement and savings bonds shall be issued only on a discount basis, and shall mature either ten years or twenty years from the date as of which issued, as the terms thereof may provide. Such bonds shall be sold at such price or prices and shall be redeemable before maturity upon such terms and conditions as the Secretary of the Treasury may prescribe, except that the issue price of such bonds, and the terms upon which they may be redeemed at maturity, shall be such as to afford an investment yield of 6 per centum per annum, compounded semiannually. The denominations of such bonds shall be such as the Secretary of the Treasury may from time to time determine and shall be expressed in terms of their maturity values. Not more than $3,000 in maturity value of such bonds issued in any one year may be held by any one person at any one time.'

"(b) Notwithstanding any provision of subsection (a) of section 22A of the Second Liberty Bond Act, the Secretary of the Treasury shall, beginning not later than July 1, 1970, issue United States retirement and savings bonds authorized by section 22A of such Act in such amounts (subject to the limitations imposed by section 21 of such Act) as may be necessary to permit individuals to purchase such bonds in the amounts permitted under subsection (b)(1) of section 22A of such Act (as amended by subsection (a) of this section)."

ONE-BANK HOLDING COMPANY LEGISLATION

Mr. PERCY. Mr. President, Mr. Gaylord Freeman, chairman of the board of the First National Bank of Chicago, has written me a most thought-provoking letter on the one-bank holding company legislation, H.R. 6778, currently pending before the Senate Banking and Currency Committee.

He perceptively details the problems of commercial banks in general as well as commenting specifically on this pending legislation. I believe Mr. Freeman's carefully considered views deserve wide attention.

Mr. President, I ask unanimous consent that the letter I received from Mr. Freeman be printed in the RECORD.

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

THE FIRST NATIONAL BANK OF CHICAGO,
February 13, 1970.

Hon. CHARLES H. PERCY,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: Knowing your willingness to consider all sides of disputed issues, I would like to express my hope that the Senate Banking and Currency Committee will not take any action on H.R. 6778 at this time.

My position is essentially as follows:

I. The Government has caused the banks to increase their interest rates.

II. Yet, the Congress is irritated with them for having done so.

III. This irritation has caused the Congress to take a punitive attitude toward the banks.

IV. This congressional hostility is entirely unwarranted.

V. The Congress should not act on H.R. 6778 or any other bank legislation until there has been an objective review of our financial institutions and the regulation thereof.

Let me expatiate on each of these five points.

I. The Government has caused the banks to increase their interest rates.

The Congress deplores inflation. It would like to see the price rise moderated. It could achieve this in any one of five different ways.

A. Congress itself could:

1. impose wage, price and dividend controls;
2. reduce governmental expenditures;
3. increase taxes;
4. impose direct credit controls; or
5. rely on the Federal Reserve to fight inflation through monetary policy.

1. Wage, price and dividend controls would be unpopular and of uncertain effectiveness. Consequently, Congress has not elected to adopt such controls.

2. A reduction in governmental expenditures is unpopular and difficult. Congress has not reduced expenditures though it has slowed the rate of rise.

3. Increased taxes are always unpopular. Congress did impose the surcharge for a period but now has provided for its termination.

4. Direct credit controls (restricting access to credit for certain segments of the society) would be unpopular with the groups so affected, and such controls do discriminate. Congress has not taken such action.

5. Thus, Congress has elected not to take any sustained and effective anti-inflationary action itself but, instead, has relied on the Federal Reserve to take such action as it may determine is necessary.

B. The Federal Reserve has two methods of fighting inflation. The Board may:

1. Impose direct controls (on consumer credit, business credit, stock market borrowing, etc.); or
2. restrict the growth of the money supply.

1. Direct controls (whether imposed by the Board or the Congress) are resented by the segment of the public directly affected. The Board, like the Congress, has preferred to avoid this resentment.

2. Thus, the Board elected the other alternative, which was merely to restrict the growth of (or actually reduce) the money supply.

Restricting the money supply has been accomplished by reducing the overall reserves of the banking system (see Appendix A). This action has been made more effective by imposing non-competitive ceilings on the maximum rates which the banks can pay for corporate CD's and for savings deposits. The effect of this has been to reduce the funds available to the larger "money market" banks (which have felt the greatest demand for funds).

If the money supply is restricted during a period of expanding demand (as was the case during the past year and is at present), credit becomes (a) scarce and (b) expensive. This is precisely what the Federal Reserve has intended. It is what has happened.

a. Why did credit become scarce?

Because the Federal Reserve held currency and demand deposits at a static level from June, 1969, to last December and actually reduced the total of currency, demand and time deposits (see Appendix B).

b. Why did credit become more expensive? For two reasons.

(i) Demand pull. Any commercial item in great demand and short supply will experience a rise in price as those who desire the product bid up the price. This is what the Federal Reserve intended—to let the free market (price) determine the allocation of funds rather than to allocate them by direct controls.

(ii) Cost push. In 1969 the large money market banks (which lost the most corporate CD's because of the non-competitive interest rate ceilings imposed by the Federal Reserve), anxious to provide credit for the normal needs of their established customers, purchased federal funds (the excess funds of the smaller banks which did not have a large demand for loans) at continuously rising

rates of interest. (These averaged 4.22 percent in 1967, 5.66 percent in 1968, and 8.22 percent in 1969, rising in the second half of 1969 to an average of 8.96 percent). In addition, as the total of such available funds was insufficient to satisfy the proper demands of business and the consumer, the larger banks (which experienced the greatest loan demand) sought additional funds elsewhere. Eurodollar borrowings rose steadily from $8.5 billion at the beginning of the year to a peak of $15 billion and for the year averaged about $12 billion. The borrowings were at an average rate of 8.4 percent in the first half of 1969 and an average rate of about 10.5 percent during the second half of the year.

Because of the strong demand for bank credit and the high cost of the money purchased to supply the increased demand for loans, many banks raised the rates they charged their customers. Since December, 1968, the "prime" rate has been raised from 6¾ to 7 percent (on January 8*) and then to 7½ percent (on March 17) and finally to 8½ percent (on June 9, 1969).

These increases in bank interest rates are the direct, predictable *and intended* result of of the Federal Reserve's restrictive monetary policy. The Federal Reserve felt called upon to adopt such a restrictive policy to fight excessive inflation because the Congress had not elected to adopt adequate anti-inflationary measures itself. Thus, the Government brought about conditions that caused the increase in bank interest rates. The banks were, in effect, the instruments of the Government's restrictive policy.

II. Yet, the Congress is irritated with the banks for their having raised rates.

As might be expected, the combination of tight money and markedly higher interest rates proved generally unpopular. It was discriminatory in effect as it substantially increased the overall cost of those goods (such as homes) which are bought on credit and paid for over an extended period. It, thus, slowed home construction both because of the higher cost of money—interest rates—and the uncertainty of the availability of construction financing. To a lesser extent, these same factors affected sales of other products. This was, of course, the intention of the Federal Reserve, but it was nevertheless unpopular.

This general resentment caused considerable congressional irritation with the banks.

III. This irritation has caused the Congress to take a punitive attitude toward the banks.

The Congress in HR 13270, Section 585, reduced the amount the banks can deduct from taxable income as an addition to reserves for bad debts. I asked a good friend of mine on the House Ways and Means Committee why they did this. "Because the majority of the Committee is irritated with the banks over the high interest rates and feels that they don't pay enough in taxes. There is no point in arguing that you need these reserves, for, if we didn't increase your taxes this way, we would do it in some other way."

HR 13270, Section 433, eliminated the asymmetrical treatment of gains and losses on securities. You may recall that in 1942, at the request of the Treasury (not of the banks), the Congress, in order to induce the banks to buy Treasury bonds (the proceeds of which the Government would use to finance the war, provided that gains on such bonds would be treated as capital gains but that losses could be taken against ordinary income. This was a special "break" accorded the banks in order to induce them to buy Government bonds. Induced by this favorable tax incentive, the banks did buy the bonds, in fact, tens of billions of dollars of them in the years since. Thereupon, having induced the banks to buy the bonds, the Congress withdrew this privilege. If the Congress had merely terminated the privilege in respect of future issues or even future purchases, we would have no complaint, but the Government induced a purchase by offering a benefit and then unilaterally cancelled the benefit. If a banker or a businessman did this, he would be civilly and perhaps criminally liable.

I believe that the Treasury, although in favor of the termination of the earlier treatment, is embarassed by the inequitable way it was accomplished, but Congress apparently did not feel that it was necessary to be fair to the banks.

HR 6778, which has been referred to the Senate Banking Committee, originated as an attempt to bring holding companies which own or control a single bank under the same federal regulation as those companies which own or control two or more banks. The House Banking and Currency Committee, after lengthy public hearings, reported out a carefully considered (albeit debatably unnecessary) bill which would have limited the activities of companies owning one or more banks to those activities which the Federal Reserve Board determined to be functionally related to banking.

We bankers didn't like that bill, but many felt that we could live with it.

When, on November 5, 1969, the Committee bill was considered on the floor, very few members were present, but there were present spokesmen for a variety of special interest groups. As a result, a small minority of the House rejected the Committee bill and, by amendments from the floor (the most important of which were approved by votes of 50–25 and 31–28), rewrote the entire measure.

The bill as passed by the House is a severe curtailment of the banking business. It would prevent not only holding companies and banks owned by holding companies but also, by implication, *all* banks subject to federal regulation from providing six financial services: insurance, data processing, accounting, leasing, travel services, and commingled investment trusts.

These several legislative actions reflect not only a critical but a punitive attitude.

IV. This congressional hostility is entirely unwarranted.

If the congressional irritation is analyzed objectively, it would seem to consist of two assumptions:

First, that the banks acted arbitrarily in raising interest rates; and

Second, that the large banks reaped unreasonable profits as a result.

I believe that an objective analysis would indicate that both of these assumptions are unfounded.

A. The banks did not raise interest rates arbitrarily.

Let us recall why the banks raised their interest rates. They did so in order to cover, at least partially, the high cost they had to pay for funds they were obliged to borrow if they were to meet the increased demand for loans. Why did they have to pay such high rates? Because the Federal Reserve had limited the supply which they could obtain domestically and forced them into the Eurodollar market as set forth in Section I B 2 b (ii) above. Why did the Federal Reserve force the banks to seek these expensive funds? Because it wanted to fight inflation. Why did the Federal Reserve have to fight inflation? Because the Congress failed to take adequate action.

B. The large banks did not reap unreasonable profits as a result of the increased interest rates.

1. 1969 earnings of the large money market banks were not high.

In part, the congressional criticism has been due to the fact that it is always safe and generally popular to criticize bankers. The bankers don't control many votes, and no one likes to pay high rates. This congressional bias was strengthened further by the thought that the banks were "getting rich" as a result of these high interest rates. The majority of smaller banks were able to loan their excess funds to the ten or twelve money market banks at an average of 8.22 percent, or to invest in Treasury bills paying up to 8.3 percent (on an interest bearing basis) or to buy seven-year Government notes at the rate of 8 percent as against the average return on Treasury bills of 3.8 percent as recently as May, 1967.

Although aggregate figures are not yet available, it would appear that the great majority of the smaller banks did far better than ever before and earned a fine return on their capital accounts.

But this is not true for the handful of the large money market banks (roughly the top ten banks which are the most interested in one bank holding companies). These few large banks were the hardest hit by the Federal Reserve imposed ceilings on interest rates which they could pay (they lost billions of dollars of deposits in negotiable CD's). These same few banks were also faced with the sharpest increase in demand for loans. In these circumstances, they were forced to pay the high Eurodollar rates of interest for large sums of money.

As a consequence, these large banks did not receive any unwarranted profits. Most of them experienced some increase in income (partly through fewer loan losses), but their increase was not great.

Although I do not have complete figures for all of these banks, press reports indicate the following:

	1969 income before security gains or losses (millions)	Change 1968–69 (percent)	1969 income as a return on average capital accounts (percent)
Bank of America	$153.8	12.8	13.7
First National City, New York	130.6	8.4	11.5
Chase Manhattan	114.6	(3.3)	11.2
Manufacturers Hanover	78.3	12.8	12.7
Morgan Guaranty	83.6	(1)	11.9
Chemical	68.8	(1)	11.7
Bankers Trust	46.9	(1)	10.3
Continental	52.7	4.2	10.5
First National-Chicago	52.8	10.2	9.5
Security Pacific	55.8	15.5	12.5
Average for the banks reporting		8.7	11.7
Average return on net worth of the 500 largest manufacturing corporation (1968)			12.2

[1] Not available.

These figures would suggest that for most of the large banks 1969 earnings were only modestly above 1968 and that, as a return on capital accounts, bank earnings were somewhat below recent earnings of manufacturing concerns.

Thus, the 1969 reported earnings of the large banks were not excessive.

2. Reported earnings do not fully reflect the adverse effect of higher rates on bond holdings.

If we are seeking an objective appraisal of the impact of high interest rates on bank earnings, we should consider not only reported earnings but also the effect of rising interest rates on the value of bonds held by the banks. In the case of our bank, the decline in the market value of our bonds as of the end of 1969 was greater than our entire income before security gains or losses. While I do not have figures from all of the other large banks, I believe that this is also true of most of them.

Although, if we hold these same bonds,

*Dates relate to increases announced by The First National Bank of Chicago.

they can be expected to appreciate when interest rates fall, the immediate impact of the higher interest rates was no blessing to the larger banks.

3. The market evaluation of bank stock reflects these facts. The price earnings ratio of the ten largest banks (as of February 11) are shown below:

Price/earnings ratio as of Feb. 11, 1970, using 1969 earnings

	Percent
Bank of America	12.8
First National City—N.Y.	13.9
Chase Manhattan	14.0
Manufacturers Hanover	11.0
Morgan Guaranty	13.8
Chemical	11.8
Bankers Trust	13.9
Continental	11.7
First National—Chicago	9.3
Security Pacific	10.8
Average for the 10 largest banks	12.3

The average price earnings ratio for the banks was 12.3 times. This compares with the average price earnings* ratio of the Dow-Jones Industrials (as of the same date) of 12.7 times and of the average price earnings ratio of Standard & Poor's 425 corporations (also as of the same date) of 15.2 times. Thus, the market reflects a relatively bearish attitude toward the profit performance of the large banks.

The foregoing figures suggest that for the large banks:

(i) the year 1969, despite a substantial increase in loans at risk, was a better year than 1968 though not remarkably so in terms of income, but a disastrous year if the bond depreciation were to be deducted from earnings;

(ii) they earned a lower return on net worth than the average for manufacturing concerns; and

(iii) the market considers bank stock as a less attractive investment than most other companies.

Thus, our one "crime" consisted in doing what the Federal Reserve required us to do (to raise rates). The Fed imposed this burden on us because it had full anti-inflationary responsibility as a result of the Congress being unwilling to assume that responsibility itself. Furthermore, the "crime" was not one which we sought, and it did not enrich us.

Thus, the current critical attitude of Congress is unjustified.

V. The Congress should not act on HR 6778 or any other bank legislation until there has been an objective review of our financial institutions and the regulation thereof.

I urge this for these reasons:

A. Some members of the Congress do not appear to be in a mood for objective analysis of the public interest in bank legislation.

The events outlined above suggest that the Congress is critical of banking, or of large banks, and quite unjustifiably so. It may also be that in 1969 Congress felt it should take some action to limit or punish conglomerates but didn't know how to do so. A one-bank holding company may have been looked upon as a sort of mini-conglomerate and was easy to attack, especially with interest rates high and banks consequently unpopular.

B. HR 6778, a so-called "one bank holding company bill," is not that but, by implication at least, a bank bill.

It implies new restrictions on *all* banks, not just those controlled by holding companies.

Representative Wright Patman emphasized the applicability of these amendments to all banks when he stated in floor debate:

"I want to make it clear that when the Congress says that the activities listed in section 4(f) of the Bank Holding Company Act as amended by this bill are neither necessary, incidental, nor related to banking, we mean just that. Therefore, the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the courts should take into consideration this statement of legislative policy when considering what is incident to banking under the banking laws."

For years, many banks have been providing insurance, travel service, etc. There has been no showing of abuse in their doing so. Yet, without regard for the public interest, but solely to eliminate bank competition in these fields, HR 6778 would prohibit banks from continuing to offer these services to the public. This would be the effect of that bill even on the small banks which had no relationship at all with any holding company.

This does not appear to be the appropriate moment for congressional enactment of objective bank legislation. There is too great a risk that any action at this time would not be in the public interest.

C. In the absence of any emergency, bank legislation should be postponed pending the outcome of the presidential commission to study banking.

The President has announced that he will appoint a Commission on Financial Structure and Regulation to conduct "a thorough examination of needed changes in our financial institutions and our regulatory structure." Presumably, this commission will consider the public interest in extending or in limiting the scope of bank (and bank holding company) activities. Some such examination is highly desirable.

In the meantime, in the absence of an emergency, it is neither necessary nor wise to enact more anti-competitive legislation in respect of which there has been no such study.

Senator Percy, I apologize for writing you at such length and on an issue on which it would be so much easier for you to take an immediately popular position of punishing the banks rather than have to study the underlying causes of high interest rates. However, I have admired your willingness to take the more difficult course of objective analysis in other cases and hope that you will do so in this case.

As I look back over this letter, I fear that I may have expressed myself too strongly, but I know that you will understand my desire to state my case as explicitly as possible.

If you have any questions on which you think I could possibly be helpful, please call upon me.

Sincerely yours,

———.

*Based on estimated 1969 earnings of $59.50 for Dow-Jones Industrials and $6.30 for Standard & Poor's 425 corporations.

MONETARY POLICY SHOULD BE EASED

Mr. TALMADGE. Mr. President, probably the most serious issue of economic policy at the present time is the excessively tight monetary policy that has been pursued by the Federal Reserve System since last May. Indeed the money supply—demand deposits plus currency—differs little in February of this year from what it was last June, 8 months ago. This situation in which the money supply has not risen significantly for 8 months, and total bank reserves are no higher now than they were in late 1968, almost 1½ years ago, is intolerably tight when we consider that this Nation's ability to produce grows at least 4 to 4½ percent a year in real terms. Our labor supply is going up at least 1½ percent a year, and productivity between 2½ and 3 percent a year. Thus the demand for goods and services must rise by at least 4 to 4½ percent to keep our workers employed, and our farms, factories, and mines operating at high levels. Yet the monetary authorities have denied the economy even the most minimal increase in the supply of money with which to do business.

This is folly, but not a new development precisely, for the monetary authorities have repeatedly swung widely from excessive increases to actual declines.

The Joint Economic Committee has repeatedly warned that we need a more stable monetary policy with the money supply increasing at between 2 and 6 percent a year, holding close to the lower limit of this range in inflationary times such as we have had for several years. But 2 or 3 percent a year is a lot more than zero. As a result of the Federal Reserve System's policies, housing starts in recent months have been 30 to 40 percent below January of 1969. Unemployment has risen to about 4.2 percent of the labor force from 3½ percent a year ago, adding over three-fourths of a million to the ranks of idle workers. Industrial production has declined steadily since last July—the latest figure released yesterday showed a decline of another one-half of 1 percent, bringing the index to 169.4 percent of the 1957–59 average, a decline of 3 percent from the peak of 174.6 percent reached last July.

Last November, the Subcommittee on Fiscal Policy of the Joint Economic Committee, of which I am a member, warned of the dangers of this policy, stating:

> We cannot long endure a policy that produces almost no increase in the money supply.

Yet, almost 5 months later, the money supply is no higher than last June. Nor are the complaints against this money supply confined to a few economists, or to the Members of Congress. The administration, in its Economic Report and the Budget, advocated some easing in monetary policy and assumed in its projections that such an easing would take place. In fact, in the Economic Report—page 60—it is stated, in regard to the money supply, that:

> The appropriate rate of expansion is between that of 1967–68 and the severe restraint of the latter part of 1969.

For a while in the fourth quarter of last year and into January of this year it looked like the monetary authorities were beginning to ease their stranglehold on the financial market. The money supply once more began to rise. But a sharp cut in February of this year brought the money supply down again to the level of last June. The housing industry, small businessmen, farmers, and our State and local governments simply cannot function effectively if this tightness, now approaching chaos, is maintained in financial markets. No economic policy adopted by this Congress can be expected to work toward restoring price stability and full employment for our growing economy if the monetary authorities insist on bringing economic activity to a virtual halt by stopping the growth in the money supply. If the Federal Reserve System does not act at once to resume a moderate rate of increase in the money supply, the public and this Congress will know

where to place the blame for the resulting high interest rates, and rising unemployment.

THE CRIME SITUATION IN THE UNITED STATES

Mr. MILLER. Mr. President, yesterday the Federal Bureau of Investigation issued a report on the crime situation in the United States and the news is heartening—although we still have a long way to go.

The year 1969, the first year of the Nixon administration, showed a sharp improvement in that the crime spiral which started back in the early 1960's has begun to slow. It is true that crime was up by 11 percent last year, but this compares with a 17-percent increase in 1968. In fact, the rise for 1969 was the smallest of any year since 1965.

Penologists and criminologists may debate the causes of crime and the reason why the crime rise last year was considerably lower. It is likely, however, that one of the underlying reasons is the change of attitude in America that crystalized on January 20, 1969.

It was obvious to all, and that includes the criminal element in our society, that Americans were no longer in a mood to tolerate the kind of lawlessness that had become the hallmark of our big cities during the 1960's. It was equally obvious that the Nixon administration was determined to do whatever lay within its power to halt the scandalous crime rise.

The President early last year submitted to the Congress a series of proposals on how to reverse the trend, not merely to slow it down. To date there has been no final action on those proposals. They still languish in the pigeonholes of congressional committees.

Democrats who run the business of this Congress and who control its committees with an iron hand have yet to give this legislation a green light and bring it to the point of final action.

Without the proper tools for law enforcement agencies to combat crime, it cannot be expected that we will see a real decline in the crime rate of the United States.

The Nixon administration has asked for those tools. Republicans in Congress have repeatedly pleaded for action to give the people the protection these tools will afford.

To date, those pleas have fallen on deaf ears.

The anticrime legislation gap should be closed now.

Mr. President, I ask unanimous consent that an article entitled "Serious Crime Up 11 Percent in 1969," published in the Washington Post of Tuesday, March 17, 1970, be printed at this point in the RECORD.

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

SERIOUS CRIME UP 11 PERCENT IN 1969

Serious crime in the United States rose 11 per cent in 1969, but the rate of increase fell sharply in big-cities, the suburbs and the densely populated Northeast.

The 11 per cent increase recorded in the FBI's Uniform Crime Report was the lowest since 1965 and compares with a 17 per cent increase in 1968.

Increases in every category of violent crime were down in 1969, except forcible rape which was up 16 per cent.

The use of firearms in assaults last year increased only half as much as the previous year—12 per cent against 24 per cent in 1968.

Cities of 250,000 population and over reported a 9 per cent increase in crime last year. The suburban increase was 13 per cent and the rural rate was up 11 per cent. The previous year's increase was 18 per cent for big cities and the suburbs and 12 per cent for rural areas.

In 1969, the north central states recorded a 15 per cent increase, the western states 12 per cent, the South 11 per cent and the Northeast 7 per cent. This compared with an increase of 21 per cent for the Northeast in 1968, when the north central region jumped 13 per cent, the South 16 per cent and the West 18 per cent.

Previously reported figures for the District of Columbia showed increases in robberies, murders and rapes as records were set in each category during 1969. Homicides increased from 209 to 291; armed robberies from 4,640 to 7,071, and rapes from 260 to 326. Other increases were larceny, from 7,876 to 11,548, auto thefts from 11,354 to 11,364, and aggravated assault from 3,103 to 3,621.

A SIGNIFICANT DEVELOPMENT IN SOUTH VIETNAM—LAND REFORM LEGISLATION

Mr. PACKWOOD. Mr. President, a significant development occurred the other day in South Vietnam which has gone largely unnoticed by the American public. That development was land reform legislation being passed by the South Vietnam Senate and the South Vietnam Assembly.

Essentially, this legislation gives the South Vietnam peasant a piece of the action by allowing him to own his own land. Up to now, the typical peasant, who makes up 65 percent of the South Vietnam population, has been hopelessly mired in debt. Outrageous demands have been made of the peasant. The peasant has been required to pay as much as 60 percent interest on money he borrows and up to 40 percent of the crop grown to the uncompromising South Vietnam landlord.

Up to this point, the South Vietnamese peasant has had no reason to fight the enemy from the north. After all, when one does not have part of the action, as has been the case with the South Vietnamese peasant, then he does not really have anything for which to fight. One study showed that the peasant regarded land ownership as five time more important than his own physical security. That gives you some idea of why it is so essential that this land reform become a reality.

But, hopefully, a new day is on the horizon. At long last we have more than a hollow hope.

The legislation calls for an initial spending effort of $50 million, the total cost of land reform is about $470 million. This is a small price to pay when one stops to consider that the Vietnam war costs the American taxpayer $100 million per day.

It would be a drastic oversimplification to say that land reform alone is going to solve the problems of South Vietnam. It is, however, a step which must be taken if the South Vietnam Government is going to be representative and responsive to the needs of the people.

POINT REYES NATIONAL SEASHORE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, as in legislative session, the Senate now proceed to the consideration of Calendar No. 732.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 3786) to authorize the appropriation of additional funds necessary for acquisition of land at the Point Reyes National Seashore in California.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on Interior and Insular Affairs with amendments on page 2, after line 3, insert a new section, as follows:

SEC. 2. (a) Section 3(a) of the Act of September 13, 1962 (76 Stat. 538), is amended by striking out the words "Except as provided in section 4, the," in the first sentence and inserting the word "The" in lieu thereof.

(b) Section 4 is hereby repealed.

(c) The remaining sections of the Act of September 13, 1962 (76 Stat. 538), are renumbered accordingly.

Mr. BIBLE. Mr. President, the purpose of the pending bill is to increase the authorized funding for the Point Reyes National Seashore. The bill addresses a matter of some urgency. I do not anticipate that it will take too long to explain it.

I ask unanimous consent that I may be permitted to proceed for not to exceed 10 minutes.

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

Mr. BIBLE. Mr. President, the thrust of the pending bill is to increase the appropriation authorized from the present amount of $19,135,000 to $57,500,000. This is an increase of $38,365,000. And this increase is brought about by a number of factors, among them the general rise in the cost of land in that area, the tremendous pressures that are put upon the Point Reyes National Seashore by the heavily populated San Francisco Bay area. In addition, and in fairness and in frankness, Point Reyes involves an instance of poor estimating by the National Park Service. The project was badly underestimated 5, 6, or 7 years ago when the original act was passed. Since that time, I am happy to say, under the able leadership of George Hartzog, the Director of the Park Service, they have beefed up the appraisal division and the staff in the Park Service of the Department of the Interior and they are now in a position to give us a better estimate. This is a difficult job, at best.

In my judgment, they have gone a long way toward improving their estimates and I hope that hereafter, when we report bills to the floor of the Senate from the Subcommittee on Parks and Recrea-

tion and the Committee on the Interior our estimates will be very close on target. We will have a bill before us in the next few weeks in connection with Cape Cod where there, too, at the opposite end of the continent, for almost the same reasons, namely poor original estimates, price escalation and population pressures have raised costs dramatically.

Mr. President, the bill should be passed and without delay. The purpose of the bill and the background of the bill are well set forth in the accompanying report. I ask unanimous consent that the subsections dealing with the purpose, background of Point Reyes National Seashore, need, land and water conservation fund, and cost factors be printed in the RECORD.

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

PURPOSE

The purpose of H.R. 3786 is to authorize the appropriation of adequate funds to assure the acquisition of all remaining non-Federal lands needed to make the Point Reyes National Seashore a meaningful unit of the national park system. The committee held hearings on the companion bill S. 1530, sponsored by Senators George Murphy and Alan Cranston.

BACKGROUND OF POINT REYES NATIONAL SEASHORE

The Point Reyes Peninsula is very strategically located about 30 miles from downtown San Francisco. It was this location, as well as the significant amount of relatively undeveloped land with outstanding natural, recreational, historical, and scientific values, which made it a prime area for consideration when Congress began to expand the Nation's inventory of outdoor recreation resources.

During the 87th Congress, legislation was approved which authorized the acquisition of 64,546 acres of land, including 10,410 acres of submerged land, on the peninsula for the purpose of establishing the Point Reyes National Seashore (Public Law 87–657, 76 Stat. 538). To accomplish this objective, based primarily on some current sales and on land value estimates made by the local tax assessor, $14 million was authorized to be appropriated to purchase the lands deemed essential to public use and enjoyment of the area. It was not contemplated at that time that it would be necessary to acquire lands located within a 26,000-acre "pastoral zone" as long as they continued to be used for ranching and dairying purposes.

Following the authorization, funds were appropriated to make the national seashore a reality, but in a short time it became obvious that the funds authorized were going to be inadequate. Not only did the original cost estimates prove unreliable, but land values increased rapidly, lands within the "pastoral zone" were threatened with subdivision, and the use of the exchange provision in the act was frustrated. All of these factors were related to the need for increased funds which were deemed essential to the preservation and development of a meaningful and useful portion of the peninsula in perpetuity.

The matter was given further congressional attention in 1966. At that time, it was recognized in the report of the committee that there would be a "need for a very considerable increase in the present limitation on appropriations," but it was decided that full funding should not be authorized until an intensive review of the overall problem of recreation land price escalation could be completed and the alternatives considered. Consequently, Public Law 89–666 (80 Stat. 919) authorized the appropriation of an additional $5,135,000 for the acquisition of six specific tracts.

To date, the appropriation of $19,130,000 has been authorized. Of this, $17,037,073 has been appropriated to purchase 28,776 acres of land and submerged lands and the remaining $2,097,927 is committed to the settlement of existing condemnation cases involving almost 400 acres of land. Unfortunately, because it has been necessary for the National Park Service to move from crisis to crisis rather than follow a more orderly land acquisition program, the federally owned lands are scattered and not fully useful for public purposes in the absence of completion of the program.

NEED

The value of the Point Reyes National Seashore to the public remains unchanged. The pattern of demand and the population expansion in the area continue to justify its existence and to underscore the validity of the action initially taken by the Congress in 1962. While events which have followed have been somewhat disappointing, it is reassuring to note that the opportunity to make the seashore a reality still exists, only because the Congress agreed to initiate this effort.

If land price escalation had not outdistanced appropriations; if more reliable cost estimates had been available originally; if the land exchange program contemplated by the act had worked; and if lands in the "pastoral zone" had not been subject to potentially adverse developments, it would probably be unnecessary to consider legislation comparable to H.R. 3786. But now, a substantial investment has been made and the alternatives are limited. If this area is to be a useful part of the national park system, then the authorization must be increased, the appropriations must be requested and approved, and the acquisition program must move forward with dispatch.

LAND AND WATER CONSERVATION FUND

Like the moneys heretofore appropriated for the Point Reyes National Seashore, the increased expenditures will be made from funds credited to the land and water conservation fund. This fund was established as a separate fund in the Treasury in 1965. Its sole purpose is to assure the availability of adequate financial resources to expand the Nation's outdoor recreation resources. From it, matching funds can be made available to the States for their recreation programs and appropriations can be made for land acquisition activities of Federal agencies having outdoor recreation responsibilities.

Together with most of the important outdoor recreation authorizations approved by the Congress in recent years, the Land and Water Conservation Fund Act is the outgrowth of the report and recommendations of the Outdoor Recreation Resources Review Commission, which was created by the Congress to study the then present and prospective outdoor recreation needs of the Nation.

On the basis of the comprehensive studies made by the Commission, the Congress has pursued an ambitious national outdoor recreation program which has as its objective providing needed outdoor recreation areas at suitable locations as near as possible to the Nation's metropolitan areas. Unlike the past, when magnificent natural areas could be carved from the public domain without significant acquisition of privately owned lands, this redirection of the national policy inherently required the reacquisition of lands which had passed into private ownership.

This course was taken because it was a recognized fact that most of the national supply of outdoor recreation resources was concentrated in the more sparsely populated regions of the country and that it was, therefore, relatively inaccessible to the masses of people living in the metropolitan areas. To expand the recreation opportunities for these people, proposals were made to provide outdoor areas at suitable locations of national significance.

Point Reyes National Seashore was among the first of these proposals to be considered by the Congress. Others have been authorized since. All are important, because in their own way, they contribute to the inventory of outdoor resources which will have to serve not only this generation, but all generations which follow.

Because suitable resources are limited and because uses incompatible with public use and outdoor recreation are encroaching on these areas, the members of the Committee on Interior and Insular Affairs have considered this program to be urgent. Every effort has been made to consider the merits of new authorizations carefully to be sure that the investment of each Federal dollar is warranted. Furthermore the committee has endeavored to assure a reasonable program in view of the limited financial resources available. The outdoor recreation program which it has sponsored, and which the Congress has approved throughout the sixties will undoubtedly make this decade one of the most significant in the history of American conservation.

The authorization of a needed outdoor recreation area is not the end, but the beginning. It recognizes the need and the desirability of a new area, but where land acquisition is required, funds must be made available before these areas can be opened for public use and enjoyment. Adequate funds are presently available in the land and water conservation fund to make a substantial portion of the presently authorized outdoor recreation program a reality. They cannot be spent, however, unless appropriated. Needless to say, it is the province of the Congress to make appropriations, but in doing so, it acts on the budget recommendations of the President. Absent a budget request, the appropriation of funds is difficult, but more importantly, the use of an appropriation in excess of the budget request can never be assured.

It is most important that we complete the acquisition program at Point Reyes National Seashore without delay, but it is equally important that the land acquisition programs be completed at such places as Delaware Water Gap National Recreation Area, Assateague Island National Seashore, Cape Cod National Seashore, Fire Island National Seashore, Indiana Dunes National Lakeshore, Pictured Rocks National Lakeshore, and others. Undoubtedly, when funds are limited some projects will have to wait, but when moneys are available in an "earmarked" fund, as is the case with the land and water conservation fund, then they should be requested by the President, appropriated by Congress, and dispersed when such expenditures can be justified by the administering agency. Every delay is costing dollars and is jeopardizing the natural, scenic, historic, and recreational values which the Congress is seeking to protect.

The Congress indicated its willingness to fund an ambitious outdoor recreation program when it increased the annual level of the land and water conservation fund in 1968 (Public Law 90–401) to $200 million for a 5-year period. It recognized the importance of converting meritorious authorizations into realities. Point Reyes National Seashore will be assured its completion if H.R. 3786 is enacted and if the funds are forthcoming within a reasonable period of time. The members of the committee feel strongly, however, that these moneys should not be made available at the expense of some other authorized or contemplated outdoor recreation area; rather each annual budgetary request should reflect the commitment on behalf of the Nation to complete the program contemplated when the authorizations were initially approved and the land and water conservation fund expanded.

The committee understands that if this

bill is enacted, the administration intends to submit a supplemental appropriation request to initiate further land acquisition at Point Reyes during fiscal year 1970. This procedure would not prejudice any presently planned land acquisition programs for other parks or recreation areas, since it would be supplemental to the current appropriations for this purpose. In fiscal year 1971 and subsequent years, however, Point Reyes funds will be budgeted at the same time other park funds are budgeted, and it is then that care must be exercised to insure that one is not favored at the expense of another. There is, or will be if the funds are used effectively, enough money in the land and water conservation fund to meet the needs of all authorized projects.

The House amendment is designed to assure the integrity of the seashore. During the course of the hearings, the Department revealed a plan whereby certain of the federally acquired lands within the boundaries would be sold or leased, subject to restrictive covenants, for residential and commercial purposes. While the Federal Government could conceivably recoup a substantial amount of money by such action, most of the members of the committee agreed that the problems inherent in such a plan far outweighed its merits. The amendment makes it clear that any lands purchsed for the seashore with the additional funds authorized shall not be reconveyed or leased for residential or commercial purposes, except for the purpose of providing public accommodations, facilities, and services in accordance with the provisions of the act of October 9, 1965, establishing concessions policies in areas administered by the National Park Service.

COST

Under the terms of H.R. 3786, as amended, the authorization of appropriations for land acquisition at Point Reyes National Seashore will be increased from $19,135,000 to $57,500,000—an increase of $38,365,000. The recommended ceiling exceeds the amount now estimated to be needed by the National Park Service by $5 million. In making this recommendation, the committee recognizes that such action is uncommon; however, in light of the history of errors in estimating the costs at this area, such action was deemed prudent. Of course, if the lands can be acquired at a lesser expense, the administering authority always has that responsibility. Every effort should be made to minimize these expenditures, and the Director of the National Park Service assured the committee that he has every intention of completing the project at the lowest price possible.

Attention is called to the press conference held at the White House on November 18, 1969, which included the President, Senator George Murphy, Congressman Don H. Clausen, Congressman Wayne N. Aspinall. At the conference it was emphasized that not only will the funds be available for the Point Reyes National Seashore but that the total amount of $38,365,000 is to be made available over the next 2 fiscal years. The President in his message on environment stated:

"I propose full funding in fiscal 1971 of the $327 million available through the Land and Water Conservation Fund for additional park and recreational facilities, with increased emphasis on locations that can be easily reached by the people in crowded urban areas.

"I propose that we adopt a new philosophy for the use of federally owned lands, treating them as a precious resource—like money itself—which should be made to serve the highest possible public good."

Mr. BIBLE. Mr. President, as I have stated, the increased cost is $38,365,000. The President, at a very recent conference with the California Senators—or with the senior Senator from California (Mr. MURPHY); I do not know whether it was one of them or both—showed his great interest in supporting this project.

There is money coming forth in a supplemental appropriation of some $7 million which, together with the amount we will handle in the regular Department of the Interior appropriation, will come very close to permitting the purchase of the remaining land in this seashore.

Special comment should be made about the pastoral zone, which was a zone carved out of the area at the time the park was created to protect the dairy farmers in that area. There are some 10 or 12 dairy farmers involved. Dairy farming was their livelihood. It was their desire that they have protection as long as they used this pastoral zone for dairy farming. In the original act, it was our intent that when these lands were no longer used for that purpose, the Federal Government, failing negotiation, could condemn the land rather than permit real estate speculators moving in, with high rise buildings and other commercial development, which would be a disservice to this magnificent seashore area lying just north of San Francisco.

I conducted the hearings just a short time ago. The dairy farmers were well represented by one of their spokesmen. He indicated at that time that they were now convinced, with the pressures on the seashore mounting daily, that dairy farming in that area is no longer consistent with its higher use as a national seashore.

Accordingly, the Senate added an amendment to the present bill which would repeal section 4 concerning the pastoral zone. I ask unanimous consent that a full explanation of this section be printed in the RECORD.

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

AMENDMENT TO REPEAL SECTION 4 CONCERNING PASTORAL ZONE

The Committee has recommended one amendment to the bill as passed by the House. This repeals section 4 of the Point Reyes National Seashore authorization act, P.L. 87–657. The gist and purposes of section 4 were explained by the Committee's report prior to its enactment in 1962:

"By its principal amendment to section 4, the Committee has provided for the designation of a pastoral zone of 26,000 acres which shall not be acquired by the Secretary without the consent of its owners as long as the land remains in its natural state or is used exclusively for ranching or dairying purposes. Such a provision permits a reduction of land acquisition costs as well as the fostering of long-established ranching and dairying activities which, in the Committee's judgment, will not interfere with the public enjoyment and use of those areas on the Point Reyes Peninsula most suitable for recreational pursuits." (S. Rept. 807, 87th Cong., 1st Sess.; 1961).

This provision of section 4, similar to one in the authorizing legislation for Everglades National Park, was provided by the Congress at the request of the dairy ranchers who were then—and still are—the principal land owners within this portion of the national seashore. The dairy ranchers told the Congress eight years ago that they wished to continue their traditional agricultural pursuits. It was expected at the time that this would continue to be the situation.

Today, however, that situation has changed. Last February 26 a spokesman for the ranchers told the Subcommittee on Parks and Recreation that each of the owners of the 10 dairies still operating within the pastoral zone now wishes to sell his property to the National Park Service. Their spokesman, Mr. Boyd Stewart, explained that during the years since the national seashore was authorized, dairying increasingly has become a marginal operation at Point Reyes. The ranchers, their spokesman said, would rather see this beautiful area "used by the people for a park than we would see it subdivided, and this is a real feeling that we have . . ." Mr. Stewart said that the ranchers knew of the desire of the National Park Service to repeal section 4 and were not objecting.

At our subcommittee hearing February 26 we also heard testimony from Park Service Director George M. Hertzog Jr. He reported that some pastoral zone landowners in the past have sold parcels to developers who then took steps to develop or subdivide for residential or commercial purposes. In such a situation, in the pastoral zone, the Park Service has been without authority to acquire the land without the owner's consent until the adverse use has actually taken place. At that stage—after title has passed to the subdivider or speculator—the Park Service has learned by experience that it too often must pay an inflated value to the subdivider or speculator. And in some cases the subdivider's development work has compromised the natural values of the land before the government could move in to protect it by purchasing it.

For these reasons the Committee has agreed with the Department of the Interior that section 4 should be repealed in order to give the National Park Service the unconstrained land acquisition authority which its experience at Point Reyes has shown that it needs there.

Representatives of the Department have advised that they continue to believe that the purposes of the pastoral zone concept continue to be sound; that is, the Department still believes that ranching and dairying uses of the pastoral zone area can be consistent with the purpose for which the seashore was authorized. The Committee agrees.

Although we recommend repeal of section 4, I wish to make clear the legislative intent that wherever feasible the ranchers at Point Reyes should be permitted to continue their traditional, exclusively agricultural, operations as long as they wish, unless and until the Secretary finds that these operations are such as to be incompatible with the purposes for which the seashore was authorized. At the time the initial authorizing legislation for Point Reyes National Seashore was enacted the federal government in effect made a promise to the ranchers in the pastoral zone area that as long as they wanted to stay there, to make that use of it, they could do it. We must keep our word to these people.

Some Point Reyes ranchers may wish to continue ranching by permit or lease arrangement with the National Park Service after the Park Service has purchased their land. It would be within the intent of this amendment for the Secretary to lease land in the pastoral zone area for grazing by permit or leasehold, subject to provisions of section 5 of P.L. 90–401 (the Land and Water Conservation Fund Act amendments of 1968). Such an arrangement in the opinion of the Committee, would not be prohibited by the language of the House-passed bill prohibiting leasing authority for commercial purposes. We agree with the House that industrial or other commercial type business activity should not be allowed. However, we believe that agricultural pursuits such as are now being followed in the pastoral could still be permitted by the Secretary.

Mr. BIBLE. Mr. President, the provision has been put in with the clear understanding that it is the legislative intent that condemnation will not apply to those dairy farmers who continue to

operate dairies within this pastoral zone. As I have said, only 10 or 12 dairy farmers are involved at this time. It appears that most of them are either desirous of negotiating a sale or, failing that, are willing to submit to condemnation so that the final determination may be made as to use of the area, and the price to be paid. The explanation is rather lengthy. I will not burden the Senate with it at this time other than to say we think that even though it does permit condemnation in the pastoral zone—nevertheless it is the firm intent of the committee that the amendment shall in no way operate to impair the integrity of the dairyman who wants to continue dairy farming. This explanation should make it very clear on this point.

The great interest shown by the two Senators from California has been most gratifying. We received this bill from the House of Representatives on February 10, 1970. Hearings were held on February 26; and today we report the bill with the hope that it will be passed without further delay.

I have some indication that the House will accept this amendment without the necessity of going to conference. I have touched base with the chairman of the Interior Committee, Representative Wayne Aspinall, and explained what we are attempting to do here. I believe there is an excellent possibility of having this bill and the amendment accepted when it goes back to the House so it can then go to the White House.

Both the senior Senator from California (Mr. MURPHY) and the junior Senator from California (Mr. CRANSTON) introduced a Senate bill (S. 1530) on the same subject and they have shown intense interest throughout this matter. The bill before us contains a House number. We could have reported the Senate bill because it was their bill and their project. They have contributed greatly. We reported the House bill rather than ask that the substitution be made on the floor of the Senate.

Mr. President, at this time I am happy to yield to the senior Senator from California for any statement he might wish to make concerning this legislation.

Mr. MURPHY. Mr. President, I thank the Senator. I think the chairman of the subcommittee has handled this matter in excellent form and expeditiously.

It is a great pleasure for me to speak today in behalf of the Point Reyes National Seashore and I want to take the opportunity to commend everyone—especially Senator BIBLE and his subcommittee, Senator JACKSON, Senator ALLOTT, Senator HANSEN, and the other members of the Senate Interior Committee—who helped make it possible for the Point Reyes bill to be brought to the Senate floor so soon after it had been passed by the House of Representatives.

Time is truly of the essence insofar as Point Reyes is concerned, and it is encouraging that this fact has been recognized by both the administration and the Congress.

A vote today in behalf of Point Reyes is a vote not only for the men, women, and children of the 1970's but also, in an even more important way, a vote for those untold generations to come who will be the beneficiaries of our efforts to preserve our environment.

In an effort to be as brief as possible, I shall not reiterate the many arguments in favor of preserving the Point Reyes area as a national seashore.

The Congress recognized these factors when it passed the original Point Reyes bill in 1962, and since then there is no Member of the Congress, I feel certain, who has not had his attention called to the rare beauties of the Point Reyes area and the necessity for preserving them.

For my part, I wish mainly to accent the need for a favorable vote today so that the version of the Point Reyes bill which has been reported by the Senate Interior Committee can be considered by the House and then sent along to the White House without undue delay.

When the Subcommittee on Parks and Recreation of the Senate Interior Committee held hearings on the bill before us today, I pointed out that I was not in the Congress when the original Point Reyes bill was passed but that in 1966 I had the privilege of cosponsoring a measure to authorize an increased appropriation of $5,135,000 for the purchase of land for the seashore. This appropriation was approved.

More recently I cosponsored the Senate version of the bill before us today.

As I said at the subcommittee hearing, when certain key Members of the Congress indicated last year that they felt that favorable action on this bill or on similar measures in the House of Representatives might be inadvisable because of the fiscal restraints then imposed on such projects by the administration, I wrote a letter to Congressman WAYNE N. ASPINALL, chairman of the House Committee on Interior and Insular Affairs, pledging that I would continue to use every possible means "including my friendship with the administration" to assure that the additional funds for the seashore would be provided as soon as the necessary authorization bill was passed.

I followed through on my promise by seeing President Nixon in person in behalf of Point Reyes.

Backing my efforts 100 percent in my approach to the President and his staff were Congressman DON CLAUSEN and others.

I mention my efforts because it is my policy to refrain from requesting the direct intervention of the President in any matter unless the situation in question has a top priority and has reached a critical point.

Both of these factors were clearly present when I went to the White House about Point Reyes.

Having taken the case for Point Reyes directly to the President, I was, of course, most pleased when he invited Congressman CLAUSEN, Congressman ASPINALL, and me to the White House on November 18 and informed us that he would make available the funds needed for the acquisition of the remaining land necessary to complete the seashore.

This fund, we were told, would begin with an allocation from the fiscal year 1970 budget.

This extremely gratifying pledge by the President was a fine recognition of the importance of the Point Reyes project, and I would like to add that if some individuals felt at the time that it should have been coupled with an acknowledgement of the needs of other worthy undertakings, this wider recognition of the general need for more parks and seashores was contained in the request which was subsequently made by the President for full funding under the land and water conservation fund.

My point is this: Prompt and favorable action is urgent since the land values in the area continue to escalate dramatically with each passing day.

In addition, we have a moral obligation, I feel, to put a definite end to the long period of uncertainty during which certain landowners in the Point Reyes area have been torn between the offers of developers on one hand and the pleas of conservationists on the other.

I have long urged quick and decisive action.

The administration has seen the need, too, and has acted accordingly.

I feel confident that the House of Representatives will accept the amended Point Reyes bill as passed by the Senate since the amendment added by the Senate Interior Committee is important and necessary.

The bill can then move to the White House for the President's signature. It is encouraging to anticipate that that day is not now far away.

Mr. President, I wish to congratulate the distinguished Senator, the chairman of the subcommittee, for the magnificent manner in which he has handled this most important acquisition involving this most important piece of property so that it may be preserved for the enjoyment of this great country by future generations. There is no place quite like this area in the United States. I am very pleased to have been able to play a small part in making sure this area is preserved for posterity so we will have this area of our State for the enjoyment of millions of people in years to come.

Mr. BIBLE. I thank the Senator. I yield to the junior Senator from California.

Mr. CRANSTON. Mr. President, I thank the Senator for yielding.

I want first to thank the Subcommittee on Parks and Recreation and its distinguished chairman, the senior Senator from Nevada (Mr. BIBLE), and the full Committee on Interior and Insular Affairs and its distinguished chairman, the junior Senator from Washington (Mr. JACKSON) for acting on this legislation favorably so soon after the passage by the House of H.R. 3786.

Time is of extreme importance in our actions on Point Reyes National Seashore, because of the rapidly escalating land prices along the California coastline, and because of the continuing threat that lands within the seashore still in private hands will be developed for residential or commercial purposes.

It is in the best interests both of saving the taxpayers' money and of limiting the Federal moneys going into our inflated economy that we complete acquisition of the remaining lands in Point Reyes National Seashore at the earliest possible moment.

It is thus gratifying that the Committee on Interior and Insular Affairs has

acted so promptly to report this legislation to the Senate.

I trust that our deliberations and affirmative action on this bill can be handled with dispatch today, so that we may move promptly toward immediate completion of the Point Reyes National Seashore as it was proposed when Congress authorized it 8 years ago. In this spirit, I will keep my remarks brief.

As the author of S. 1530, the companion measure in the Senate, cosponsored by my distinguished colleague from California (Mr. MURPHY), I have already, and often, set forth the urgent need for completing Point Reyes in my remarks when I introduce the bill on March 12, 1969, in other statements for the record, in testimony before the subcommittee last month, and in other ways.

In the house, H.R. 3786 was amended by the addition of language which would prohibit the conveyance of any freehold, leasehold, or lessor interest in any lands within the Point Reyes National Seashore for residential or commercial purposes.

This action was taken in response to a sellback or leaseback plan which was proposed in the Department of the Interior testimony before the House Interior Committee.

Under Interior's plan, the Department would sell some 9,200 acres of federally acquired lands within the seashore to private interests for residential subdivision.

The Department felt that the money thus recovered might permit a decreased net expenditure from the figure which both H.R. 3786 and S. 1530 call for.

The lands involved in this Interior Department plan are an integral part of the seashore.

The northern parcel includes the rolling hills of the northern promitory between the Pacific Ocean and Tomales Bay.

The southern parcel lies along the eastern border between the Inverness Ridge and Olema Creek.

Both parcels add to the diversity, beauty, and recreational value of the seashore.

The effect of the "sellback" would be to deauthorize almost one-sixth of the seashore.

The Department proposed to carry out this plan for private subdivision development within the seashore boundaries by administrative action, without further leave of Congress, under section 5A of the act of July 15, 1968 (82 Stat. 354, 356), the Land and Water Conservation Fund Act Amendments of 1968.

However, the House found that the disadvantages of the sellback plan far outweighed any possible merits, and the Senate Interior Committee also has acted very wisely in rejecting the sellback plan by including the House-approved amendment prohibiting its implementation at Point Reyes.

I believe we can best protect the integrity of Point Reyes by adopting the bill before us containing the House language on this matter.

At the hearing on February 26, before the Subcommittee on Parks and Recreation, I urged that the committee adopt the House language; I am pleased that this has been done.

In one further amendment to the bill, the Interior Committee proposes to repeal the restriction on the Secretary of Interior's condemnation authority in the "pastoral zone," which makes up most of the northern portion of the seashore.

This action, as the distinguished Senator from Nevada has indicated, was a result of testimony by Mr. Boyd Stewart, a spokesman for the dairymen whose cattle graze on these northern hills.

I, too, was impressed by Mr. Stewart's candid and eloquent plea for the completion of Point Reyes, and by the willingness of the Point Reyes farmers to accept the exercise of condemnation authority.

I support the Senator from Nevada's wise decision on this question, and I urge the Senate to approve repeal of section 4 of the 1962 act.

Mr. President, I consider the privilege of authoring this bill as one of the high points of my first session in the Senate

I support the committee amendments, and I urge the Senate to adopt the bill as reported.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The ACTING PRESIDENT pro tempore. The question now is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. BIBLE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

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

The motion to lay on the table was agreed to.

JAPAN'S ANSWER TO THE POPULATION EXPLOSION

Mr. PACKWOOD. Mr. President, several weeks ago I introduced two bills having to do with the population crisis, one providing tax incentives to discourage large families and one outlawing restrictions against abortion in the District of Columbia.

In the Parade magazine section of the Washington Post for Sunday, March 15, 1970, there appeared an article entitled "Japan's Answer to the Population Explosion," by Jane Morse, which I ask unanimous consent to be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PACKWOOD. In a nutshell, the article indicates that with legalized abortion, the Japanese have had a stable population over the last 21 years. The article states that 20 million abortions have been performed in the last 21 years, which were officially registered, and at least that many in addition which were not reported because of the paperwork and the onerous task reporting of those cases involved.

The effect of this has been not only population stabilization in Japan, but there are fewer than 20,000 illegitimate children of welfare mothers, with almost no illegitimate births to unmarried mothers and very little evidence of child abuse.

I think in the United States we are going to have to consider not only lifting restrictions against abortions, but other measures as well. I introduce this article merely to show one method that has been used, and that is legalized abortion, to bring population into a reasonable state of equilibrium.

EXHIBIT 1

[From Parade magazine, Mar. 15, 1970]

JAPAN'S ANSWER TO THE POPULATION EXPLOSION

(By Jane Morse)

TOKYO, JAPAN.—Last year Tokyo's Asahi Publishing Company routinely reimbursed ten employees for abortion expenses. Asahi was neither revolutionary nor alone. Under the Eugenic Protection Law adopted 21 years ago, the Japanese government and most big business concerns cover therapeutic abortion in their regular medical insurance for workers.

Given the right to a discreet, safe, simple, and sanctioned way out of having unwanted children, Japanese women have proved their regard for it in an unmistakable way: in 21 years, more than 20 million abortions have been officially registered. The true total is generally believed to be double because of the cases that go unreported by doctors evading taxes or paperwork.

When the law was passed, 82 cities, including Tokyo and Osaka, lay in ruins. Inflation was rocketing. People were edgy and wasted by near-starvation diets—and a huge new baby boom threatened to keep "reconstruction" stuck in the dictionary. The Eugenic Protection Law was the answer.

The law spelled out a woman's right to terminate a pregnancy when it's a threat to her well-being. Most significantly, it recognized that both physical and *financial* considerations can affect that well-being.

Today, more than 90 percent of the reported operations are requested because of "economic necessity," with no proof required. The case of Mrs. Watanabe (not a real name but a real person) is representative.

A slightly built, but healthy woman of 26, Mrs. Watanabe works hard as a waitress in a busy restaurant. Last year she took two days' sick leave and had an abortion.

"I went to the clinic at noon and I took the subway home three hours later," she recalls.

It was her fifth abortion—not at all unusual, says Japanese doctors.

"THE PILL" QUESTIONED

"The Pill" is officially condemned because its long-term effects are unknown, but the Watanabes claim to use a variety of other contraceptive methods. Her doctor admits, however, that he's never discussed it with her in any detail.

Japanese husbands generally regard abortion as their wife's problem, not theirs, say doctors. Mr. Watanabe, a taxi driver, was sympathetic about his wife's latest operation but scarcely upset. "He thinks the doctor charges too much," says Mrs. Watanabe. "But what else can we do? I can't stop work and we certainly don't have money for a nursery. Maybe in two or three years."

The operation cost them the equivalent of $18. Some doctors charge as little as $9, some as much as $24. An overnight or longer stay at the clinic or hospital costs more; however, over half the patients are like Mrs. Watanabe, in, out and on their feet all in the same day.

To the chagrin of the Japanese Government, the low price coupled with an ever

increasing accumulation of professional skill has made the country a mecca for abortion seekers from abroad. To avoid the dangers of an illegal abortion in America, the father of a 14-year-old California girl brought her to an American-trained Tokyo doctor who performs hundreds of these operations in his well equipped office. Under the Eugenic Protection Law, though, abortion is only available to Japanese residents, with a husband's consent (without, if there is no husband) and at the discretion of a gynecologist licensed to perform the operation. Because of the first restriction, the American girl got the operation illegally—for $75.

In 1954, when the last survey was taken, deaths from abortion in Japan numbered only about seven in 100,000 cases. (In the U.S., roughly 28 women out of 100,000 still die in childbirth each year.) Done within the first three months of pregnancy, the Japanese contend that there are few harmful effects.

Is there a lesson in this for America? Prof. Toshio Kuroda of the Japanese Government's Institute of Population Problems thinks yes.

In 1948, he observes, Japan was faced with the same potentially disruptive situation that haunts the United States today, a population explosion imperiling the nation's ability to adequately provide for itself. In only 30 years' time we stand to have 100 million more Americans. As a Washington, D.C. newspaper put it, ". . . if this rate prevails, the United States would have to build the equivalent of a new city of 250,000 persons each month from now until the end of the century."

All this recently prompted President Nixon to point out that better birth control methods and family planning are not just the needs of underdeveloped nations. We're in trouble, too. "Unwanted or untimely childbearing is one of the several forces which are driving many families into poverty or keeping them in that condition," said the President.

Legal abortion is, of course, a controversial solution to this problem, but the Japanese have proved one thing: it works. In Japan, free choice and close-to-free abortions have brought about a phenomenal decrease in the birthrate, something sought after but achieved by no other country.

ECONOMIC FACTOR

Abortion, distasteful or not, has been the number one factor in birth control in Japan for the past two decades and a, if not *the*, major ingredient in the Japanese economic "miracle."

There are signs Japan even picked up a few fringe benefits:

"Welfare mothers" with illegitimate children are virtually non-existent, presently numbering less than 20,000.

Illegitimate births are minuscule in number.

Child abuse is rare.

Professor Kuroda additionally credits the reduced birthrate with helping Japan create a democracy:

"In a country which had no experience in democracy until after the war, the system could never have succeeded without a demographic revolution. When there are too many human beings, they fall too low, they have no value. Today a young worker can choose where he wants to work; he's not a surplus commodity. His human rights are respected.

CITE VALUE TO POOR

"You [in America] should think about it. Legal abortion is valuable mainly to the poor. The others are already practicing other kinds of birth control or can buy an abortion."

Even the harshest critics of abortion in Japan don't want to make it go undercover again, despite abuses that have included complaints to the Civil Liberties Bureau in Nagano by 17 farm women who several years ago charged that their husbands were forcing them to have abortions so that they'd be on the job during an upcoming harvest.

"We can't go backward and make abortion criminal again. What we can do is provide more sex education," says Mrs. Ichiro Ishikawa, president of The Research Institute for Better Living, who would nevertheless like to see the present law tightened.

She'd like to be sure that husbands appear in person "like at the wedding ceremony." In practice she says, too often it's a case of the woman saying to her doctor-friend, "But you know my husband agrees."

Yasuo Kon, deputy executive secretary of the Family Planning Federation of Japan, is a critic of the Eugenic Protection Law. He faults it for being "too simplified, therefore too destructive to family stability." It's the mental after-effects of abortion that he fears most. "Women become depressed and that often breaks up a marriage."

JOB FOR DOCTOR

Both Mr. Kon and Mrs. Ishikawa think it should also be compulsory for the doctor to give family planning instruction to each woman directly following her first abortion.

But despite nearly 100 percent literacy and no religious opposition, birth-control devices are almost as unpopular in Japan as in the rest of Asia and Africa. Women, particularly, are timid about buying them (although now they can order through the mail a "newlyweds kit" containing a variety of sample items); most, they say, are inconvenient to use in overcrowded homes and none are 100 percent effective anyhow.

Meanwhile, Mrs. Watanabe, having lived virtually all of her young life with a right most governments still label a wrong, accepts abortion almost as an American accepts electric light, even to wondering how people get along without it.

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment, as in legislative session, until 10:30 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR McGOVERN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that immediately after the disposition of the reading of the Journal tomorrow, the able Senator from South Dakota (Mr. McGOVERN) be recognized, as in legislative session, for not to exceed 30 minutes.

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

ADDITIONAL STATEMENTS OF SENATORS AS IN LEGISLATIVE SESSION

PEKING ATTACKS PRESIDENT NIXON

Mr. GOLDWATER. Mr. President, before the spreading euphoria about the current Warsaw talks between the United States and Communist China becomes too thick I believe it would be useful if Senators and all others who are interested in the talks knew precisely what Peking is saying about the United States through such official information organs as its New China News Agency.

For example, on February 28, 1970, the New China News Agency commented on President Nixon's state of the world address—an address which has been well received in this country and around the world. Barely 1 week after the February meeting in Warsaw between representatives of this Government and that of Communist China, Peking—through NCNA—called President Nixon "an imperialist chieftain" and described the Nixon doctrine:

A prescription by him for U.S. imperialism which is sick to the core and in the grip of over-all political, economic and military crisis, a prescription which is doomed to failure.

Peking's official news organ also commented on President Nixon's call for peace:

To put it bluntly, the word "peace" in the mouth of Nixon is "peace" for U.S. imperialism to forcibly occupy the world, to suppress the people's revolutionary struggle in all countries and to plunder and slaughter the people of various countries at will.

Not content with this incendiary and insulting language, the New China News Agency reacted to President Nixon's pledge to seek better relations between Peking and Washington in this manner:

In his report, Nixon has to admit to China's growing strength and her tremendous influence in the world. He expressed apprehensions over the fact that "China has acquired thermonuclear weapons" and had thus broken the U.S. and Soviet nuclear monopoly. While talking hypocritically about his desire to improve relations with China, Nixon asserted blatantly that he wanted to maintain the treaty commitment with the Chiang Kai-shek bandit gang in Taiwan. This has further exposed the aggressive nature of U.S. imperialism in its plot to occupy China's sacred territory Taiwan permanently, exposed its criminal scheme to create two Chinas and also exposed its feeble nature as a paper tiger.

The Peking agency concluded its undiplomatic diatribe by asserting:

No matter what kind of "doctrine" U.S. imperialism dishes up and what new labels it puts up, none of them can save it from complete destruction.

Mr. President, I urge those who have been trumpeting the economic, social and political possibilities that might ensue from the Warsaw talks to read this dispatch of the New China News Agency and to replace their present euphoria with clear-headed realism as to what the talks can and cannot produce.

I ask unanimous consent that the February 28, 1970, commentary of the

New China News Agency of Communist China on President Nixon's state of the world address be printed in the RECORD.

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

NEW CHINA NEWS AGENCY RIDICULES NIXON'S STATE OF THE WORLD MESSAGE

(NOTE.—Probably due to its length, President Nixon's "state of the world" message, delivered February 18, was not commented upon by the Peiping regime until yesterday. When Peiping did, its unyielding hostility toward President Nixon amid increasingly shrill attacks on the United States since the resumption of the Warsaw talks was plain for all to see. A New China News Agency commentary called the foreign policy report, officially entitled "United States Foreign Policy For the 1970s—A New Strategy For Peace", "a record of the over-all defeat of the U.S. imperialist's policy of aggression and self-revelation of the weakness, the waning and the drastic decline of U.S. imperialisim." President Nixon's stress on "strength", "partnership" and "negotiation"—the so-called "Nixon Doctrine"—was seen as "a prescription made by him for U.S. imperialism which is sick to the core and in the grip of over-all political, economic and military crisis." The NANA commentary concentrated on the theme that the message only betrayed the weaknesses for the United States, using the term "paper tiger" at least four times. "The 'golden age' of U.S. imperialism . . . was but a fleeting phenomenon," it noted. "Since the disastrous defeat in its aggressive war against Korea, U.S. imperialism has rapidly fallen from its zenith." It then enumerated the "crises" facing the Americans, such as the Vietnam war, the "anti-imperialist struggle" of the Asian, African and Latin America people, and the financial and monetary crisis at home. The article did not forget to play the tune that "U.S. imperialism" is intensifying "its contention and collusion" with Soviet revisionist social-imperialism." Noting smugly that "Nixon has to admit to China's growing strength and her tremendous influence in the world," NCNA rapped the U.S. president for "talking hypocritically about his desire to improve 'relations' with China." "Nixon asserted blatantly that he wanted to maintain the treaty commitment with the Chiang Kai-Shek bandit gang," it said. "This has further exposed . . . the U.S. imperialism in its plot to occupy China's sacred territory Taiwan . . . and to create 'two China's.'" It concluded that "the Nixon doctrine is nothing but a variation of the Truman doctrine, the Eisenhower doctrine and various other aggressive doctrines of U.S. imperialism under more clearly that the masters of the White House fare worse and worse from generation to generation." The NCNA commentary, entitled "New Strategy for Peace Cannot Save U.S. Imperialism From Fast Approaching Doom" and monitored in Taipei, is distributed here for the benefit of students of Chinese Communist affairs.)

PEKING, February 28.—U.S. imperialist chieftain Richard Nixon submitted to the U.S. Congress on February 18 a foreign policy report entitled "United States Foreign Policy for the 1970s—A New Strategy for Peace."

This report is a record of the over-all defeat of the U.S. imperialist's policy of aggression and self-revelation of the weakness, the waning and the drastic decline of U.S. imperialism. It is another helpless confession of the U.S. imperialists that at the end of their rope, they are trying futilely to press ahead with their counterrevolutionary two-faced tactics.

Nixon packed his lengthy report with beautiful terms such as "peace", "new approach" and so on and so forth in an effort to disguise the ferocious and brutal U.S. imperialism as a peacock and cover up its aggressive and expansionist nature and the awful straits it is in.

In his report, Nixon put forth three "principles" and flaunted a tattered banner for his "new strategy for peace." The three "principles" are "partnership", "strength" and "negotiation", the essence of which is to proceed from the position of "strength", carry forward the policy of aggression and war and step up the collusion and contention with social-imperialism to control the U.S. "allies" by establishing so-called "partnership" and press them to "share in the responsibility" of military aggression by U.S. imperialism and to serve as its cats-paw; and to use "negotiation" to cover up its schemes of aggression and expansion. These three "principles" are wrapped with a tattered banner of "peace." What has been brazenly lauded by Nixon as the so-called "Nixon doctrine" is in fact a prescription made by him for U.S. imperialism which is sick to the core and in the grip of over-all political, economic and military crisis, a prescription that is foredoomed to failure.

This prescription of Nixon's fully reflects the weakness of U.S. imperialism as a paper tiger and the awkward straits in which it finds its power falling far short of its ambition in pushing the counterrevolutionary global strategy. Indulging in reminiscences of the swashbuckling arrogance of U.S. imperialism in the early post-war years and thinking of the present, Nixon was seized with mournful nostalgia in his report. He recalled "American predominance" in the past when "the United States had a monopoly . . . of nuclear weapons" and has "taken such pride" in its "leadership" of the "free world" and "talked to our allies", but he had to admit that now "the world has dramatically changed", that "American energies were absorbed in coping with a cycle of recurrent crises" for more than 20 years and that "we will exhaust our resources, both physical and moral, in a futile effort to dominate our friends and forever isolate our enemies"; meanwhile, both Japan and the West European allies of the United States "have recovered their economic strength" and the struggle to control and the struggle to resist control between U.S. imperialism and these countries have been intensified, a great number of countries in Asia, Africa and Latin America have won independence and become "a growing strength of independence"; and the nuclear monopoly of U.S. imperialism has also gone bankrupt.

"The golden age" of U.S. imperialism that Nixon yearns for so keenly was but a fleeting phenomenon. Since the disastrous defeat in its aggressive war against Korea in the early 1950s, U.S. imperialism has rapidly fallen from its "zenith." In the 1960s it has been badly battered again in its war of aggression against Vietnam and the crises besetting it at home and abroad have been greatly aggravated. The vigorously developing revolutionary armed struggle and anti-imperialist struggle of the Asian, African and Latin American people and the surging revolutionary movement of the people of Western Europe, North America and Oceania are more than U.S. imperialism can cope with and make it sit on thorns. Its baton has become less and less effective toward its "allies" and it finds itself in unprecedented isolation, opposed by the masses and deserted by its followers. In the country, the financial and monetary crisis is daily deepening and the inflation is developing viciously, the position of the dollar is tottering and the economic crisis is getting more and more serious, the social system is rotten to the core and the class contradictions have sharpened to an extent never before seen. Nixon admitted himself that the "greatest increase in inflation and the latest social unrest" had taken place "in America in 100 years." U.S. imperialism is in what Nixon admitted to be "the most difficult time in history" and its financial and economic strength cannot provide "unlimited means" for it to carry out all its plans of aggression. In a word, U.S. imperialism has declined drastically; the paper tiger has been punctured all over. Nixon himself lamented that to continue "the preponderant American influence . . . would be self-defeating." Therefore, he has to resort to political deception more and more to cover up the ambition of U.S. imperialism for military aggression and expansion. This is the very essence of Nixon's "new strategy for peace."

Nixon's report shows that though U.S. imperialism has been like the sun setting beyond the western hills, it will never give up its aggressive designs in the world and will make a deathbed struggle. U.S. imperialism is clearly a paper tiger badly battered by the people of the world, yet Nixon had the cheek to brag that the United States "occupies a special place in the world" and will continue to play a "major role" "because of its strength." He shouted himself hoarse that U.S. imperialism has "no intention of withdrawing from the world," and that it will "maintain current U.S. troop levels in Europe," "remain involved in Asia" and intensify the war of aggression against Vietnam by means of a "Vietnamization program." Moreover, it will step up its intervention in the Middle East and its penetration into Africa, further enslave Latin America and keep all its "treaty commitments" of aggression.

As U.S. imperialism is weak and on the decline with its strength unequal to its will, Nixon indicated in his report that in Europe, U.S. imperialism will use German revanchists as its hatchetman in the fight for domination over Western Europe and as its instrument for subversion in Eastern Europe. In Asia, it would make use of Japanese militarism, giving Japan "a unique and essential role to play". Nixon said: "Japan's partnership with us will be a key to the success of the Nixon doctrine in Asia." This is to say, U.S. imperialism wants to revive Japanese militarism energetically so that it will co-operate with U.S. imperialism in suppressing the Asian peoples' national liberation struggle, exploiting the independent countries in Asia and launching aggression against them, and carrying out counter-revolutionary criminal activities against China, against communism, and against the people. This should alert the people in the Asian countries to heighten vigilance.

In face of the aggression and expansion of the revisionist social-imperialism in various parts of the world, Nixon indicated in the report that U.S. imperialism would intensify its contention and collusion with Soviet revisionist social-imperialism. He said that since he came to power, U.S. imperialism and Soviet revisionism have "made a good beginning" in their collusion with each other. However, he stressed that the U.S. "overall relationship with the U.S.S.R. remains far from satisfactory." He added that on the Middle-East question, Soviet revisionism wanted to seize a position in that area which would make great power rivalry more likely so as to intensify its contention with U.S. imperialism. In East Europe, Nixon demanded that Soviet revisionism "improve situation regarding Berlin" and "normalize its own relations with Eastern Europe." In his report, Nixon made no effort to hide the U.S. imperialist ambition to penetrate into Eastern Europe and to contend with Soviet revisionism for control over Eastern Europe. Nixon openly declared that U.S. imperialism will maintain "a level of involvement sufficient to balance the powerful military position of the U.S.S.R. in Eastern Europe" and that it will engage in a still more frenzied nuclear arms race with Soviet revisionist social-imperialism so as to avoid losing its "leading" position in the nuclear field.

In his report, Nixon has to admit to China's growing strength and her tremendous influence in the world. He expressed apprehensions over the fact that "China has acquired thermonuclear weapons" and had thus broken the U.S. and Soviet nuclear monopoly. While talking hypocritically about his desire to improve "relations" with China, Nixon asserted blatantly that he wanted to "maintain" the "treaty commitment" with the Chiang Kai-shek bandit gang in Taiwan. This has further exposed the aggressive nature of U.S. imperialism in its plot to occupy China's sacred territory Taiwan permanently, exposed its criminal scheme to create "two Chinas" and also expose its feeble nature as a paper tiger.

Juggling right and left with the word "peace", Nixon said in his report that few ideas have been "so often or so loosely invoked as that of peace". However, it is precisely U.S. imperialism and social-imperialism which have loosely invoked the word "peace". To put it bluntly, the word "peace" in the mouth of Nixon is "peace" for U.S. imperialism to forcibly occupy the world, to suppress the people's revolutionary struggle in all countries and to plunder and slaughter the people of various countries at will. It is "peace" for U.S. imperialism to have its allies act according to its dictate and to have its satellites continue to be enslaved. It is also "peace" for U.S. imperialism and Soviet revisionism to collude and contend with each other for world domination and for redividing the world.

What is both ridiculous and pitiable is that Nixon himself had to come out and glorify his own report. He smugly asserted that his report had taken "a full year in preparation", that "the report is the first of its kind ever made by a president", that it is "historic" and "marks a watershed in American foreign policy" and so on and so forth. He sounded as if he had really found a panacea for U.S. imperialism which is sick to the core. But contrary to his self-glorification, even the Western press has reacted coldly, saying scornfully and sarcastically that "with its ordinary absence of substance, given its length", the report is empty and "relates nothing that is new and little that is specific" and that it "raised more questions than it answered". The Western press comments also pointed out that the report "left American foreign policy broadly unchanged", a policy that "essentially remains to be diplomacy from the position of strength." The only significant point in the report is that it has "proclaimed an end to the era of post-war American domination". Indeed, the "dominant position" of U.S. imperialism, which rots with every passing day, is gone forever.

The great leader Chairman Mao has pointed out: "The imperialist system is riddled with insuperable internal contradictions, and therefore the imperialists are plunged into deep gloom." The emergence of the "Nixon doctrine" precisely reflects the deep gloom of the U.S. imperialists who are declining drastically and are at the end of their rope. The "Nixon doctrine" is nothing but a variation of the "Truman doctrine", the "Eisenhower doctrine" and various other aggressive doctrines of U.S. imperialism under new circumstances and a new situation. It reflects still more clearly that the masters of the White House fare worse and worse from generation to generation. Ours is an era in which imperialism is heading for total collapse and socialism is advancing to world-wide victory. No matter what kind of "doctrine" U.S. imperialism dishes up and what new labels it puts up, none of them can save it from complete destruction.

LAND REFORM IN SOUTH VIETNAM

Mr. MAGNUSON. Mr. President, a very important matter occurred in the news yesterday morning, and its importance deserved much more space than it was given. That matter was the passage of the land reform program by the House of Representatives of South Vietnam. It is probably the most important story about winning the hearts and minds of the Vietnamese people in years, and I think the most important nonmilitary event to occur in Vietnam since American involvement began.

Much of the credit in initiating this measure should go to Prof. Roy Prosterman from the University of Washington law faculty. Professor Prosterman made numerous trips to South Vietnam and Washington, D.C., to argue the merits of land reform to public officials and to State Department officials. His efforts have been very substantial.

The significance of land reform is this:

About 1 million South Vietnamese families, or more than 6 million people out of the country's total population of 17 million, have been dependent for years and years for their living on tenant farming, carried out under the most onerous conditions. They form a vast majority of the rural population, and they have been an easy mark for the Communists because of their discontent. Now these 6 million people are to be the beneficiaries of the largest scale democratic land reform program of this century: bigger than similar programs embarked upon previously by Japan, South Korea, or Mexico.

Of course, this is the way to win the hearts and minds of people. This is good news for all the American people, and it is the result of what we hoped for when we introduced Senate Resolution 290, which suggested that land reform be enacted as soon as possible.

The South Vietnamese Legislature has now given final approval to the land reform bill and it has been sent to President Thieu for his signature. I hope now it will be administered properly and funded adequately by AID officials.

I read as follows from a dispatch in today's Wall Street Journal. I know Senators will be interested in this:

In Saigon, the national assembly passed and sent to President Thieu a land-reform bill designed to make every peasant owner of the land he farms. Vietcong propagandists have been able to stir discontent in the countryside by capitalizing on the landlord-tenant situation. The bill provides that a landlord can retain all the land he personally tills, up to 37 acres. He will be compensated for the rest, which the government will take over for redistribution.

This is a dramatic step and one that will give peasant farmers a "piece of the action" without onerous rents.

I again want to stress the great amount of work done by Professor Prosterman from the University of Washington. Two Presidents were urged to do what they could about beginning this kind of land reform in Vietnam. Other Senators joined me in sponsoring Senate Resolution 290 and in sending letters to the President on this important issue—their support was greatly appreciated.

I think this is very bright news from South Vietnam—if the government will now administer the program vigorously and carry it out as written. We should make great progress with the peasant farmers. Much of the credit for this result relates to the interest and awareness of Members of the Senate to this critical issue.

MEMORIAL TO DR. ROBERT H. GODDARD, FATHER OF AMERICAN ROCKETRY

Mr. ANDERSON. Mr. President, on Monday, March 16, the Committee on Aeronautical and Space Sciences conducted a hearing on Senate Concurrent Resolution 49, providing for congressional recognition of the Goddard Rocket and Space Museum at Roswell, N. Mex., as a fitting memorial to Dr. Robert H. Goddard, known as the "father of American rocketry." During the course of the hearing, tributes were paid to Dr. Goddard by associates and other Government witnesses for his outstanding contributions to rocketry.

One of these witnesses was Mrs. Robert H. Goddard, widow of Dr. Goddard, who was not only a devoted wife, but an active assistant in his work from the time they were married in 1924 until his untimely death in 1945.

Another witness was Dr. Charles Greeley Abbot, Secretary emeritus of the Smithsonian, who on May 31, 1970, will celebrate his 98th birthday. Dr. Abbot was a close personal friend and a strong supporter of Dr. Goddard's work while serving as Assistant Secretary and Secretary of the Smithsonian Institution. Dr. Abbot retired in 1944 but has continued his work in astrophysics, in which he is an acknowledged expert, and still makes frequent trips to the Smithsonian Institution where he maintains an office.

Mr. President, I ask unanimous consent that the statements of Mrs. Goddard and Dr. Abbot be printed in the RECORD at the conclusion of my remarks. I urge Senators to read about this remarkable man. To quote Dr. Thomas O. Paine, Administrator of the National Aeronautics and Space Administration, who also appeared before the committee in connection with Senate Concurrent Resolution 49:

Americans can ill afford to ignore the contributions of Robert H. Goddard in the history of the coming of the space age. Young Americans need to appreciate that what appear as unsolvable problems today are not new to man's experience. Dr. Robert H. Goddard's rocket artifacts and his lifelong labors should be an inspiration to each generation of youth as they grapple with the concerns of their day and their dreams of a better world of their tomorrows in a dynamic universe. This Nation cannot afford not to have Robert H. Goddards in the future.

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

MRS. GODDARD'S STATEMENT

Mr. Chairman and Members of the Committee: I am happy to make a short personal statement in support of Senate Concurrent Resolution 49, which proposes that the Congress recognize the Goddard Rocket and Space Museum and Art Center at Roswell, New Mexico, to be read at the Senate hearing on Monday, March 16.

Forty-four years ago, *today*, on a small farm in Auburn, Massachusetts, a small rocket took flight. It was an unusual rocket, because it used, for the first time in the world, liquid propellants more powerful than any others thus far developed. For a quiet professor at Clark University, in nearby Worcester, this flight was the culmination of

a childhood dream and a ten-year laboratory quest. In 1914, after Robert Goddard had obtained his doctorate in mathematical physics, he was able to lay down firm mathematical foundations for his belief that "extreme" altitudes could be reached by efficient jet propulsion. This faith, was however, not shared by others. Even the professor under whom he had won his doctorate commented, after he had studied the mathematics, "I can't find a flaw in your work, but it just doesn't seem reasonable!" Thus, only when the mathematical theory proved to be sound, did my husband pick up metal and begin to fashion a rocket motor.

In the years after the 1926 flight, the spadework of investigation and experiment continued, financed by the Smithsonian Institution. Other small rockets became more reliable, and attained modest heights. In 1929, one of them decided to fly horizontally, spewing a long tail of flame, and was seen by a resident who assumed it was an airplane in trouble. Police and fire equipment arrived, and the newspapers had a heyday with the "moon-rocket man."

But the publicity caught a few comprehending eyes, among them those of Charles Lindbergh and Harry Guggenheim. They investigated, liked what they saw, and in the summer of 1930 announced support of expanded work in optimum surroundings. Thus the doors of seventh heaven opened for the Goddards. The new site required a climate suitable for year-round outdoor work, level terrain, few people and little property to be endangered. Professors of geography and climatology pored over maps and supplied advice. Southeastern New Mexico was selected. Never was science more fully vindicated: Roswell, in the heart of this area, met expectations in every respect. A house on the outskirts was found, which could accommodate the Goddards and two of the four employes, a neat workshop was quickly erected nearby, where privacy could be assured, and a launching site ten miles out, on lonely ranch land called Eden Valley was offered, without charge, by its owner, Oscar White. Roswell merchants, particularly the Mabie-Lowrey Hardware Company, cooperated heartily. For us, Roswell was Eden indeed. Our little rockets grew in size and power and beauty. As time went on, unexpected benefits appeared. Roswell cared about beauty, and its Main Street as well as its residential streets were lined with tall cottonwoods. The townspeople came to call, and invited us to participate in club and Church activities. They soon forgave us our Eastern accents, and allowed us to become one of their own. For Eastern city dwellers, this warmth and kindness, as well as keen civic pride, was something new.

This was the era of the WPA, and one of the projects undertaken was the building of an Art Center and Museum. Prime movers in this were members of the faculty of the New Mexico Military Institute. In those days Roswell had two bright stars in the arts: Paul Horgan, who had won several prizes for his writing, and Peter Hurd, already becoming known for his paintings of the Western scene. With Robert Goddard representing the sciences, the town was unusually well supplied with talent.

After my husband's death in 1945, his launching tower was moved to the grounds of the Museum. A few years later, a rather large collection of rocket parts was given to the Museum, along with funds from The Daniel and Florence Guggenheim Foundation to help build a special wing to house it. As the years have gone by, more parts and life-sized photographic murals of the four extant Goddard rockets have found their way to Roswell. The most recent additions have been a reconstruction of the Goddard workshop, including most of the machinery he used, and a new Goddard Planetarium, generously given by Donald Anderson of Roswell. All these gifts have grown into a first-rate memorial, well qualified to be called the Goddard Rocket and Space Museum. It is a fine educational resource for all those living in this area, particularly the children, many of whom would not otherwise see machine tools, or the drama of the heavens.

My most vivid memories of New Mexico center around sunrise on the prairie. I was motion-picture photographer for my husband at most of his tests, and thus often went out with the group before dawn, before winds could rise. As we approached the 85-foot launching tower, we could first discern its tip, then more and more as we neared. This lonely sentinel, standing far out on the level prairie, pointed *straight up*, like a finger, firmly reminding us of our goal, the star-studded space above us, where we felt sure that the fulfillment of man's mind and spirit will lie.

DR. ABBOT'S STATEMENT

Mr. Chairman, Mrs. Goddard and Members of the Committee: My copy of Mr. Lehman's book, "This High Man," has this gift inscription: "For Charles G. Abbot, life-long mentor and confidant of 'This High Man,' with gratitude and affection. Esther C. Goddard, November 13, 1963."

I first met Mrs. Goddard in October 1937, when she danced with me the Merry Widow Waltz on the veranda of the ranch house at Roswell.

On October 19, 1899, Robert Goddard climbed a cherry tree on Maple Hill near Worcester to do a little trimming. There he had the waking dream of "the possibility of ascending to Mars."

That was his "Anniversary Day" as long as he lived.

Within 15 years, in July 1914, he was awarded two United States patents which will always cover any rocket journey in space, manned or unmanned.

He graduated from Worcester Tech and Clark University, and in June 1911, received his doctorate. The next year, Dr. W. F. Magie of Princeton invited Dr. Goddard to Princeton, to teach a little, and to do an intricate physical problem. This he completed, and, as a result, was able to secure a patent in 1915, covering an early form of De Forest's audion tube which became the long-distance radar.

But he had over-tired himself. Returning to Worcester an invalid, a medical examination reported that he had tuberculosis in both lungs and might hardly be expected to live over two weeks. Then Dr. Goddard summoned his strong resistance. When able to walk feebly, he would start at the street corner to climb a certain hill and would mark the farthest point he could reach. The next day, he went a little farther, and so on, until he got to be the slender, slightly stooped, handsome, hard-working friend I first met in his workshop at Clark University in 1916. I last received him on the eleventh floor of the tower of the Smithsonian brownstone building a few weeks before his death in 1945.

When the United States was about to be drawn into the First World War, Dr. Goddard at Clark University was diligently planning and making, with his own hands, laboratory test instruments to fire rockets propelled by a series of consecutive discharges of rifle powder. Dr. Goddard sent a letter to Secretary Walcott of the Smithsonian describing his work and the lack of funds to go on. With the letter came a paper in which he set forth his plans for investigating the makeup and density of the earth's highest atmosphere.

He also discussed the possibility of very long rocket flights of military value, and even of flights into space. Dr. Walcott referred the communication to me, and that same day, I reported to him that I considered it the best description of a new research that I had ever seen. The Secretary told me to get an opinion from the Bureau of Standards. I referred it to Dr. Edgar Buckingham, a mathematical physicist. He also regarded the Goddard paper very highly.

With these favorable reports in hand, Dr. Walcott sent me to Worcester to see Goddard and his work. I found a charming friend, and very clever apparatus of his own design and construction. On my return the Secretary informed Dr. Goddard that he had made a grant of $5,000 from the Hodgkins Fund and was sending $1,000 at once, with more to follow when needed.

Not many months afterward, a gruff officer of the Signal Corps called on Dr. Goddard, and demanded that his research and apparatus be turned over to the Corps for military purposes. Goddard objected. The officer said, "We are going to take it anyway. You may put that in your pipe and smoke it."

"I don't smoke," replied Goddard.

The next morning I found him in my Smithsonian office. My close friend, Dr. George E. Hale, was in town. I found him, and described Dr. Goddard and his work. He told me to tell Goddard that if he would bring everything to Pasadena he could use the facilities of the Mount Wilson Observatory.

I reported this to Goddard, who immediately went back to Worcester, packed everything, and went by truck at midnight to a station some miles off. He soon reached Pasadena.

Dr. Walcott was friendly with General Squier, head of the Signal Corps. They arranged that Goddard should develop the military uses of his rockets, and the Corps would furnish him funds throughout the war, with me as liaison officer between Goddard, the Smithsonian, and the Signal Corps.

This arrangement led me to witness the most surprising experiment I had ever seen. For after the Corps had sent two officers to see Goddard's research in Pasadena, they recommended that he bring his apparatus to Washington to show results. Goddard arrived in the first week of November, 1918. I went with two Majors of artillery to Aberdeen, Maryland, Proving Grounds.

There, on November 7, Goddard set up two music stands with Y-frames instead of music racks. Laying a three-inch tube of proper end-flare across the two Y-frames, he fired a three-inch rocket through the tube and two sandbags without disturbing the tube or the music stands. *It was the first bazooka.*

I was in correspondence with Dr. Goddard until his death in 1945. Others will tell the Committee of his association with General Lindbergh, the Guggenheims, and with others, and also of the sojourn of Dr. and Mrs. Goddard and assistants near Roswell. At all times Mrs. Goddard has entered fully into her husband's life and work. At Roswell she was active in the social life, and highly regarded.

I will conclude with brief summaries of the great pioneer's achievements:

Dr. Robert Hutchins Goddard, 1882–1945.

Basic Periods of his Researches:

At Worcester, Massachusetts, from 1914 to 1929.

At Roswell, New Mexico, from 1930 to 1941.

At Annapolis, Maryland, from 1942 to 1945.

Chief Accomplishments. Dr. Goddard the first:

1. To develop a rocket using liquid fuels.
2. To fire successfully a liquid fuel rocket.
3. To fire a liquid fuel rocket faster than sound.
4. To develop gyro steering apparatus for rockets.
5. To use vanes in the blast for steering rockets.
6. To conceive the multi-stage rocket.
7. To demonstrate mathematically the availability of rocket propulsion in vacuum.
8. To prove by actual tests that rockets may be propelled in vacuum.

Now, from the publication of the Smith-

sonian miscellania of the Smithsonian National Physical Laboratory at Cambridge, the first homing rocket satellite for America was called Explorer I, also known as 1958 Alpha, and was predicted to re-enter the earth's atmosphere and stop, in February or March, 1970. Nelson Hayes, in his history of the early days of satellite tracking, says:

"The United States launched its first artificial satellite from Cape Canaveral . . . on January 31, 1958 . . . The Jupiter C rocket thrust Satellite 1958 Alpha into an elliptical orbit with an apogee greatest elongation of 1575 miles, perigee 224 miles. . . . period 114.8 minutes. The payload, weighing 30.8 pounds, carried instruments to measure cosmic rays and atmospheric temperatures, and to detect micrometeors.

"This first American man-made satellite made possible one of the most important discoveries of the International Geophysical Year—the existence of what is now known as the Van Allen Radiation Belt."

So now, after 12 years of making about 550,000 orbits of the earth, Explorer I, that Dr. Goddard's researches made possible, returns to earth, as a first fruit of the era of Man's visits to its other satellite, the moon, by space rockets.

HONORING OF ST. PATRICK'S DAY

Mr. WILLIAMS of New Jersey. Mr. President, St. Patrick's Day, a time of great pride and satisfaction for all Irishmen, is also a joyous celebration for Irish and non-Irish alike throughout the world. Americans are well known for their participation in various festivities honoring the religious accomplishments of this great Irish saint.

St. Patrick's actual birthdate is unknown, but it is believed to have been approximately 380 A.D. His childhood was marked by tragedy, as he was kidnapped by Irish outlaws and sold as a slave when only 16. However, his dedication to religion and his determination to help others prompted him to escape to Gaul and there become a priest.

His priesthood soon led him back to his own land where he devoted his career to the problems of the Irish people. His work in helping the spiritually lost and curing the physically ill earned him in the year 432 A.D. the position of bishop, the first such honor in Ireland's history. It was only 1 year later that St. Patrick was named the apostle to Ireland.

During his more than 20 years as bishop, St. Patrick contributed significantly to the building of a strong foundation for Christianity. A major accomplishment was the founding of 365 churches, most of whose priests he personally ordained. But his greatest accomplishment was the extending of a deep and personal concern and total devotion to the people of his land.

Today, after his death, Irishmen the world over pay tribute to him. Americans, joining in the celebration extensively, have demonstrated their enthusiasm for several centuries. The first recorded such meeting of an Irish American organization was in 1737 in Boston, and the first parade was held in 1776, in New York City. Since that time, the New York St. Patrick's Day Parade is the most thrilling display of our Nation's dedication to the Irish.

I wish, Mr. President, to add my personal best wishes to "the green" this day, and to join in voicing a "slan bheas tu".

SENATOR HARTKE DISCUSSES STUDENT CRISIS

Mr. McGOVERN. Mr. President, it has become all too easy and fashionable for public officials to condemn student unrest on our campuses without making the slightest effort to inquire into the causes of that unrest. The assumption appears to be that any young person critical of current national policies or institutions is at best irresponsible, at worst an anarchist or seditionist. In neither case, we are told, does the student deserve any response other than repression.

Fortunately, not all of us share that view—a view, I may say, far more appropriate to a dictatorship than to a democracy. Some of us believe, on the contrary, that these young people—without by any means being always justified in their criticisms—have something of value to tell us.

We have an outstanding example today of one Senator who has listened and is attempting to understand. In a speech prepared for delivery this afternoon at Indiana State University, Terre Haute, the distinguished senior Senator from Indiana (Mr. HARTKE) perceptively observes that—

At this point in our history, the actions of students are inspired by a grave cultural pessimism.

And he argues that—

If we can understand the nature of this cultural despair, we will recognize the character of the threat to the traditional structures of American freedom.

Mr. President, I am struck by the concept of "cultural despair" as applied to student behavior today and by the incisiveness and humanity of Senator HARTKE's analysis. So that his remarks may have the widest possible attention, 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:

THE CRISIS OF STUDENT LIFE

We are already into the second week of March; and it will not be long before this cold winter comes to its official end. The vernal equinox is generally regarded as the event that marks the beginning of the new season. But American colleges have discovered that it is possible to determine the arrival of spring without bothering to consult the Astonomers. The Administration and Faculty of numerous institutions of higher learning have observed that they need only pay attention to the vocabulary of students. The frequent use of such words as sit-in, boycott, ROTC, student power, irrelevant, and non-negotiable demands is a sure indication that spring has broken out.

Since the Berkeley Free Speech Movement and especially since the Columbia University upheaval of 1968, college administrators and faculty have dreaded the "Student Spring"; and have found themselves awkwardly wishing that winters would never end and that summers would come sooner. But each campus insurrection demonstrates that it is impossible to avoid the political storms of that tempestuous season. And those who imagine that the problem could be solved by altering the academic calendar would soon learn that a "Student Spring" can occur any time during the year.

Television has carried the images of rioting students at Harvard and gun-toting students at Cornell into the houses of millions of Americans. And it is not surprising that the rebellious actions of students have provoked an ominous response from a nation that appears to be drifting blindly to the Right. State Legislatures throughout the United States have been flooded with bills that would, if passed, establish repression as official campus policy. The Department of Justice tends to speak of students as a subversive fifth column within the country. And even inside the academic communities administrators and teachers are accusing students of destroying the process of education.

At times, when reading of the reaction to student dissent, I have the impression that the members of the over-thirty generations have declared war on youth. There appears to be little sympathy for students and even less understanding for their problems. Little effort has been made to analyze critically the student upheavals within the context of contemporary American society. It is far easier to blame college disorders upon a vague conspiracy of student anarchists who are bent on havoc for its own sake. I reject this notion of a conspiracy; for it only reinforces the complacency of those who would find it too uncomfortable to look for the deeper roots of social disorder. And I deplore the attempt to subject the student generation to vilification and threats.

By now it is obvious to you that I am inclined to defend the college generation. But defending or condemning is not important in itself. One's partisan reaction must be founded upon an intellectual understanding of the causes of the peculiar response of students to the past decade of chaos.

At this point, I wish to warn you that I do not intend to tell you what I think of boycotts and sit-ins as a political tactic. I do not wish to obscure the real issues of the student crisis with empty moralizing, either pro or con the dissenters. Furthermore, I do not think the form of protest used by students—so long as it is nonviolent—is particularly important to any discussion of the student crisis. I will go so far as to suggest that the problem that I will discuss would be important if a non-negotiable demand had never been issued, if a sit-in had never happened, and if a four-letter word had never been uttered. It is the attitudes and ideals of students that must provoke our concern.

Nearly ten years ago, the distinguished historian Fritz Stern wrote a study of nineteenth century Germany in which he coined the phrase "The politics of cultural despair." Today, I am going to borrow that phrase and apply it to the problem of student life in the United States of 1970. For I believe that at this point in our history, the actions of students are inspired by a grave cultural pessimism. It is important to understand the nature of this cultural pessimism, for it is not the exclusive perception of the left-wing student. It is felt as strongly by the growing conservative force in this country. If we can understand the nature of this cultural despair, we will recognize the character of the threat to the traditional structures of American freedom.

Stated in its most elemental sense, cultural despair is a profound dissatisfaction with the character of national life. It does not spring from economic want; indeed, affluence tends to nourish the intensity of the despair. Rather, it develops out of the belief that national life is predicated on the denial of all spiritual and humanistic values. Cultural despair is an especially angry critique of the modernized society that achieves material well-being at the expense of values that cannot be counted in dollars and cents.

Students have expressed their cultural

despair in forms that vary from the aesthetic to the banal. It may be expressed in their appreciation of a movie such as Easy Rider, their response to Rock music, or in the use of obscenities to shout down a public speaker—the politics of cultural despair.

But it is important to realize that students see themselves as not just the critics of American society, but more importantly, its victims. Students feel oppressed by the social structure of the society in which they live. And as a result of this, they have become its enemies. They see themselves entrapped in a world from which there is no escape. They consider themselves imprisoned in a society that is impersonal and hostile, one which enforces isolation, encourages loneliness, and demands conformity. The student suffers from the fear that he may be superfluous to society; or no more than an anonymous unit within a faceless mass.

To the student, the draft and the war in Vietnam are the most flagrant examples of his victimization by society. It appears to him that society finds him most useful as cannon-fodder for a war he despises. The inability of the United States to resolve the conflict represents to the student the absolute indifference of the nation to any genuine moral concern. The political process, in which the student is probably too young to participate, has failed to solve the issue of war and peace.

One of the familiar pieces of black humor around campuses these days is that in 1964 the American people voted for Johnson and got Goldwater; in 1968 they voted for Nixon and got Johnson.

Apart from the war, contemporary American society places difficult social burdens upon the student that increase his sense of alienation. While he is in college, the student becomes especially sensitive to the possibility that there is no useful place for him in society.

In order to gain a better perspective on the social burdens perceived by students, let us compare their college experiences to those of earlier generations.

If you were among the generation that went to college in the 1930's, then you were probably part of a small elite that was guaranteed the consideration of society. For those of us who were educated in the 1940's on the G.I. Bill, college was a place to catch up on the time and opportunities taken up by a popular war. To the generation educated in the 1950's, college was an unquestioned institution attended by those who could afford it. It was either a stepping stone to a career in business or it was a place to pass the time before sliding into comfortable America.

There is no such thing as an age without troubles, nor has there ever lived a human being without problems. But one cannot look at America before the 1960's without being struck by the impression that it was a less complicated land. Before the process of history destroyed the illusion that this was a nation of equals, there was a general faith in the ability of America to solve its difficulties. The moral questions were uncomplicated: in the forties it was Us against the fascists; in the fifties it was Us against the communists. If someone wanted to provoke a moral dilemma, he asked you what you would do if a neighbor tried to enter your bomb shelter after an atomic attack.

The student of the 1960's entered college with a more sensitive moral perspective. He saw America as a nation without ideals—the rhetoric of democracy seemed nothing more than the false tribute paid by vice to virtue. And at the same time, he began to view college as yet another continuation of compulsory education. It was no longer optional, because without a baccalaureate degree, a young man could look forward only to menial labor. And, the expectations of society are not satisfied with the completion of four years of college. Graduate school looms before the student as yet another requirement he must fulfill before he may be initiated into the harried competition of the adult world. Until that time, he remains an adolescent. He must jump through the fiery hoops set before him by a society that is not prepared to accept him until every trick is learned to their satisfaction.

This fact has a significant psychological effect upon the student. I am not speaking figuratively when I suggest that society has subjected the student to a protracted adolescence. The society in which a student lives demands that he be kept in the status of an adolescent long beyond the age when he should be capable of functioning as an adult in society. The technological evolution of society has prolonged a stage of psychological development from its usual seven years to something like fifteen.

And I must tell you frankly that I think that colleges tend to participate in the social oppression of their students. Institutions of higher learning tend to commit the same sins against their students of which society, as seen by the students, is guilty. Colleges give the impression of not really caring about the lives of their students, and they also treat them as children who are not ready to assume responsibility for their lives. From the time when students first resign themselves to college, they are treated as a kind of necessary nuisance.

Once at college, the student finds that his opinions are of little concern to the officials who run the college. An article which appeared in the Saturday Review in 1965 describes the situation very well: ". . . the faculty and the administration rarely relate to the student as an individual. He is conceived rather as an aggregate of different functions, categorically separable from each other, for the management of which different sets of machinery have been set up. Registering, advising, counseling, disciplining, lecturing, grading papers—all are handled by different people who attend strictly to the function rather than to the student."

Students must at some time wonder whether they exist for the institution or whether the institution exists for them. At the very time when a young person should be channeling his abundant energies into positive functions, college directs him to the edge of the abyss of cultural despair. To say the least, college does not excite the student to believe that he matters as an individual. The institution subjects him to the same cold stare that he encounters from the rest of society. College is not the promise of what the world might be, but rather the dreary example of what it is.

It is unlikely that colleges can persuade students that their perceptions of this country are overly pessimistic. Nor should educational institutions attempt to do so. I still believe that educational institutions should allow students to seek and find their own truths. And if cultural despair is the malaise of our times, colleges alone will not find the cure. But it should be the earnest desire of colleges not to be part of the illness . . . and certainly not its cause.

Colleges should abandon the prejudice that students are not capable of participating in the governance of the academic community. They should refrain from emulating the social structures that consider their human constituents to be superfluous.

Nearly a year ago, on March 22, 1969, President Richard Nixon declared:

"Student unrest does not exist in a vacuum but reflects a deep and growing unrest . . . self-righteous indignation will solve none of this. We must resolve the internal contradictions of our communities. There must be university reform including new experimentation in curricula such as ethnic studies, student involvement in the decision making process . . ."

It is to these suggestions that I give my willing bi-partisan support. Colleges must reform themselves so that they serve the interests of students as well as those of the Establishment. If they do so conscientiously, colleges may not raise their students from the depths of cultural despair. But perhaps the fury of their politics will be tempered; and perhaps find constructive application outside the "community of scholars."

ARMY REPORT ON SONG MY AND MY LAI

Mr. STENNIS. Mr. President, the Peers-MacCrate inquiry established by the Department of the Army to investigate the nature, scope, and adequacy of the original Army investigations into the Song My and My Lai incidents has now completed its work and submitted its report. The Department of the Army today released portions of the report and it is expected that the remainder of the report, except for portions classified for national security reasons, can be released at a later date when there would be no prejudice to the trials of those who have been charged with criminal offenses.

The Senate Committee on Armed Services has followed this entire matter very closely since the first report was made to us last summer. We have required the Department of the Army to furnish periodic reports and we held a special hearing on the matter on November 26, 1969, which was followed by a committee news release. The committee will continue to exercise its special jurisdiction over this entire matter and will continue its surveillance both of the alleged occurrences and the question of whether the Department of the Army has properly discharged its duties and responsibilities in investigating this tragic affair and in dealing with those who are allegedly guilty of criminal acts and violations of Army regulations.

Several Army officers and enlisted men have previously been charged with crimes such as murder, assault with intent to commit murder, and similar offenses. As a result of the Peers-MacCrate report, charges have now been preferred against 14 command and staff officers for offenses ranging from dereliction of duty and/or failure to comply with applicable regulations and directives, false swearing and misprison of a felony. All men charged with crimes of whatever nature are, of course, entitled to a fair trial in accordance with the applicable military processes. Under the circumstances, and in order not to prejudice or interfere with the military trials, the committee has not made plans to hold hearings on this matter at this time.

All of us recognize that this unhappy matter has serious and unfortunate consequences, both to the Army and to the country as a whole. The committee will see that the maximum amount of information is released to the public to the extent that it can be without infringing on the right to a fair trial. The Committee on Armed Services has a special responsibility with respect to this matter and intends to carry it out fully.

In this affair it is crucial that justice be administered in accordance with our military processes and without any prejudicial publicity. While there is a special responsibility on the Armed Services Committee, the entire Congress, and the news media as well, has a responsibility to see that all those who are charged with criminal offenses receive a fair and impartial trial. It appears to me that this is an occasion which requires self-restraint by all of us.

As far as I know at this time, it appears that the Peers-MacCrate panel did a good job and performed well in making the investigation into the adequacy of prior investigations or inquiries about this matter, their subsequent reviews and reports within the chain of command, and possible suppression or withholding of information by persons involved in the incident. The Peers-MacCrate report alleges that there were serious deficiencies in the actions of a number of officers holding command and staff positions, and these are the officers who have been charged with additional criminal offenses.

With the filing of the report, and with the criminal charges having been preferred as a result, this entire matter is in the judicial stage and care must be taken that there be no action which would interfere with the judicial process or prejudice unduly the rights of either the defendants or the Government. After these trials are completed, the committee will then take another look at the entire picture and all of the facts for the purposes of making a further determination as to the Army's responsibility and duty with respect to this matter and whether or not they were discharged satisfactorily and in a proper manner.

NEW JERSEY REGION, NATIONAL JEWISH WELFARE BOARD, URGES DIRECT NEGOTIATIONS IN THE MIDDLE EAST

Mr. WILLIAMS of New Jersey. Mr. President, I have received a copy of a resolution of the New Jersey region of the National Jewish Welfare Board urging that peace in the Middle East be pursued through direct negotiations between the Arab States and Israel. I wholeheartedly agree.

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

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

RESOLUTION BY THE NEW JERSEY REGION, NATIONAL JEWISH WELFARE BOARD

Whereas over the past year the Four Power talks on the Middle East have resulted in a serious erosion of the American Government position regarding Israel, and

Whereas it is our considered judgment that the relationship between Israel and the United States should be strengthened, and

Whereas the balance of power in the Middle East must be maintained to assure peace,

Now therefore be it resolved that the United States should implement a program to strengthen the relationship with Israel and adopt a policy to pursue the establishment of peace in the Middle East through direct negotiations between the Arab States and Israel.

Adopted at a meeting of the board of directors of the New Jersey Federation of YM-YWHA's the New Jersey Region, National Jewish Welfare Board, January 25, 1970.

HENRY M. RAFF,
President.
MITCHELL JAFFE,
Executive Secretary.

ADDRESS BY SECRETARY OF COMMERCE STANS BEFORE ECONOMIC CLUB OF NEW YORK

Mr. MILLER. Mr. President, Secretary of Commerce Maurice Stans in a recent address before the Economic Club of New York looked forward to the year 1990 and raised some questions about the future of our American free enterprise system.

As the Secretary pointed out, there are around the country today some of the young who place no confidence in our economic system, the irresponsibles who would destroy it without any idea of what is to follow, and the frustrated and bitter who challenge its right to survive.

There are also, he pointed out, the proliferating public critics who indiscriminately attack business in the guise of protecting the consumer, who blame business for committing all the sins of pollution, who find it a convenient whipping boy for all the errors of commission in our society.

If the Gallup poll figures cited by the Secretary are representative, only 6 percent of our college students look forward to a career in business.

While business ought rightfully to be concerned about its public image, at least on our college campuses, the critics of American business might also wonder whether they are not guilty of overkill and negativism. Would they, for example, replace a system where one farmworker produces enough to feed 42 people with the Chinese system where the ratio is one for one? Or would they replace it with the Russian system where it takes 183 hours of work to buy a suit of clothes compared to only 24 hours of work in the United States? What do they propose to replace our economic system with if not Chinese or Russian socialism?

Secretary Stans raises questions concerning the future outlook in taxation, business-labor relations, access to minerals, urban growth, minorities, international trade, business opportunities, and consumer affairs.

I ask unanimous consent that his remarks be printed in the RECORD.

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

ADDRESS BY THE HONORABLE MAURICE H. STANS

It is a pleasure to be here tonight—good to be back with so many old friends, good to have the opportunity to speak before this distinguished audience.

Whenever a Cabinet officer with responsibilities for economic affairs comes to New York for an occasion of this kind, he always generates an air of expectancy.

Does he bring glad tidings that will lift tomorrow's stock averages up? Or will a gloomy statement move them down?

I hope that what I say tonight will have a salutary effect on all financial markets. But it certainly won't affect tomorrow's average; not even this year's. Believe it or not, I'm going to wonder tonight about the health of the Dow Jones industrials and all they represent in 1990.

LONG RANGE FUTURE

As important as today's averages are to the ample portfolios represented in this room, I want to talk about something with much longer term consequences for the business community as a whole. I would like to suggest that we undertake tonight, within business and government, a new dialogue whose echo will influence the entire American economy 20 years from now. I want to raise some of the major questions that I think we should be answering in order to assure the progress of our great free enterprise system between now and 1990.

OUR SYSTEM

What I have to say tonight stems from a bias—a strong bias of faith in what we verously call free enterprise, competitive enterprise, the free market system, or the American way of private capitalism.

There are today around the country the young who place no confidence in our business system; the irresponsibles who would destroy it without any idea of what is to follow; and the frustrated and bitter who challenge its right to survive.

There are the proliferating public critics who indiscriminately attack business in the guise of protecting the consumer, who blame business for committing all the sins of pollution, who find it a convenient whipping boy for all the errors of commission in our society.

I do not exaggerate when I say this. Only six percent of our college students tell Gallup that they look to a career in business. The anarchists milling on our streets admit that they have no plan beyond destruction of today's institutions.

There are those who question the desirability of market building, of advertising, of promotion; who predict the demise of the business world as we know it; who suggest that somewhere around 1990 or 2000 we will all be serfs of an industrial state.

Who is speaking out today in defense of the American business system? Where is the voice of its beneficiaries? Where are those who participate in it and reap its extensive rewards? Why did the Columbia Journalism Review cite as one of the ten least covered stories of American journalism in the 1960's the story of American industry? In short, why are there not more people recognizing and extolling the magnificent effectiveness of American competitive enterprise?

COMPARISONS

Travel around the world and you will see it. Compare ours with the living standards of any other nation. Compare the way in which they live, eat, and travel. Compare their free time for diversion and the use which they can make of it. Compare their limited conveniences of life and the extent of their comforts.

Look at the hard evidence, developed by the Department of Labor: To buy a suit of clothes in Soviet Russia takes 183 hours of work. In France a comparable suit takes 75 hours; in Great Britain 40 hours; and in the United States only 24 hours of work is needed for the same item.

Here's another gauge: In the United States one farm worker now produces enough to feed 42 people. In France one worker can feed only about 6. The figure is about 5 in Italy, and it is one farm worker for only one other person in China.

We're not boasting when we cite these figures. They are simple illustrations that what we have works better than what anyone else has.

With so many cynics nipping at our heels, disparaging the system, ignoring its values, what will we have 10, 20 or 50 years from now? Will we have been overtaken through lack of foresight, planning and diligence, or failure to defend and support its principles?

MOTIVATION

I've said many times and believe strongly that the superiority of American life is due to the fact that our business system is built upon the most fundamental instincts that motivate people—beyond those of family affection and survival. They are instincts to compete and to acquire and own: Backed by a society and a government that stand for equality of opportunity and freedom of choice, these instincts are the basic incentives that fuel progress. The heart of the American economy, and what makes it so uniquely effective, is its ability to encourage and channel these characteristics into constructive endeavors.

True, there are imperfections. There is inequity in the distribution of our mass products. Business has its malefactors and its shysters. There are many reasons for the consumers to be dissatisfied, for conservationists to be critical, for underprivileged to be unhappy. But we are gaining on all that. There is a will today to give everyone an equal chance at the starting line, and to help those who falter, or those who face obstacles which are not common to all of us. There is a growing recognition by business of the need to become more involved in solving social problems.

1990

1990, a distant horizon that once seemed a long way off, is only 20 years away. The year 2000, which opens a new millenium, is only 30 years away.

Think back to 1950—it was almost yesterday. Yet it was 20 years ago. In that perspective, 1990 is almost tomorrow, and the way the future seems to be approaching faster every day, it will be tomorrow—and then George Orwell's 1984 will be six years old.

In the face of the attacks on the business system and in the face of our failure to defend it adequately, what kind of economy will we have in 1990?

Will we take this system that has given us everything we have and perfect it into one that can give us everything we want?

Or will we let it go by default because we fail to recognize its superiority and build upon it?

Let's vault over the twenty years ahead to the first Tuesday in March 1990. The Economic Club of New York already has a meeting scheduled for that date—March 6, 1990. What will those who gather here wish we had done in the meantime?

MUST PREPARE

The answer to this general question can lie entirely in how well we raise our sights to take a longer view of all the problems that face is, of all the criticisms that threaten us. It lies in whether we will meet every social and economic crisis on an ad hoc basis, and be caught off balance on each unfolding issue and thereby become only half effective in our response.

It depends on whether we have the foresight to marshal forces to enable us to repel unwarranted attacks, but at the same time be honest enough to admit shortcomings and proceed to strengthen the system, to keep it healthy, viable, and responsive to the needs of the Nation in all the years ahead.

Let's consider some of the individual questions that ought to command long range consideration.

TAXATION

What about taxation? Will we have a tax structure that will allow adequate private capital accumulation to permit industry to satisfy the tremendous growth needs ahead? How can we mould taxes to provide the revenues required for realistic public needs, but not so high that they become confiscatory? President Nixon warned recently that the economy would lose its private character and become a state controlled economy, if taxes took a substantially larger portion than the present 37 percent of the national income. Are those people who advocate spending countless billions more on government programs fully alert to the capital requirements of a productive economy? Will we be able to prevent taxes from growing to levels which destroy individual incentives to expand income? Can we build into our system some kind of a check, some kind of a formula, for the proper allocation of national income between the private and public sectors?

BUSINESS-LABOR RELATIONS

What about the relations between business and labor? Isn't it about time that someone came up with a more rational way to settle disputes than through strikes and lockouts? Such head-knocking methods may have been the only recourse to the two parties in the brutal beginnings of the Industrial Revolution in the Nineteenth Century. But must we suffer through more of the same for the next twenty years? In the computerized society of 1990, can't some programming genius devise formulas for apportioning a fair division of profits and wages, based on principles acceptable to both labor and management? Is this more difficult than getting to the moon? Maybe it would blow every transistor that IBM owns, but I'd like to see it tried.

ACCESS TO MINERALS

To provide our standard of living, our economy demands vast quantities of raw materials.

What about our access to world supplies of minerals in order to meet the needs of a dynamic economy 20 years from now?

Recently we've experienced shortages in such critical raw materials as copper, nickel, chromite, antimony, platinum, silver, and other metals. There's a lag in coal mine investment at home, and there are problems of acquiring new deposits of other minerals abroad. There is potentially a world maldistribution of oil and gas, both vital substances for a future economy.

We are living in a world of limited natural resources but unlimited expansion of requirements. Are we heading toward material shortages that will stymie our growth?

Shouldn't business and government be taking more positive steps together to assure sufficient access to critical materials and products in the decades ahead?

URBAN GROWTH

What about the problems of urban growth? Our population will increase by 100 million during the next 30 years. This is equal to more than 250,000 a month—a city the size of Tulsa every thirty days. Where is industry going to locate its new facilities in order to avoid the anthill society of megalopolis? Can business maintain a rising level of productivity in the face of increasing diseconomies that will result from further concentrations in our present metropolitan areas? Wouldn't everybody gain by the building of new, well planned cities from the ground up and by expansion of our present small cities that are some distance from today's overcrowded areas? Won't we be a healthier country if our people and our businesses are spread more broadly across the landscape? And what kind of government—national, regional and local—is business going to advocate and support to deal with problems we have not yet even imagined, when we have those 100 million new people just 30 years from now?

President Nixon has proposed a national growth policy to help guide urbanization in order to raise the quality of American life and avoid the counter-productive results of chaotic industrial expansion. Again, shouldn't business and government at all levels—national, state and local—be planning and working together to assure successful patterns of urban growth in the long term future? Other major industrial nations in the world are guiding their urban development. Shouldn't we, the most industrialized of all, be the one to show the way?

MINORITIES

What will we have done to bring the underprivileged American minorities into the mainstream of the economy? Will the promise of the American dream become a reality for this 15 percent of the population as it is for the rest of us—not only the security of equal employment but also the equal opportunity to be an owner, an employer, a capitalist? So long as only 85 percent of our people can participate in our system, we will never have full understanding of it, full respect for it, and full assurance that it will survive. How can government and business best combine to guarantee an equal place at the starting line for everyone?

INTERNATIONAL ECONOMY

What about our position in the international economy? The trend toward a one-world market is gathering momentum every year. Regional trading blocs will likely be merging, common currencies are under active discussion, direct overseas investment is erasing traditional trading patterns. Where does this leave the United States, the greatest trading nation in the world, but the one with the highest wages and the highest standard of living? Will we continue to be competitive?

With our military research on the decline, can we maintain the scientific and technological lead that enabled us in the past to compete with low-wage countries in civilian markets? Will we be able to continue our innovative advantage? We know that we have no corner on knowledge; knowledge knows no boundaries. Not only do we freely export our most sophisticated machines; the scientists and engineers of other countries are generally as capable as our own. And in many other industrial countries, a far greater proportion of their research and development than ours goes into improving civilian goods which they export. Some of their governments also are far more aggressive in promoting international trade. In the face of all this, how are going to restore and maintain the healthy merchandise trade surplus that has been the mainstay of our balance of payments and the footing for our dollar?

BUSINESS OPPORTUNITIES

In the midst of considering the hard questions that will affect us all, what is to happen to the individual businessman in a nation increasingly overcrowded? In our country, it is traditional that businesses start small and grow. Twenty years from now, will the opportunity still exist for anyone with an idea to start his own venture and capitalize on it? How do we maintain an environment that helps small business to succeed and grow and become big?

If the merger wave of the last few years continues, for good or for bad, what will the economy be like in 1990? Can we define more effectively the point at which agglomerations of capital or of enterprises are most efficient? And what is the right balance between government regulation and freedom for business operations—and how do we get there?

CONSUMER AFFAIRS

Consumerism is a growing issue—and rightly so.

How do we provide the consumer of 1990 with improved quality, safety, and value—and still at a price he can afford?

How do we give the housewife the simplicity she wants in the supermarket and at the same time not deprive her of the variety of choice that competition brings?

How do we provide the consumer with reasonable product standards without destroying the incentive for someone to build a better mousetrap?

CONCLUSION

These, then are some of the critical matters that I believe the leaders of government and business must begin addressing themselves to jointly, if we are to meet our re-

sponsibilities to the future. There are many more: the long term problems of inflation, the environment, multi-national corporations, communications, the needs of less developed nations, and so on.

If 1990 is to be what we want it to be, business organizations and their leaders must raise their eyes more often from the profit and loss statements to take a long look down the road. They will have to rise above the problems of their own individual enterprises and help to seek solutions to broad problems of the whole society.

In short, we need more effort to seek sound answers to long range questions:

More dialogue, more open debate about the future;

A stronger defense of the system;

More statesmanship on the part of business, labor and government;

A reduction of class antagonism and an end to demagogic abuse of business;

A weeding out of the few who thrive on shoddy practices and thus discredit the many;

A willingness by business to become more involved in evolving social problems;

A fresh, forward-looking approach to tomorrow, as though our very survival depended on the right solutions—as indeed it does!

EPILOGUE

Let's travel ahead in the time machine to 1990 for a moment. Your club members have assembled for their March 6 meeting. There are only four survivors. The others have joined an outfit called GOOP, Government Organization of Officials in Production.

A veteran member gets to his feet. He recalls the meeting of 20 years before at which some government official whose name he had long since forgotten suggested action on the long term problems of the future.

"As we all know," he says, "it was just a lot of empty rhetoric. Nothing ever came of it. We lost our place."

The other three club members then open their box lunches and start munching on fish meal sandwiches and cold potato salad.

The speaker feels a drop of water on his head and looks up.

"I move that we don't meet here anymore," he says. "This old barn is leaking."

Now turn the dial on the time machine to another channel, again in 1990:

The speaker this time is another government official whose name also will be forgotten in a few years. He has a report to make:

The Gross National Product has just passed $4 trillion.

The unemployment figure stands at 162—all in Alaska.

There have been no strikes for 3 years.

Literacy is at 99.44 percent.

Average family income is $40,000.

The work week is 30 hours.

The Dow Jones industrials are at 2800!

Our national life is vibrant, free, stimulating and at peace.

If we achieve all of this, there will be only one reason.

It will not be because government managed it.

It will not be because an entirely new system has taken over.

It will not be because extremists and defeatists have had their way.

It will be because we found the right answers to the long questions, and continued to build and perfect the greatest machine for abundance the world has ever known.

NATIONAL OPERA COMPANY

Mr. JORDAN of North Carolina. Mr. President, teenage tastes are generally not thought of as running to culture and the rock and roll music they favor is usually a far cry from opera.

So it may come as something of a surprise when I report that last year in North Carolina the one-millionth student attended a performance of live opera in the State in a series that has been running since 1950.

It was started by Mr. A. J. Fletcher, a Raleigh attorney and businessman, whose own love for opera was born when he heard his first aria from Faust as a boy of 12 in his hometown of North Wilkesboro before the turn of the century.

He decided to form a group of singers to present operatic scenes which he hoped would provide training for young musicians and at the same time create an appreciation for the art among youthful audiences.

The idea caught on. First known as the Grass Roots Opera Company and later renamed the National Opera Company, the troupe has presented more than 1,900 performances in North Carolina and other States since its establishment and has given practical experience to more than 200 performers, some of whom have gone on to take leading roles with the Metropolitan and other opera companies in this country and Europe.

While the project has never been completely self-supporting from box office receipts, it has operated without use of any tax funds—a source of pride to its backer, who has made sizable personal contributions every year to keep it going.

The opera company and its sponsor are the subject of a feature article published in Music Journal for October 1969. I ask unanimous consent that the story be printed in the RECORD, to acquaint readers with more details about this unusual venture.

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

OPERA IN THE SCHOOLS

(By David H. Witherspoon, general manager, National Opera Co.)

"I liked the opera in many ways. It was funny in some ways, dramatic in some ways and full of romance. I once thought it was just a lot of phony screaming that was supposed to present foreign languages. Going in I heard one boy say he wished he had his earmuffs. When we were coming out, I heard the same body say he would never miss another opera."

Such was the impression of Bill Winters, Grade 6, Edgemont School in Rocky Mount, North Carolina, after having seen opera for the first time. On October 1, 1951, the National Opera Company, then known as Grass Roots Opera, initiated a program of opera appreciation in the schools of North Carolina. The attraction was Mozart's *Cosi fan tutte*, which gained more attention when billed as *School for Lovers*. It was sung in English, as have been all of 1900 subsequent performances.

Since that autumn afternoon, a large percentage of the performances by the various troupes have been given in the state, from the westernmost town of Murphy in the Great Smokies, to Manto, an island on the east coast.

On May 1, 1969, the current group of singers played to the one-millionth in attendance at North Carolina school performances in Rutherfordton, N.C. Steve Oates, an eighth grader who was attending his eighth opera performance, was designated to receive the honor. The attraction was *The Italian Girl in Algiers*, a comedy by Rossini.

This unique experiment in opera was conceived by an attorney and businessman of Raleigh, A. J. Fletcher. A life-long lover of the arts and an actor and singer of considerable ability, Fletcher realized the uninitiated must be exposed to art in order to appreciate it.

Accordingly, he formed an opera troupe of avocational singers to present performances sponsored by music clubs and civic organizations. The performance sites varied from plush hotel ballrooms to drafty school gymnasiums.

The next step was a collaboration with the public schools in matinee performances. For this a group of full-time singers was recruited. The constant polishing of roles before live audiences proved to be a boon to the young singer. Also, hearing an opera performed in our own native language opened up a new vista of entertainment and cultural appreciation to thousands!

Great care is taken in choosing opera for student consumption. Experience has proved that young audiences will not sit through static works, no matter how beautiful the melodies. Action, color and humor are looked for in selecting the repertory. Attention is given to securing the best English translations available.

Classroom teachers and music supervisors are furnished a teaching guide which outlines the story of the composer's life together with a resume of the opera plot. Taped excerpts with narration are furnished along with action photographs of scenes. In instances where music supervisors are not available, the National Opera Company will schedule a representative to brief student assemblies on the opera by the use of sound movie film and slide presentations. The running time of the matinee does not exceed one hour and thirty minutes.

Imaginative teachers carry the study still farther. In art classes model sets are constructed and painted; glee clubs are taught choruses and principal arias; English classes are assigned essays on the life of the composer and reviews of the performance; drama classes work out the action of the plot; and one enterprising music teacher presented a fifth-grade version of Carmen after a visit by the opera company with that popular work.

In productions of Hansel and Gretel, Carmen, and Martha, local student choruses have been used. Assigned music is sent to the school music department well in advance of the performance. When the students have memorized the work, a company representative visits the school to map out the limited stage action. On the day of the performance, a few rehearsals with the cast complete the preparation. Of necessity the chorus passages are brief, but the lack of polish is compensated for by the enthusiasm of the participants. Supers from the schools are used in other works, provided they fit into the costumes furnished by the Company.

The musical innovation in North Carolina has resulted in an invaluable training ground for hundreds of young singing aspirants. Two such performers, Jeanette Scovotti and Elfego Esparza, went on to the Metropolitan where they appeared in leading roles; Arlene Saunders is one of Europe's leading lyric sopranos, based at Hamburg State Opera; William Beck and Mary Jennings starred this summer at the Central City, Colorado Opera; Kay Creed, Judith Anthony and Patricia Wise will sing leading roles this coming season with the New York City Opera; Glade Peterson is a leading tenor with the Zurich Opera; others are appearing with companies in both this country and in Europe.

The National Opera Company's activities are by no means limited to appearances in North Carolina. During the 1955–56 season, a regional tour of the southeastern United States was arranged by Alkahest Attractions, Inc., of Atlanta. The Company has been booked each succeeding season by that

agency, as well as by other agencies in different parts of the country. In one season, the young singers travelled from Bangor, Maine, to Santa Fe, and from North Dakota to Miami.

Singers come to the Company from college music departments and conservatories. Other more experienced singers find the North Carolina company an ideal place to perfect different type roles. For example, Arlene Saunders toured two seasons as Carmen and Dorabella. After a year's study with a different teacher, she returned to sing the soprano roles of Rosalinda and Fiordiligi. The same is true of Delores White, who later sang with the Chicago Lyric. And this past season, a veteran baritone who had become "typed" with buffo parts jumped at the chance to sing lyric baritone roles in *Don Pasquale* and *The Italian Girl*. He is now singing the elder Germont in Europe.

In planning the twenty-first consecutive season, Fletcher has not deviated from his original aims: To give experience and employment to young singers; and, to give the public an opportunity to hear opera performed in the native tongue of the audience. He continues to audition singers, plan repertoire and experiment with innovations in the promotion of opera. Last season, in preparation for performances for blind students, the story of the opera was produced in braille in order that the youngsters might follow the story as the action unfolded. His television station and radio station are used to publicize performances in the viewing and listening area.

Productions for the 1969–70 season will include *La Perichole*, Offenbach; *The Italian Girl in Algiers*, Rossini; and *The Marriage of Figaro*, Mozart. The Musical Director for the season is Don Wilder, a musician well-versed in opera, symphony and musical comedy.

BOARD OF TRUSTEES, HAR SINAI TEMPLE, TRENTON, N.J., URGES CONTINUED U.S. SUPPORT FOR ISRAEL

Mr. WILLIAMS of New Jersey. Mr. President, on January 19, 1970, the board of trustees of Har Sinai Temple, in Trenton, N.J., adopted a resolution urging continued U.S. support for Israel. The resolution urges direct negotiations between the parties to the Middle East dispute and continued U.S. military and economic assistance to Israel.

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

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

JANUARY 29, 1970.

Hon. HARRISON C. WILLIAMS,
U.S. Senator,
Washington, D.C.:

The Har Sinai Temple Board of Trustees at its regular meeting on Monday evening, Jan. 19, 1970, unanimously passed the following resolution:

1. Are appreciative of our Government's statement consistently identifying United States Policy as one which seeks to attain a lasting peace with secure and agreed boundaries, through direct negotiations by the state of the Midle East followed by their binding agreements. This has been the position consistently declared by our Government and we urge that there be no deviation from it.

2. Any concessions regarding the cease fire lines without direct negotiation between Israel and the Arab countries will increase the military imbalance within that area and will reduce the base for genuine peace negotiations.

3. We welcome the action taken by our Government in the past year to strengthen Israel's capacity and to deter aggression. We also urge that this assistance be broadened to assure the economic requirements of Israel's security.

4. We urge our Government to do all in its power to bring the governments of the Middle East to the peace table without limiting pre-conditions.

EDWARD M. LEVIE,
President, Har Sinai Temple.

ROUGH TIMES FOR THE SMALL INVESTOR

Mr. BIBLE. Mr. President, as chairman of the Small Business Committee, I feel that I should point out to the Senate that we have apparently entered an increasing rough era for the small investor.

During the past month, we passed two landmarks along this path. At the end of February, it was announced that the U.S. Treasury would no longer sell its short-term Treasury bills in $1,000 lots, which had become popular with small savers, and that the minimum purchase would be $10,000.

Thus, so far as the Department of the Treasury is concerned, anyone having less than $10,000 in liquid savings should purchase a savings bond or make a deposit in a bank, savings and loan association, or credit union where the rates of return are as much as 2½ percent lower.* Hobart Rowen of the Washington Post concluded:

> The small saver and investor is taking it on the chin . . .

Another dramatic sign of these new times was the proposal by the New York Stock Exchange which emerged during the week of Friday, February 13, an unfortunate period for any young investor who may be tempted to believe securities industry advertising that he can still "buy his share of American industry." The exchange declared that it wants to raise commissions as much as 116 percent for small stock transactions, while at the same time lowering them as much as 60 percent on the largest transactions.

The stock exchange launched this proposal with great fanfare, complete with a computer study which purported to show that such a new commission schedule would be "cost-related." Actually, the income against which these costs were matched was understated by $1 billion a year when this supposedly objective report failed to mention any brokers earnings from underwriting, mutual funds, investment, and advisory services. These are significant omissions since it would be impossible for these firms to bring in this $1 billion without the large network of small customers which has been built upon the basis of commission sales business.

This proposal prompted columnist Philip Greer to state that the Stock Exchange is seeking to raise its overall rates "all on the back of small investors."

There is certainly a relationship between private proposals and public policy. It is natural that Wall Street brokers and bankers and giant corporations will seek to advance their own interests. These industries are well organized and well represented in the Government. The small investors, small savers, and small businessmen in contrast are fragmented, and underrepresented. They must be defended in the councils of Government if any kind of balance is to be maintained.

It is quite clear that public policy or the absence of policy sets the climate for and encourages private action. I recall a statement of 1968 to the effect that there should be less heavy-handed regulation of the securities business. We are now seeing some of the consequences of how this philosophy works out in practice. It is boiling down to additional pressure, including legal restraints on the small investor, in favor of large corporate investors which are pushing for higher profits as the small investments are forced into institutional channels. Wealth and stockownership are already highly concentrated in this country. Probably as few as 2,500 institutions currently account for more than half of all stock transactions. What happened in February will accelerate these trends and constitute further major pressures in the direction of cutting down individual judgment, individual risk taking, initiative, capital accumulation, and enterprise by people of limited means in the 50 States.

As I have noted on previous occasions, these developments come on the heels of a year when interest rates set by private banks, without objection from the administration, rose to the highest peaks since the Civil War, when small business loans from the Federal Government were cut 58½ percent, and where the tax law was changed unfavorably to small business at several key points. All of these public policies make it seriously more difficult to begin a business, to make a small firm profitable, and to allow it to compete and retain its independence.

I suppose that, as compensation, we will now hear a series of speeches from administration officials with noble rhetoric about how small enterprise is truly the backbone of the Nation, as the Congress declared in the Small Business Act of 1953.

However, the actions of this administration are flying in the face of these values. The truth is that its policies favor the large corporate and financial corporations and are strangling small centers of enterprise across the country.

Mr. President, I ask unanimous consent that the two articles from the Washington Post be printed in the RECORD.

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

*On January 20, the Federal Reserve System announced increases on maximum interest rates payable on savings and time deposits, of which the following are a sample:

	Percent
Bank passbook	4.5
Less than 100,000, up to 1 year	5.0
Less than 100,000, 1 to 2 years	5.75

See *Federal Reserve Bulletin*; January 1970, pp. 105–106.

As of February 27, although "Treasury bill yields have declined spectacularly . . . about 115 points (since the beginning of the year)," 3-month Treasury bills were yielding 6.85%, and 6-month bills 6.78%. *Comments on Credit*, Saloman Brothers & Hutzler, Feb. 27, 1970.

NYSE PROVES CYNICS CORRECT IN DATA GAME

(By Philip Greer)

NEW YORK, February 22.—Cynics are given to say that statistics can be twisted to demonstrate anything. The New York Stock Exchange has just proven the point.

The exchange's proposed new commission rate schedule, which has now been scaled down to nothing more than a collection of computer data that must be refined into a schedule, is an exercise in statistics that, unfortunately, bears little relation to reality.

The plan, which the exchange presented to the Securities & Exchange Commission 10 days ago—amid a veil of secrecy that would warm a CIA agent's heart—is so full of holes that Big Board President Robert Haack has downgraded the proposal to raw data. The plan drew even more flak than was expected in Wall Street and it is obvious that changes will have to be made.

Judging by members' reactions, the final schedule will have to call for smaller, but still hefty, increases for small investors and higher but still reduced charges for institutions.

While the final numbers shown in the proposal no longer have any validity, the basis for the recommendations—a $500,000 study of the costs of executing and processing orders—is still very much alive. And that part, too, has a number of holes.

As part of the campaign to sell the rates, the exchange sent out two 100-page volumes which it says contain the economic justifications. Stripped of all the wasted matter, such as copies of transmittal letters and totally useless statistics, there are about 40 or 50 pages of good solid figures.

One section discusses the various components of brokers' income and explains how National Economic Research Associates, which conducted the study, decided which elements should be counted as securities commission income and which are other activities which brokers just happen to be involved with. In a word, the conclusions are incredible.

The report blithely rules out income from such sources as underwriting, mutual fund sales, investments, advisory services and a few others. In all, these areas represented $999.7 million in revenue for the brokers in 1968 and $538.6 million in the first half of 1969. The report also largely ignores profits and losses from block positioning, which is confined to institutional firms and generally produces small profits. For the first half of 1969, the "untouchable" income amounted to nearly 50 percent of the revenues from commissions.

Now that's a bit of surgery to make Christian Barnard proud. All they've done is remove all the benefits of the exchange membership from consideration as a source of broker income.

Take an example. At the larger retail firms, the underwriting and commission businesses are inseparable, even by NERA. The main reason why Bache & Co., for one, does as many underwritings as it does is that the firm's vast retail network—built up on the commission business—can pump out virtually any number of shares virtually overnight. A company needing investment banking services goes to a banking firm—Lehman Brothers or Morgan Stanley or many others. When it goes to Bache or F. J. Du Pont, it's because the company wants distribution—through a network whose prime function is the commission business. So NERA is saying, in effect, that the retail customer—that's the little guy—has to pay the bill of that network so that the brokers can use it—gratis—for stock distribution.

Much the same argument can be made for retail firms that are heavy sellers of mutual funds. Bache, in fact, sells more fund shares than any other member firm and gets a lot of stock exchange business in return. It's those same retail salesmen who do the selling and NERA wants the small investor to pick up the tab there, too.

For years—as the exchange knows, even if NERA doesn't—brokers have operated on the principle that, if the sales force produces the money to cover the overhead, the partners can take care of the gravy. Now the gravy is being reserved as an exclusive right, not to be counted when toting up the bill for brokerage services. Personally, I'm amazed that the exchange had the nerve to present that kind of package.

There are other places where the proposal runs into trouble. The primary function of a stock exchange is to provide continuous and orderly markets. Exchanges are specifically exempted from anti-trust prosecution, but only so long as it is necessary to provide those markets.

The NYSE's proposals, however, are aimed at protecting the brokers, not the market. By definition, that's what a "cost-related" commission schedule does. The schedule takes money away from the institutional, block-trading firms whose help and capital are needed almost daily to absorb the giant blocks of stock that come in from mutual funds, banks and the others. It showers money on the retail firms whose help is not needed on the exchange floor and who have shown that the first thing they do with money is stick it in their pockets. If that's maintaining the market, I better get a new dictionary.

I buy the argument that commissions should be increased. Not by the over-all 10 per cent the exchange is asking for and certainly not all on the back of small investors, but brokers have higher costs and they should be able to raise the tab a little. But on the basis of a so-called "cost study" that carves out all the white meat and leaves only the bones? Out of sight, man.

THE SMALL INVESTOR GETS A ROUGH DEAL

(By Hobart Rowen)

The small saver and investor is taking it on the chin these days. Like the big boys, he suffers as the dollar depreciates through inflation: the consumer price increase of nearly 6 per cent in 1969 was no less for him than anyone else.

But when he places his dollar bill out for lending or investing, it doesn't seem to go as far. Even the New York Stock Exchange, which once prattled about "investing in a share of America," now wants to jack up commissions as much as 116 per cent for small trades and lower them as much as 60 per cent on the biggest transactions.

The latest step in this discriminatory process was taken by the United States Government itself by reserving the attractive interest rates paid on Treasury bills for larger investors.

Last week, after a battle inside the administration, the Treasury announced it would no longer sell Treasury bills in $1,000 lots—which had become popular with smaller savers—and that the minimum denomination would be $10,000.

The Treasury's plea was that the cost of processing a $1,000 bill was excessive, and that the small saver paying a fee to a banker or broker was losing part of his "real" return anyway.

"Treasury bills are a money market instrument," Secretary David Kennedy told the Joint Economic Committee. Better, the implication was, buy U.S. Savings Bonds which pay 5 per cent, than bother the Treasury for bills which recently have been paying 7 per cent, and paid as high as 8 per cent earlier this year.

Many experts think that the Treasury's plaintive note just doesn't wash. If it uses horse-and-buggy methods of issuing bills, each piece of paper may be costing too much money; but presumably, if computers can be used to trace a path for a rocket to the moon, they could be used to lower the administrative costs of borrowing money from the public.

The real reason for the change, as Secretary Kennedy has admitted privately, is that the savings and loan lobby brought terrific pressure for it. Much of the flood of orders for Treasury bills in $1,000 and $2,000 lots came from people who took their money out of the S & Ls.

That was tough on the S & Ls, which have been the backbone of mortgage support for the housing industry. But it made sense for depositors, who were limited for most of last year to 4¾ per cent on regular accounts and 5¼ per cent on savings certificates.

Recently, the rate structure was adjusted so that the S & Ls can pay 5 per cent on regular savings. And to get as much as 6 per cent, you have to have a minimum of $10,000, and leave it for 2 years. But if you can part with $100,000 for one year, 7½ per cent is now available at S & Ls.

It is little wonder, therefore, that Treasury bills proved so attractive: they paid more, for modest amounts, than available elsewhere. Large banks in this city used to buy them for regular customers as part of their service; more recently, they have put a $5, then a $10 charge on each transaction.

Investors who have direct access to Federal Reserve banks have been able to buy bills without any charges. It is also possible to buy bills directly on a mail-order basis; there is some red tape involved which the Treasury could simplify but doesn't choose to do.

Outside of the Treasury, the discrimination is readily recognized. "This issue is a live one," Economic Council Chairman Paul W. McCracken agrees. The problem as he sees it traces back to the artificiality of interest-rate ceilings at banks, originally intended to prevent the payment of interest higher than "sound" practices would warrant.

But then the ceilings became a device to help protect S & Ls from a massive loss of funds. That worked until it dawned on the small investor that he could "beat" the ceiling limitation by investing directly in Mr. Kennedy's "market instruments."

Apparently, only the fatter cats are supposed to deal in these. In fact, just three weeks ago, the Farmers Home Administration (a government agency) sold $200 million worth of 8⅞ per cent 5-year notes and $150 million of 8.90 per cent 10-year notes. And guess the minimum unit? It was a cool $1 million each.

In New York the other day at a meeting of the National Industrial Conference Board, Federal Reserve Board adviser J. Charles Partee, asked whether the small investor was being treated unfairly in view of the new Treasury bill minimum, said:

"I think clearly we're discriminating against the small saver, and I think it's terrible. I think there's some logic for a difference (in rates) based on costs (of the transaction) and liquidity."

But the differentials between what is available to the large investor, and the smaller man have become excessive, Partee said, adding: "I would hope that we're moving toward (a situation) where the market would determine the differentials."

This ideal system, however, is a long way off: we are so locked into the system of ceiling rates that if they were removed entirely, the S & L industry would collapse while savers sought better returns.

For the moment, McCracken says, the government should be working "on something that will give the little saver a better break," perhaps through an instrument "more appropriate" than Treasury bills.

Clearly, something like this ought to be done. If the Farm Credit people can pay around 9 per cent for 5- and 10-year money, why should the average citizen accept 5 per cent for a 10-year U.S. Savings Bond? He shouldn't. Given the pattern of interest rates today, he's entitled to more. The return on

savings bonds doesn't even match the rate of inflation.

If bills aren't the "right instrument" for the smaller investor, Secretary Kennedy ought to put his boys to work to find one.

THE IMPORTANCE OF COAL

Mr. WILLIAMS of New Jersey. Mr. President, as most Senators know, I have been concerned for some time with conditions affecting the coal industry, particularly with relation to the well-being of coal miners. Most recently, I have sponsored the most comprehensive coal miners health and safety act ever passed and the Senate Labor Subcommittee, which I chair, is conducting hearings into the United Mine Workers election of 1969. Those hearings are continuing this week and we are directing our inquiry specifically at the handling of the mine workers' pension fund.

Since my State of New Jersey is not exactly a leader in coal production—as a matter of fact, we do not produce any—it may seem strange to some people that I have taken such an interest in the coal industry. There is a good reason for my interest, because what happens within the coal industry could very well have an impact on millions of people in New Jersey and elsewhere in the Nation who live hundreds of miles from the nearest coal mine.

Most people have very little idea of how dependent this country is on coal. They realize vaguely that many industries, such as the steel industry which is basic to our economy, rely heavily on coal. But for the most part it would come as a surprise to most people to find out that millions of Americans are directly dependent on coal for the electricity which is an essential part of their daily lives.

Last year more than 310 million tons of coal was consumed in this country in the production of electricity. That represents nearly 55 percent of our total coal consumption. In my own State alone, more than 4 million tons of coal were used to produce electric power.

It is true that utility companies are converting increasingly to use of hydroelectric or nuclear power to produce electricity, but they still rely to a very large degree on coal. Last year, nearly half of all electricity consumed in this country was produced by coal-burning generators. In New Jersey, utility companies rely on coal to produce 33 percent of the electricity used in the State.

In many parts of the country, utilities are taking advantage of power generating stations located right at the mouths of coal mines. For instance, in central Pennsylvania there are eight mine-mouth power stations which make up what is known as the Chestnut Ridge energy center. It has a power output of some 6.7 million kilowatts which is more than the combined output of the giant hydroelectric installations at Niagara Falls, Grand Coulee, and Hoover Dams.

The image of the coal industry in this country has been one of an industry which is declining because of declining demand for its product. A few years ago this may have been accurate, and it may well prove to be accurate over the long-haul in the years ahead. But the fact of the matter is that at the present time the demand for coal has increased substantially and the supply has not kept pace, creating a potentially dangerous situation.

Between 1967 and 1969, while coal production remained stationary at about 550 million tons a year, consumption increased from 530 million tons to 564 million tons. Because production lagged behind needs, coal consumers used up 19 million tons out of their reserve stockpiles. As a result, reserves are now well below normal levels. Utility companies, which like to keep enough coal on hand to operate for 90 days, are now down, on the average, to only enough to last them for 64 days.

In some places reserves are well below that level. The power manager of the Tennessee Valley Authority reports that nine of his plants have only enough coal on hand to operate for a maximum of 2 weeks.

What all this means is that this summer, when use of electricity goes up in direct relation to the temperature, this country could face a critical power shortage. The Federal Bureau of Mines tells me that to be sure of avoiding an electrical shortage our coal mines must produce an average of 11 million tons a week. Last year they produced an average of only 10.6 million tons a week and the bureau says that similar production figures this year could cause serious problems.

There are many reasons for the coal shortage, but one important one is labor unrest. I believe our coal miners have legitimate grievances which have gone unanswered far too long. They sometimes are forced to strike in order to make any gains at all, and strikes have a dramatic effect on coal production. Last year, when miners in West Virginia walked off the job for 3 weeks to dramatize their demands for economic protection from the incurable "black lung" disease, their strike resulted in loss of about 9 million tons of coal production.

According to the Bureau of Mines, a similar work stoppage this year could be very serious in the effect it would have on the supply of coal to electric utilities.

It is clear that what happens in the coal fields is of great importance to the entire country. That is why I have devoted so much attention to this area even though there is not a single mine in my own State.

I hope that through attention to the serious problems facing coal miners we can avoid any crippling walkouts. I believe that if we demonstrate to the men in the mines that we are sensitive and responsive to their problems they will not feel compelled to resort to strikes which could cause a critical loss of electric power for much of the Nation.

SOUTH KOREAN THREAT TO NORTH PACIFIC SALMON RESOURCES

Mr. MAGNUSON. Mr. President, as many Members of this body are well aware, I have long been concerned with the conservation and future of the North Pacific fishery resources. Most often, my remarks have dealt with the salmon fisheries, but problems with halibut, king crab, and other species have been a regular subject of discussion as well.

In recent years I and others have devoted considerable time and effort toward pursuading the Japanese to reexamine the International North Pacific Fisheries Convention and the spirit and intent of that tripartite treaty so that our anadromous salmon fisheries might continue as a valuable renewable resource to the commercial and recreation interests on the west coast of the United States.

During the past 2 years, a new threat has arisen to this important resource, and if not halted could well bring about the abrogation of the entire North Pacific Treaty regime.

Three nations are signatory to this convention: Japan, Canada, and the United States. It has been in force since June 12, 1953, and though there has been considerable interpretive debate between the parties, it has served to protect and conserve a high percentage of the Pacific salmon resource. Although the Soviet Union has developed a tremendous harvest of other stocks of fish in the North Pacific area and along the Pacific States, she has consistently pledged abstinence in the matter of salmon. This is understandable for the Soviets have salmon resources of their own and well recognize the inherent danger of a high seas net fishery on a specie which must return in good quantity to its stream of origin so that the escapement needs are properly met for spawning and continuance of the runs.

The new threat which I mention to the Pacific salmon resource comes from South Korean fishermen. Although these fleets have departed their home ports destined to harvest other species, it is a recorded fact that substantial quantities of Pacific salmon have been taken in net fishing activity off the coast of Alaska during the 1969 season.

Although the South Korean Government assured us the 1969 fleet was not authorized to fish for salmon, documented evidence including photographs of the fleet actually operating demonstrate that salmon was taken and eventually marketed by a Korean-owned Japanese trading company.

In November of last year, the three parties to the North Pacific Convention, meeting at Vancouver, British Columbia, unanimously adopted a resolution calling attention to the dangers of the South Korean entry into the salmon fishery.

Following the 1969 season, I have received increasing information, both formal and informal, of the intent of South Koreans against participating in the salmon runs. Early this year it became very apparent to me that, despite the Korean Government assurances that their vessels would not be licensed or instructed to fish salmon, that not only was such a fishery contemplated by the operating fishing company, but that it would be on a much larger scale than that of last year.

As a result of this information, I met on March 10, along with my colleague from Washington (Mr. JACKSON), and

some of our colleagues from the House of Representatives, with His Excellency, the Ambassador of Korea Don Jo Kim. Our own fisheries Ambassador from the Department of State, Donald McKernan, and Deputy Assistant Secreatry Charles Meacham from the Department of the Interior, were also present.

I was impressed with Ambassador Kim's understanding of the problem and convinced that the Korean Government wants to work out a formula which might prevent problems in the good relations now existing between our two countries. I felt that he sincerely desired to assist in halting any harvest of salmon of North American origin on the high seas by South Korean nets.

On the following day, March 11, Senator JACKSON and I, along with Senators and Representatives from all of the Pacific States, met with representatives of the concerned agencies and departments of our Government, including State, Interior, and the U.S. Coast Guard. Also present and presenting very critical concern were representatives from the west coast industry and State officials. I felt that the meeting was fruitful.

In opening the second meeting, I presented a brief statement which included a four-point understanding of direction arrived at in the meeting with Ambassador Kim.

I would like to include at this point my opening remarks at that meeting which give a general summary report of the situation together with the four points which hopefully could solve this difficult problem.

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

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

OPENING STATEMENT BY SENATOR WARREN G. MAGNUSON FOR MEETING TO DISCUSS PROBLEMS ASSOCIATED WITH THE SOUTH KOREAN FISHERY FOR SALMON AND OTHER SPECIES IN THE NORTH PACIFIC

Yesterday several of my colleagues from the State of Washington, including Senator Jackson, Congressman Pelly and Congressman Meeds, met with the Ambassador of Korea Don Jo Kim, who was accompanied by Mr. Choi (Chay), economic counselor for the Embassy. Our own fisheries Ambassador Donald McKernan from the Department of State, and Deputy Assistant Secretary for Fish and Wildlife and Parks and Natural Resources from the Department of the Interior, Charles H. Meacham were present.

This problem of Korea fishing in the North Pacific and the critical danger to our present International North Pacific Fisheries Convention and, indeed, the entire West Coast salmon resource was not a new one to anyone present. Our Government has held numerous talks with Korean officials both here in Washington and in Seoul on this problem but have been unsuccessful in attaining much more in the way of assurance than we had for last year's season. As you all know, the Koreans, despite lack of license and reported pressure from their own Government, did take a substantial quantity of salmon in the North Pacific very close to the Coast of Alaska.

At yesterday's meeting we reached a four-point understanding. It is not a final or satisfactory answer to any of us, but it is a hopeful sign and a step toward the kind of assurances we need to continue a kind of orderly harvest of the important West Coast salmon stocks, not only those from Bristol Bay, Alaska, but from every salmon-producing stream of the Pacific States.

We have been advised that the Director of the Korean Department of Fisheries, Mr. Koo, will be coming to the United States later this month. Our Government, together with the Korean Ambassador, will discuss the following four points:

1. Try to reach agreement on the location of the species which the Korean vessels will be licensed to harvest and also agree on those times and locations where North American salmon runs may be present and thus subject to their fishing effort.

2. Try to agree on the kind of gear that will be used by the Korean vessels so that there will not be salmon gear aboard.

3. Determine the kinds of observation and enforcement to be carried out by the Korean Government to assure that the vessels will abide by any agreement reached.

4. Reiterate the necessity for settling this issue at the earliest possible moment, not only in light of the need for early departure of the Korean fleets to the North Pacific, but also to assist in the necessary planning for our own industry and scientists so that conservation needs can best be served.

Obviously, other activities will continue both here in Washington and in Korea toward a resolution of this problem, not only for the 1970 season but for future years so that we will not be faced with unusual ad hoc solutions to this fishing threat.

Mr. President, as I clearly stated in both of these meetings it does not seem to me that it would be in the interest of South Korea to endanger the present good relationships we both enjoy over a matter as minimal to her overall economy, particularly in view of the fact that continuation of this fishery could spell disaster to the sixteen-year-old North Pacific Treaty and put an end to the valuable Pacific salmon resource which provides a vital commercial fishing industry as well as a growing and important recreational fishery for the West Coast States.

This nation has spent millions upon millions of dollars for hatcheries, spawning channels, power dam fishways, biological research and other facilities that these salmon runs might be saved.

Our own commercial fishermen have made untold sacrifices in the inshore fisheries to assure adequate escapement to the respective streams so that the salmon may spawn and the young return to sea, thus maintaining and hopefully, enhancing this splendid renewable resource.

Mr. President, a high seas net fishery is indiscriminate in its capture. There is no way to determine where these salmon are headed until they actually reach the bays and rivers. In addition, the high seas net fishery is wasteful, not only because many of the fish have not reached full maturity, but many drop out and die due to the heavy seas offshore; nets are lost and continue to fish with no benefit to fishermen or the resource.

Under the terms of the North Pacific Treaty, Japan abstains from fishing salmon East of the 175 Meridian West. U.S. and Canadian fishermen are banned by domestic law from conducting net fishing on the high seas. The Soviet Union has voluntarily abstained from the fishery.

Mr. President, it is fairly obvious to me that it will be utterly impossible to maintain any orderly management or conservation of the West Coast salmon stocks if the South Koreans mount a net fishery in the 1970 season. I do not think we can allow this to happen.

Later this month the Director of South Korea's Department of Fisheries, Mr. Koo, will be in the United States to discuss this problem with our Government. I am hopeful that specific steps providing enforceable safeguards can then be officially established so that this matter can be resolved not only in the interests of fishery conservation, but for the continuance and furtherance of the good relations this nation now enjoys with the Republic of Korea.

SHORE LODGE, B'NAI B'RITH, ASBURY PARK, N.J., URGES CONTINUED U.S. SUPPORT FOR ISRAEL

Mr. WILLIAMS of New Jersey. Mr. President, on January 11, 1970, the Shore Lodge of B'nai B'rith, Asbury Park, N.J., adopted a resolution urging the United States to "continue its efforts to compel the Arab countries to negotiate directly with the Israeli Government, toward effecting a peace treaty," and to continue U.S. military and economic aid to Israel. The Shore Lodge also opposes any change in the status in the Middle East unless it is in the context of a peace treaty.

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

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

RESOLUTION

(Adopted by Shore Lodge, B'nai Brith, Asbury Park, New Jersey, at its meeting held on January 11, 1970, in Wanamassa, New Jersey.)

Whereas, William Rogers, Secretary of State of the United States, recently declared that the United States Government favored restoration of the original borders between Israel and Egypt, as they were prior to 1967, the withdrawal of Israel to the west bank of the Jordan River, and the withdrawal of Israel from the Old City of Jerusalem; and

Whereas, such action would place Israel in a dangerous position from future attacks by the Arab countries;

Now, therefore, be it

Resolved: That Shore Lodge, B'nai Brith, express its opposition to the aforesaid recommendations, and requests the Secretary of State, and our Government, to continue its efforts to compel the Arab Countries to negotiate directly with the Israeli Government, towards effecting a peace treaty; and be it further

Resolved: that until such a treaty is finally achieved, the defensive lines which Israel now controls along the Suez Canal, the Jordan River and the Golan Heights, be maintained; and be it further

Resolved: that the Shore Lodge, B'nai Brith, favors continuance by the United States of both military and economic aid to Israel, so that she may continue to defend herself against aggression by neighboring Arab countries; and be it further

Resolved: that copies of this Resolution be forwarded to Secretary of State William Rogers, Senator Clifford P. Case, Senator Harrison A. Williams, Jr., and Representative James J. Howard.

CANADIAN OIL AND NATIONAL SECURITY

Mr. PROXMIRE. Mr. President, yesterday the distinguished junior Senator from Kansas (Mr. DOLE) attempted to defend the President's action imposing quotas on the importation of Canadian oil by implying that the Canadians were abusing their "special treatment."

Unfortunately, in our attempts to defend a position we sometimes lose sight of the real issues involved.

The only—I repeat, the only—justification for limiting imports is national security, and I would hope it too obvious to bear repeating that protecting the structure of an industry is not the same as protecting our national security.

Canadian oil is secure—more secure, in fact, than Alaskan oil. That is the only issue. Does the importation of secure Canadian oil impair our national security? The answer is clear: it does not, unless, of course, one postulates another War of 1812. I think this is clearly shown by the fact that the Chairman of the Federal Power Commission, who dissented from the majority of the task force report, just approved a big pipeline to bring in Canadian natural gas. Is gas any different from oil?

The agreement to which the junior Senator from Kansas referred was a secret exchange of notes between the United States and Canada. Why a secret exchange of notes to limit Canadian oil imports? The reason is clear: there was no justification for limiting Canadian oil aside from the fact it might impair the profit level of some oil companies supplying the upper Midwest with oil. As a matter of fact, the legality of this agreement is now under attack before the ICC.

Although I am not a lawyer, I, too, believe that this agreement was illegal. If this secret agreement is upheld, it means that the President can make secret agreements with foreign nations without consulting the Senate. He can effectively make treaties without the necessity of having the rationale of the treaty examined by the Senate as was intended by our forefathers when they drafted the Constitution. It means that the President could sign a secret agreement with the Government of Laos and bind this country to that agreement without consulting the Senate. Is that a result which impairs or enhances the Senate's duty to advise and consent?

Second, let me examine the levels of Canadian oil imports. Although the secret and illegal agreement set the level of permissible imports at 332,000 barrels of oil a day, imports were running at about 559,000 barrels a day. Did this level impair our national security? The answer I think is "No." The Presidential proclamation was very carefully worded. It did not say these imports were imparing our national security; what it said was these imports do "not effectively serve our national security interests and leads to inequities with the United States." There is a big difference between impairing and not effectively serving. I asked the Director of the Office of Emergency Preparedness whether this level of oil imports impaired our national security. To this date, I have not received an answer. When I do you may be sure that I will let the Senate know.

The one point that did intrigue me in President Nixon's proclamation was that Canadian imports were creating "inequities." I wonder what "inequities." The only inequity that I can think of is that every barrel of Canadian oil that comes in subtracts from the amount of oil that can be allocated under the 12.2 percent limitation on oil imports. This means that every barrel of Canadian oil that comes in costs the holders of import tickets about $1.50. Doing some rough arithmetic, by multiplying $1.50 times the number of barrels now available for import quota allocations because of President Nixon's cutback on Canadian oil imports we arrive at a windfall for the big oil companies of about $85 million a year; $85 million is a lot of money and well worth fighting for. I gather President Nixon feels that the big oil companies have an inalienable right to these subsidies.

If President Nixon were worried about our national security and cared about the consumers, rather than the health of the oil industry, he would have excluded Canadian oil from the 12.2-percent limitation. That would have allowed secure Canadian oil to flow into the United States and, at the same time, would have allowed the consumers to benefit by the cheaper Canadian oil.

That brings me to my third point: Canadian oil is about 50 to 60 cents a barrel cheaper than similar American oil. Although one might question why that is so because drilling costs in Canada and the United States are about the same, let us put that aside for the moment as just another example of the inequities of the oil import program.

A barrel of oil, as my good friend from Kansas knows, contains 42 gallons. With a price of 50 to 60 cents less a barrel for raw material, this means that the refineries, if they operate in a competitive market, should sell their gasoline for a cent to a cent and a half less a gallon. If this is not true, then the conclusion must be that the oil industry is not competitive, that it is a monopoly and that something, like changing the entire oil import program, as suggested by the President's own Cabinet task force, must be done.

Finally, as it comes to the "secret government of oil," I think I need only point to the article by Erwin Knoll, which I placed in the RECORD at page 6485. It details brilliantly the secret government of oil and how it operates. Although I know the junior Senator from Kansas disagrees with its conclusions, I have not seen any rebuttal of the points Mr. Knoll made.

In conclusion, I should like to point once again to the fact that our Nation's security is at issue, not the particular structure of an industry. The President's own task force unanimously agreed that the present oil import program was not responsive to our Nation's needs, although they differed as to what to do. Yet, today, we still see the American consumer being milked by the oil industry to the tune of about $5 billion a year with a program that does not work. How absurd.

If the oil industry needs incentives to go exploring, let us give them the incentives openly, not through the back door; let us pass an appropriation so that we can have some idea of the cost benefit ratio. I guarantee that we can design the necessary incentives which would cost the American consumer and taxpayer a lot less than the $5 billion they are now paying.

SENATOR McGOVERN SPEAKS OUT ON THE POPULATION EXPLOSION

Mr. TYDINGS. Mr. President, last month during hearings of the Senate Health Subcommittee on S. 2108, a bill to expand and improve our domestic population and family planning programs, the distinguished Senator from South Dakota (Mr. McGOVERN) delivered an excellent statement on the population explosion. His remarks revealed both insight into our pressing population problem and an awareness of the urgent need for a solution.

The Senator from South Dakota was one of the first Members of this body to recognize the dangers posed by unchecked population growth, and one of the first to sound the call for action. He was also an original cosponsor of S. 2108 when it was introduced last May.

Mr. President, this was important testimony. I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT BY SENATOR McGOVERN

America today faces the most serious issue ever to confront mankind. It is not overly dramatic to say that on the resolution of that issue may depend the continued existence of mankind itself. That issue is the population explosion.

Our hopes for mankind—the quest for a peaceful world, the elimination of poverty and hunger, the cleansing of our polluted environment, every effort we make to improve the quality of life—all depend to a significant degree on our willingness to come to grips with the question of limiting population growth. It is not our generation, but the generations of our children and grandchildren, who will pay for our folly should we fail. A child born into a nation of 150 million in 1950 may find himself crowded into a country twice as populous by his 50th birthday. Unless we wish to consign our children to a standing room only environment we must act now.

But the recent past is not encouraging. Leaders in American government have been aware of the existence of the population problem for over a decade. President Eisenhower was the Honorary Chairman of the Planned Parenthood movement. President Kennedy authorized, for the first time, the use of American resources to help foreign nations come to grips with their population questions. President Johnson spoke of the need for American leadership in the field of population control many times. And, President Nixon sent a special message to Congress, in which he asked that family planning facilities be made available to all who desired them within five years. In the Congress, former Senator Ernest Gruening pioneered the authorization of funds for family planning facilities.

I am proud to have been a cosponsor of the legislation which Senator Gruening introduced in 1965 to initiate federal government support for family planning. I testified before his subcommittee then, pointing out that rapid population growth was a threat to economic development, adequate food and nutrition, and hopes for individual advancement.

But five years have passed, and despite considerable rhetoric, the action taken by our government to provide safe, effective, and acceptable family planning for all Americans has been half-hearted, largely rhetorical, and wholly insufficient.

Perhaps because it was viewed as a foreign problem the decade of sixties has been large-

ly one of procrastination in the area of population control.

Many will say, "the planning of a family is an intensely personal matter," and they are correct. At the same time, the question of population growth is an urgent public matter. The issue, is as former Secretary of Defense Robert McNamara said only last month, "at once, intolerant of government pressure—and yet endangered by government procrastination."

Today the measures being offered in Congress to deal with the population problem are neither compulsory nor destructive of family privacy. If we wish them to stay that way, it is imperative that we move now to insure that these measures are put into effect on the broadest, most effective scale possible. Should we fail, future generations may be compelled to undertake more drastic steps whose consequences would inevitably be abhorrent and destructive of the rights we consider central to a free society.

Through S. 2108 the distinguished Senior Senator from Maryland, Senator Tydings, seeks to render such drastic future measures unnecessary. His legislation, which I am proud to cosponsor, would vastly expand voluntary family planning services, coordinate the disjointed bureaucracy now maladministering what U.S. family planning programs we already have, and increase research efforts directed toward discovery and dissemination of safer, cheaper, more effective methods of contraception.

Many who share my belief in the urgency of the population problem might argue that the Tydings bill does not go far enough. With one important exception, I cannot agree. It is held that family planning is ineffective because many Americans still want families of three or more children. Yet it is a fact that about half of the gap between present average family size and the size needed to control population is due to unwanted pregnancies. According to Dr. Charles Westoff, of the Office of Population Research at Princeton University, each succeeding child in a family is increasingly likely to be unwanted, to the point where over one-fourth of third births, and over one-half of sixth births, are not desired by the parents.

By making easy access to family planning services the universal human right that it should be, we will have taken a giant step toward controlling our population without coercion of any kind.

When this step is coupled with a widespread public effort to inform Americans of the dangers of overpopulation, to lower family size preferences, and to encourage adoption for those families who continue to hope for a large family, I think there is a good chance that we will be able to arrest our population growth without being forced to resort to less desirable measures.

The one area in which I believe Senator Tydings' carefully drafted measure might be further strengthened is in the area of funding. While S. 2108 far exceeds anything now available, it seems to me that the urgency of the problem in question demands an open ended authorization which would say to our appropriations committees, to the the executive, and to the American people, that the Congress is ready to spend such sums as may be necessary to defuse the population bomb.

The funds provided in the Tydings bill should be regarded as a floor, not a ceiling for expenditures on family planning and population. Perhaps it would be wise for the Congress to *earmark* funds for HEW family planning programs, as has been done for AID family planning work, to insure that the Department of HEW will treat the target figures as a minimum, not a maximum, for carrying out these essential programs.

The hearings recently held by Senator Gaylord Nelson of Wisconsin have focused nationwide attention on what is perhaps the greatest gap in the U.S. family planning effort—research.

The National Institutes of Health have, rightly in my judgment, spent many billions of dollars on measures to control death and to permit healthier happier lives for our citizens. But NIH has spent less than $100 million over the last decade on measures to control births and to ensure that safe, effective, and acceptable measures of family planning were available for those here and overseas who want to be responsible parents and plan their families in accordance with their wishes and resources. More research for better birth control methods should have a high priority in health research programs because the results of such research will determine the quality of life for many generations to come.

Ultimately, I believe, the United States should seek as a national goal the achievement of zero population growth at the earliest possible date. In other words we should recognize as I believe many people now do, that "Bigger does not necessarily mean better" and that 500 million people in the United States in the 21st century might very well be poorer, not richer than 200 million are today.

To preserve the quality of our environment where we now have clean air, pure water, livable cities, and to improve and upgrade those areas where pollution has already made scars, we will have to check our present fertility. Surely if the U.S. population continues to double every 50 years, we will never solve the pressing problems of education, employment opportunities, nutrition, housing, and all the other needs that our children and our children's children face.

As a population control device, hunger and poverty are an ineffective, grossly unjust substitute for responsible planned parenthood. It would be a great tragedy if, in our zeal to curb the population explosion, we were to forget this fact. Senator Tydings' bill does not make that mistake. Instead, it provides for expansion of voluntary, proven, effective methods of population control. There could be no better omen for our future than the achievement of the goal of zero population growth in time for our nation's 200th birthday, in 1976. I urge the Congress to move now toward that goal by enacting S. 2108 into law before the close of this session. The quality of our future—perhaps even our future itself—depends on it.

HUNGARY AND HUMAN RIGHTS CONVENTION

Mr. PROXMIRE. Mr. President, the battle for human rights has taken many forms throughout history. The United Nations has passed the human rights convention to place these essential rights of all men under the protection of international law. At the present time, however, three important human rights conventions still have not been ratified by the U.S. Senate: the Genocide, Women's Rights, and Slavery Conventions.

Mr. President, the cause to which we today must unceasingly direct our efforts—human rights protection through Senate ratification of the United Nations conventions—is eloquently stated in past events. Twice in the past 125 years of Hungarian history, the struggle for human rights and national independence has boiled over into revolution. The Hungarian people demonstrated to the world in 1848 and 1956 that they would stand firm, and alone if necessary, in their drive to insure freedom and human rights.

It is particularly fitting at this time that we pay tribute to the unfailing courage of the Hungarians, as March 15 is celebrated by Hungarians around the world as "Kossuth Day," in commemoration of the 1849 revolution against the Hapsburg dynasty of Austria.

Louis Kossuth, an editor and public leader, was instrumental in the political reform of the Hungarian Government through the proclamation on March 15, 1848, of the "March Laws" by the Hungarian Parliament. These decrees began the evolution of a democratic order. The people of Hungary had taken a giant step toward insuring their freedom and human rights. On April 11, the King of Austria signed the March laws and Hungary became a virtually independent state in the Hapsburg Empire.

Under a new king who did not recognize the March laws as valid, the Austrian Government launched a military invasion of Hungary in December of 1848. The invaders were repulsed by the freedom fighters, but Hungary had won only an uneasy peace. Finally, on April 14, 1849, the Hungarian Parliament formally declared Hungary to be a free and independent state, with Louis Kossuth as President. The nation's new leaders committed themselves to unfailing protection of the rights and liberties denied to their people for so long by the Austrians.

From its inception the new government was faced with military difficulties. The Hapsburg Empire escalated its efforts at regaining control, and in the summer of 1849 enlisted the aid of the Czar of Russia in crushing the revolution. The overwhelming strength of the reactionary forces proved to be too much even for the valiant Hungarian freedom fighters and patriots. On August 13, the new government fell. Tyranny had returned to Hungary, and the dreams and hopes of the Hungarian revolutionaries were dashed by the iron hand of the House of Hapsburg.

Over 100 years later, in October of 1956, Hungarian students and workers overthrew the oppressive dictatorship of the Soviet puppet ruler, Enro Gero. For a few glorious days it appeared that the long-hoped-for freedom and dignity of Hungary had been restored. But on November 4, while the rest of the world again stood by, the dreams of the Hungarian people were ruthlessly crushed by the military might of the Soviet Army. As in 1849, human rights and liberties had been effectively eliminated.

Today, few political and human freedoms exist in Hungary. The observance of "Kossuth Day" serves as a powerful reminder to the free world of the importance of guaranteeing protection of human rights for people throughout the world. The United States can demonstrate its sincerity, good faith, and resolve in this most crucial matter by ratifying the three human rights treaties now before the Senate.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore (Mr. McGOVERN). The Chair lays before the Senate the pending question, which the clerk will state.

The ASSISTANT LEGISLATIVE CLERK. The question is, Will the Senate advise and consent to the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

Mr. ALLOTT. Mr. President, the Senate has once again taken up the task of advising and consenting with regard to the President's nomination of an Associate Justice of the Supreme Court.

I am pleased to have this opportunity to outline some of the reasons why I support the nomination of G. Harrold Carswell, and why I am confident he deserves, and will receive, prompt confirmation.

Let me begin where the controversy surrounding this nomination began—with the facts about Judge Carswell's judicial philosophy.

Judge Carswell is a strict constructionist. That is one of the reasons the President has nominated him. That is entirely proper.

No one doubts that the President must consider the judicial philosophy of his nominees. Presidents have done so throughout our history.

President Lincoln did this when he appointed Salmon Chase as Chief Justice. President Theodore Roosevelt did when he appointed Oliver Wendell Holmes as Associate Justice. President Wilson did when he appointed Louis D. Brandeis as Associate Justice.

These are just a few examples from past generations. The list could be greatly expanded. In fact, it would be a strong indictment of any President to suggest that his examination of a prospective nominee was so cursory that it excluded a consideration of the nominee's judicial philosophy.

President Nixon has approached the nomination process in the same way Lincoln, Theodore Roosevelt, Wilson, and others approached it. He has considered the judicial philosophy of his nominees. Indeed, President Nixon has been uncommonly forthright about this.

Even before he was elected, President Nixon explained to the American people his thinking with regard to judicial philosophy. He explained that he favored the philosophy of "strict construction," a philosophy which translates into a policy of judicial restraint.

It is odd that the philosophy of strict construction should be an embattled philosophy today.

It is odd that it should require such patient and extensive defense in a century that has benefited from the thinking of such strict constructionists as Oliver Wendell Holmes and Felix Frankfurter.

Nevertheless, it seems that strict construction does need explaining and defending today. I welcome the task.

Strict construction, and the policy of judicial restraint, has two features.

On the one hand, it accepts the Court's responsibility to rule on the constitutionality of challenged laws and procedures. On the other hand, a judge who accepts the policy of judicial restraint will be very sensitive to the fact that every judicial determination of the unconstitutionality of a law nullifies an action taken by the duly constituted legislators who represent the people.

There is nothing inherently wrong with this. Americans have long believed that judicial review is not incompatible with a general commitment to majority rule. Indeed, judicial review of our laws is vital to the whole fabric of American constitutionalism.

But a "strict constructionist"—a constitutional conservative, if you will—is very sensitive to the responsibility to exercise such judicial review with the utmost respect for the principles of popular government.

A strict constructionist believes in a presumption of constitutionality that is, in judicial review, the equivalent of the presumption of innocence in criminal proceedings. He believes that laws passed by duly constituted legislators are constitutional until decided otherwise.

And he thinks that proof of unconstitutionality must be supported by the clear language of the Constitution, construed—to the fullest extent possible—in accordance with the intentions of the framers.

A strict constructionist is wary lest, in the guise of simply interpreting the words of the Constitution, he unconsciously reads personal predilections into the subtle language of the Constitution. He is wary lest his own principles lead him to artificially expand constitutional provisions until the will of the majority is frustrated, and the will of the judge is satisfied—and, I might add, until the will of the various legislative bodies also is frustrated.

A strict constructionist will be especially wary of attempts to allow current sociological hypotheses to determine the meaning of constitutional language. And he will be wary of all attempts to give constitutional standing to every notion of substantive due process.

In short, a strict constructionist believes that laws come before the courts with a momentum of respect, and that respect for the Constitution often requires the judge to respect views other than his own.

Mr. President, strict construction has always been an admirable persuasion with a respectable following. As a result of recent Court decisions, it may be national necessity, as well as a respectable option.

We can illustrate this point, and document Judge Carswell's qualifications, by examining just one facet of this constitutional process.

Many competent observers of the Court believe that some Court decisions recently handed down in the field of criminal law have greatly expanded the constitutional rights of criminal defendants beyond what the original drafters of the Constitution intended. I would go one step further, and say that some of these have gone beyond the realm of commonsense in light of the realities of the nature of law enforcement activities today.

Others, not necessarily close students of the Supreme Court's opinions, have felt that in the face of rising crime rates throughout the Nation, it was a serious mistake to push to their ultimate logic those legal doctrines which result in making it far more difficult for society to apprehend and punish the guilty, but which in no way realistically added to the protection surrounding the innocent.

Again, it is a question of degree, and not of kind. Many of the doctrines adopted by the Warren court in the field of criminal law—such as the right to counsel in the case of felony prosecutions—are sufficiently sound in policy so that there is little disposition to argue as to their constitutional derivation. But others have not received the same wide approbation.

I confess that when I view the repeated reversal of criminal convictions because of matters entirely independent of the guilt or innocence of the defendant, I am occasionally reminded of Lincoln's famous, though perhaps aprocryphal, comment respecting the suspension of the writ of habeas corpus during the Civil War—"Shall all the laws go unenforced save one?"

I do not need to dwell upon the grim details of the Nation's soaring crime problem. The FBI statistics are readily available. Between 1960 and 1969, while the population was growing by 13 percent, violent crime increased by 131 percent; that is, during the last decade violent crime increased 10 times as fast as the population.

Murders were up 66 percent. Forcible rapes were up 115 percent. Robberies were up 180 percent. Aggravated assaults were up 103 percent. In 1960 there were 285,200 violent crimes. In 1969 there were approximately 660,000 violent crimes.

Senator MCCLELLAN has stated:

> The fact is that the chance of being apprehended, convicted and punished for a serious crime is less than one out of twenty.

Another statistic which dramatizes the situation is this: If you committed a burglary in Chicago in 1968, the odds were 23 to 1 that you would never go to jail. Those are better odds for success than a person faces when he opens a new business. Consider that fact. The odds against failing as a burglar are less intimidating than the odds against successfully launching a new business.

Mr. President, I know that there are often complex social causes of violent behavior. Thus I do not want to oversimplify the significance of these crime statistics. But four things are clear:

First, crime has reached epidemic proportions.

Second, there are enormous inadequa-

cies in the entire law enforcement system, from apprehension of suspects through the prison systems.

Third, recent Supreme Court decisions have had an influence on this system.

Fourth, a large body of learned opinion holds that it would be constructive to redress the balance in Court thinking on the matter of criminal defendants' rights.

Chief Justice Warren E. Burger offered this warning against imbalance in the criminal law:

> Our system of criminal justice was based on a strikingly fair balance between the needs of society and the rights of the individual. To maintain this ordered liberty requires a periodic examination of the balancing process, as an engineer checks the pressure gauges of his boilers.

Mr. President, crime is growing six times as fast as the population. Violent crime is growing 10 times as fast as the population. The administration of justice is intolerably delayed by court backlogs resulting from lengthening trials and soaring rates of appeal. These facts reveal a striking rise in crime and a disconcerting decline in society's ability to punish it. Thus, Mr. President, it is time, in the words of Justice Warren Burger, to re-examine the balancing process by which we maintain ordered liberty.

We had better reexamine this balance because we are in danger of losing the fight for ordered liberty.

We had better check the pressure gages on our society's boilers before there is an explosion. For surely an explosion is coming when the majority of Americans, white and black, and brown and red, are afraid to venture at night into the streets of their communities.

An explosion is coming when the downtown commercial areas of our great cities—and Washington, D.C., is a prime example—become deserted at sundown, when the citizens retreat to the relative safety of their homes.

To help prevent an explosion, and to help correct the imbalance between the rights of the individual and the rights of society, it will be useful to add some leavening thinking to the current Court.

The President, in nominating Judge Carswell, has expressed his concern that the Court not lose sight of the vital interest of society in convicting the guilty criminal, or keeping the peace in public places, at the expense of according hitherto unknown "rights" to criminal defendants.

Judge Carswell's record as a Federal judge shows that the President has picked an able and balanced proponent of such a view. Heedful of the plea of the indigent defendant, he is likewise heedful of the plea of the public prosecutor; the interests of neither one will be sacrificed to those of the other.

I suspect that a strict constructionist might feel that the time has come for a consideration as to whether an imbalance has not developed in the construction of the relevant constitutional language.

It is instructive to examine some details of Judge Carswell's record in the vitally important area of the criminal law.

Since a district judge is bound by the law as laid down by the court of appeals, whose jurisdiction he is subject to, and by the Supreme Court of the United States, he is generally not in a position to express his own legal preferences for one type of rule as opposed to another.

However, the decisions to which I will refer demonstrate that Judge Carswell, as a Federal district judge and as a circuit judge, faithfully followed precedent where he felt it was applicable, and when there was no applicable precedent, he refused to sacrifice the right of society to apprehend and punish the offender to still a further extension of the rights of defendants.

For example, in *United States* v. *Levy*, 232 F. Supp. 661 (1964), he rejected a defendant's double jeopardy claim. Analysis of the facts of that case indicate the soundness of his decision.

The defendant had been brought to trial. During his opening statement, defendant's counsel alleged that the defendant was incompetent to stand trial. Considering the gravity of this allegation, the trial judge declared a mistrial for the purpose of inquiring into its truth.

The defendant then moved to dismiss his indictment on the ground that a second trial was prohibited because it would place him in jeopardy again. The defendant placed principal reliance on the Supreme Court's decision in *Downum* v. *United States* 372 U.S. 734. In Downum, a mistrial had been declared at the request of the prosecutor, who had failed to secure the presence of a material witness at the trial.

Judge Carswell, in an opinion which I find eminently sensible, distinguished Downum as a case involving the "unexcused negligence" of the prosecutor while the case before him involved a mistrial which was dictated by the serious nature of the defense counsel's allegation that his client was incompetent to stand trial.

I think that every Senator would agree that the mistrial in the Levy case, decided by Judge Carswell, was fair and necessary. Surely Judge Carswell was correct in holding that that mistrial did not bar a second trial of the defendant.

There is other evidence of Judge Carswell's prudent concern that Supreme Court pronouncements not be extended to situations in which they were not intended to apply. Consider the matter of *Agius* v. *United States*, 413 F. 2d 915 (5th Cir., 1969).

In that case, a three-judge panel, which did not include Judge Carswell, held that a conviction for bank robbery would be reversed on the ground that proper Miranda warnings had not been given.

The Miranda case applies only in cases of "custodial interrogation." The issue before the fifth circuit was whether on-the-street interrogation at the defendant's home constituted custodial interrogation requiring application of the Miranda rules. The Government asked the fifth circuit to reconsider its position.

This request was denied, but Judge Carswell noted for the record that he would have granted a rehearing en banc to review the application of the Miranda principle to that case (417 F. 2d 635).

We see then that Judge Carswell has attempted to apply the Supreme Court's pronouncements in a manner consistent with the rights of society to punish those guilty of crime. At the same time, however, Judge Carswell's record is a balanced one. Recently, in *Bell* v. *Wainwright*, 299 F. Supp. 521 (1969), Judge Carswell was called upon to rule upon the contention of an indigent defendant that his poverty had worked to his disadvantage during the trial of his case.

The Supreme Court has stated many times, as we all know, that the Constitution recognizes no distinction between the poor and the rich. In Bell against Wainwright the defendant contended that the judge who had tried his case had denied him equal protection of the laws by refusing to authorize transcription by the court reporter of the closing arguments of counsel.

The defendant's theory was that he had been denied an effective appellate review by the trial judge's action. The State disputed this contention, arguing that the petitioner had not shown that prejudice resulted from the trial judge's refusal.

Judge Carswell flatly rejected the State's argument in these terms—and these are important words:

> To deny petitioner relief on the grounds that the record does not show prejudicial comments and objections, when it is necessary to have a full transcript of the argument in order to determine prejudice in the first place and that transcript does not exist due to the order of the trial court is a complete nonsequitur * * * the respondent's position places an undue burden upon the petitioner and his counsel to attempt to reconstruct an argument in order to show that what might otherwise be isolated remarks by the prosecution were prejudicial. This burden would not have been placed upon petitioner had he been able to purchase the reporter's time himself. Such a burden is in direct conflict with the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States as interpreted in *Griffin* v. *Illinois, supra.*

I applaud Judge Carswell for this decision. Judge Carswell applied a basic constitutional principle in enunciating his ruling. While upholding the right of society to punish the guilty, Judge Carswell recognizes that fundamental guarantees must also be upheld.

Clearly Judge Carswell's record in the area of the criminal law is one of balance. It evinces a learned and conscientious attempt to apply the pronouncements of higher courts in a sensible and constructive manner. Nothing could be more illustrative of that than the case I have just quoted from.

Mr. President, I am convinced that an examination of Judge Carswell's record confirms the wisdom of President Nixon's choice. Indeed, it is interesting that many of the objections to the choice have no basis in the record.

Mr. President, I think some of the objections voiced concerning this nomination do not require much confuting. But I do want to mention a few in passing.

It has been said that Judge Carswell has had too little experience. This is not a weighty objection.

G. Harrold Carswell served for 5 years

as a U.S. attorney in the northern district of Florida. After that he served for 11 years as a Federal district judge.

Last spring the President nominated him to be a judge of the court of appeals for the fifth circuit. Just a year ago those same Members of the Senate who now raise a hue and cry about his nomination—and some of them were members of the Judiciary Committee and reported and recommended him to the Senate—at that time had no qualms at all about confirming him to this sensitive and responsible position.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ALLOTT. Mr. President, I yield.

Mr. BYRD of West Virginia. Mr. President, has not the name of Judge Carswell been before the Senate twice for confirmation to important office?

Mr. ALLOTT. I believe that his name has been before the Senate for confirmation three times prior to this occasion—once as U.S. attorney, once as a Federal district judge, and once as a judge of the court of appeals.

Mr. BYRD of West Virginia. Mr. President, has not the Senate upon each of those three occasions favorably acted upon the nomination of Judge Carswell?

Mr. ALLOTT. This is entirely true, and I will go further than that. In all three of those instances, I do not recall a single dissenting voice being raised against his confirmation, nor was there a dissenting vote.

Mr. BYRD of West Virginia. Has not the Senate three times unanimously confirmed Judge G. Harrold Carswell for important posts to which he was nominated by the President.

Mr. ALLOTT. The Senator is entirely correct. And I appreciate his reminding me of that fact.

I am about to get into the matter of reversals, and I cannot help indulging in a personal observation and experience at this point.

When I was a young man, I practiced law, and for obvious reasons I will not name the district or the judges that were involved. However, there were two judges in this district, both of whom were honorable men.

One was very seriously lacking in the law. The other was undoubtedly one of the most brilliant judges in the State of Colorado. The facts are that when a lawyer was discussing a point of law before one of the judges, the lawyer always had to draw pictures for him. However, when one was discussing a point of law before the other judge, the lawyer soon found that that judge already knew all there was to know about the law and was always on top of the question and on top of the argument and discussion.

Yet, the fact is that the brilliant jurist was reversed many times before the Supreme Court of Colorado, while the jurist who did not have the same eminent qualifications was reversed hardly at all by the Supreme Court of Colorado.

So, in my opinion, it does not make any difference. The argument about reversals actually carries no weight with me.

I am reminded of what one of my law professors said to me one day when I was answering a question. He said:

I agree with your analysis. And that is fine, but, according to the last guess of the Supreme Court, both you and I are wrong.

Many times those of us who have watched the Supreme Court over the years have felt it was the last guess of the Supreme Court.

Mr. President, one of the most confused and unconvincing complaints about Judge Carswell concerns the fact that a number of his decisions have been reversed by a higher court.

Without attempting to reopen and reevaluate each case, I would just point out one thing. It is not surprising or alarming that some decisions of a strict constructionist should be reversed in an age when the high Federal judiciary is practicing what might be called "loose construction" or "constitutional liberalism."

Thus there is nothing necessarily alarming about the fact that some of Judge Carswell's opinions have not coincided with the opinion prevailing on other courts.

It is curious to note the semantic gymnastics involved in discussions such as these. When someone whose views we favor is in a minority, we say that his views testify to his integrity, steadfastness and courage in the face of opposition.

But when someone whose views we do not share finds himself in a minority, we argue that he is recklessly out of step with the times.

Mr. President, I for one do not think the voice of the majority is always right. Nor do I think the voice of the higher court is necessarily the voice of inspired and correct jurisprudence.

It is worth recalling that one of the most revered justices in the history of the Supreme Court was known as the "Great Dissenter."

Of course I am referring to Mr. Justice Oliver Wendell Holmes. His nickname as "the Great Dissenter" was a token of the affection and respect of the legal profession and an admiring public.

The nickname—and the admiration it indicated—reflected the traditional American respect for a man who is not afraid to stand against a fashionable tide of opinion.

I do not think this traditional American respect has become a thing of the past. On the contrary, I think the American people are anxious to find men in public life who are not governed by the conventions of fashionable dogma.

There is something very odd about the protestations of some of Judge Carswell's critics.

On the one hand they claim that their opposition to the judge is not a reflection of any general prejudice against strict constructionists. But on the other hand, they link their opposition to the fact that a number of his opinions have been reversed by higher courts where the philosophy of loose construction is dominant.

Perhaps what these critics are saying is that they have nothing against a strict constructionist, so long as his strict construction is not strict enough to offend any loose constructionists who review his decisions.

This sort of thinking is small comfort to strict constructionists.

Mr. President, I would like to say one more thing in this regard.

I, and other Senators who share my views, have on more than one occasion voted to confirm nominees whose views were not congruent with our own.

I think it is time for some reciprocity in this matter of tolerance. I hope Senators who do not favor strict construction, and who have enjoyed nearly two decades of ascendant judicial liberalism, will be as tolerant of our preferences as we have been to theirs.

At any rate, Senators need not worry about this nomination resulting in any judicial earthquake. There may be a tempering of the prevailing philosophy. But that is hardly unprecedented.

The history of the Supreme Court is replete with examples of such temperings and shifts of philosophy.

These are not dramatic, 90° turns. They are lesser changes which preserve the best of a preceding era, but also contribute something of their own.

Chief Justice John Marshall presided over the Supreme Court for 34 years, and during his tenure the power of the Federal Government to act effectively was thoroughly established. He was then succeeded by Chief Justice Taney, who came from a States rights school of judicial thought.

However, the Court under Taney left standing virtually all of the constitutional structure which Marshall and his associates had bequeathed. The Taney court declined to further expand the Marshall federalism doctrines in most fields, and developed its own doctrine of State police power.

Similar transitions in the membership of the Court have taken place in more recent times, and resulted in some shifting of constitutional doctrine. These changes are not destructive revolutions in constitutional law. They are shifts in emphasis, different variations on the same basic theme.

Mr. President, allow me to sum up.

I believe Judge Carswell will and should be confirmed. The case for Judge Carswell rests on three powerful arguments.

First, Judge Carswell's 17-year record of public service is a record of his proven competence.

Second, the President has nominated Judge Carswell, and the Senate's thorough examination of his record has revealed nothing that would justify the Senate in withholding approval from this nomination.

Third, conditions on the Supreme Court, and in the country at large, are such that there is a clear and present need for a redress of judicial balance in the direction of the philosophy of strict construction.

Mr. President, this is the case for Judge Carswell. It is a strong case that has not been scathed or in any way jeopardized by the flurry of opposition.

The opposition to Judge Carswell has

been, from the start, an opposition in search of an argument.

The opposition has been given ample time to come up with such an argument. It has not succeeded.

The time has come to act with dispatch.

It is well-known that many important cases are pending before the Supreme Court. The Court is understandably and wisely reluctant to consider these important cases until it has a full complement of Justices.

It has been a long time since the Court was at full strength. In the intervening months the Senate has exercised its right to withhold consent from a nomination. While I regret the Senate's having made that decision, I am sure the Senate will not allow refusal to become a senseless habit.

I am confident the Senate will consider the needs of the Court, the interests of the Nation and the constitutional rights of the President. I am sure that these considerations will insure a prompt and overwhelming confirmation of Judge Carswell.

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

Mr. ALLOTT. I would be very happy to yield to the distinguished Senator from Mississippi.

Mr. EASTLAND. Of course, the distinguished Senator has heard raised the question of mediocrity and that Judge Carswell does not measure up to the job. Does the Senator realize that Judge John J. Parker was one of the great judges in the history of this country?

Mr. ALLOTT. I do. I am well aware of that gentleman's name.

Mr. EASTLAND. He was appointed to the Supreme Court and Senate refused confirmation. I would like to read to the Senator what the newspapers at that time said about Judge Parker. He was one of the most distinguished judges in the country, as is Judge Carswell, when his name reached the Senate. The statement I am about to read was published in the New York World on April 23, 1930. They summed up the entire case against Judge Parker to be an Associate Justice of the Supreme Court and this is the way they summed it up:

> It is Judge Parker's total lack of a distinguished record of public service and the total lack of proof that he has any distinction as a jurist which seems to us above all else to justify the Senate in saying that his nomination does not measure up to the standards which the American public rightly expects to see obtained in the nomination of a Supreme Court Justice.

They were totally wrong then and this cry now is totally wrong.

Mr. ALLOTT. The subsequent career of Judge Parker, as I recall it, of course, utterly belies the comments of that newspaper because he did have a brilliant and successful career after that.

Mr. EASTLAND. And he did before.

Mr. ALLOTT. And he did before, too. The Senator is correct.

I thank the distinguished Senator. I thank the distinguished Senator from West Virginia for his contributions to this discussion.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ALLOTT. I am happy to yield to the distinguished Senator from West Virginia.

Mr. BYRD of West Virginia. The question of mediocrity has been injected into the discussion. I suppose one could look at the present Court and make a judgment that some of the sitting justices are perhaps mediocre justices, as compared with some of the great justices who have sat on that great Court in the past.

Mediocrity cuts across senatorial lines as well as judicial lines. I would assume that, depending on who is doing the judging, probably there are Members of the Senate now and there have been in the past and will be in the future who might not measure up well against the high standards of other Members of this body. So I think we should be careful about how we toss around this term mediocrity. I have not heard of any Senators turning back their paychecks because of mediocrity. I wonder if the Senator from Colorado knows of any.

Mr. ALLOTT. No. I must confess I am sure there are none.

With respect to the Senator's comments about the Supreme Court, I must say in some decisions that have come out in the last few years, in the last 10 to 15 years, I find many of them mediocre because they are expositions of sociological doctrines of the writer of the opinion rather than any exposition of the law interpreting the Constitution.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield further?

Mr. ALLOTT. I am happy to yield.

Mr. BYRD of West Virginia. Was there anything in the background of the previous Chief Justice of the United States which would have indicated that he would make more than a mediocre Chief Justice of the Court? He had had no previous judicial experience, had he, before being appointed to the Court?

Mr. ALLOTT. I do not recall all of his experience. He had, of course, been a district attorney, or the equivalent of that, in California.

Mr. BYRD of West Virginia. He was an outstanding politician.

Mr. ALLOTT. And an attorney general, but he had no judicial experience that I can recall at this time.

I may say this to my good friend, and I appreciate his intervention: I think in any instance such as this we have a situation in which people rise to their position; they exceed themselves. Many capable Members of this body, for example, could only be described as mediocre when they came here, and many whom nobody had tapped as being great Senators became great Senators.

I am not sure that when our late good friend, Everett Dirksen, first went to the House of Representatives anyone would ever have thought that Everett Dirksen would become the great parliamentarian and the literal treasure house of information about the Government that he became. In this reference, and leaving aside our friendship for him, he was fantastic.

As the Senator has said, it is strange that a man could be nominated three times by Presidents, go through a Judiciary Committee hearing, have his name submitted to the Senate, not have a voice raised even in question, be confirmed unanimously, and then, at this critical point, he suddenly becomes a bad guy with a black hat. I believe the people who knew him and who know him now are better judges of him than anyone else.

I thank the distinguished Senator for intervening, and I yield the floor.

Mr. EASTLAND. Mr. President, as chairman of the Senate Judiciary Committee, it is my distinct honor and privilege to address the Senate on the nomination of George Harrold Carswell to be Associate Justice of the U.S. Supreme Court and recommend his early confirmation. I would like to preface my remarks with a review of certain facts which will, I believe, place the consideration of this nomination in clearer prespective.

The seat we are being called upon to fill has been vacant since May 6 of last year, throughout the greater part of an entire term of the Supreme Court. This nomination has been before the Senate now since January 19 of this year. Opponents of the nomination, as is their right, have availed themselves of the time-honored rules of the committee and the Senate to win lengthy delays in bringing this nomination before the Senate.

But what effect has this long delay had upon the administration of justice, the rights of litigants, and the prestige of the Court?

Mr. President, I ask unanimous consent that the following compilation of postponed cases be inserted in the RECORD at this point.

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

COMPILATION OF POSTPONED CASES BEFORE U.S. SUPREME COURT

[Docket No., case, and subject matter]

4. Younger v. Harris (California): Criminal Law and Procedure, Constitutionality of California Syndicalism Statute.

6. Boyle v. Lanry (Illinois): Criminal Law and Procedure, Constitutionality of Illinois State Statute, Overbroadness.

7. Gunn v. University Committee To End War in Vietnam (Texas): Criminal Law and Procedure, Constitutionality of Texas Breach of Peace Status, Disorderly Conduct, Vagueness.

8. U.S. v. U.S. Coin & Currency in the Amount of $8,674.00: Criminal Law and Procedure, Federal Wagering Tax Prosecution, Fifth Amendment, Self Incrimination.

11. Samuels v. Mackell (New York): Criminal Law and Procedure, Constitutionality of New York State Anarchy Statute, Vagueness and Overbreadth.

13. Maxwell v. Bishop (Arkansas): Criminal Law and Procedure, Capital Punishment, Discrimination in Imposition of Sentences by Juries in Interracial Rape Cases.

20. Fernandez v. Mackell (New York): Criminal Law and Procedure, Constitutionality of New York State Anarchy Statute, Vagueness and Overbreadth.

46. U.S. v. White: Criminal Law and Procedure, Electronic Eavesdropping, Admissibility of Defendant's Conversation with Government Informer Wired for Sound.

53. Baird v. Arizona (Arizona): Civil Law and Procedure, Communism, Denial of Admittance to Bar because of Refusal to Answer Questions Concerning Membership in Subversive Organizations.

75. Matter of Stolar (Ohio): Civil Law and Procedure, Denial of Application to Take

State Bar Examination, Refusal to Answer Questions Concerning Membership in Subversive Organizations, Self Incrimination, Due Process.

267. Moon v. Maryland (Maryland): Criminal Law and Procedure, Double Jeopardy, Increased Punishment After Retrial.

269. Price v. Georgia (Georgia): Criminal Law and Procedure, Retrial for Murder After Conviction for Voluntary Manslaughter.

529. Mackey v. U.S.: Criminal Law and Procedure, Federal Income Tax Evasion, Self-Incrimination Privilege as Defense to Prosecution.

565. Batchelor v. Stein (Texas): Criminal Law and Procedure, Constitutionality of Texas Obscenity Statute, Possession of Obscene Materials, Overbreadth.

696. Law Students Civil Rights Council, Inc. v. Wadmond (New York): Civil Law and Procedure, Constitutionality of New York State Rules and Procedures for Admittance to Bar.

1142. Elkanich v. U.S.: Criminal Law and Procedure, Searches and Seizures, Narcotics, Arrest, Probable Cause, Nexus of Offense.

Mr. EASTLAND. It is astounding the number of cases which the Supreme Court cannot decide until another member is placed upon the Court.

Mr. President, I ask unanimous consent that the letter received from Prof. Charles Alan Wright of the University of Texas Law School on February 6, 1970, be inserted in the RECORD at this point.

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

THE UNIVERSITY OF TEXAS,
SCHOOL OF LAW,
Austin, Tex., February 6, 1970.

Hon. JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: I support the nomination of Judge Carswell, as I did that of Judge Haynsworth. The purpose of this letter is to urge not only that the Senate confirm Judge Carswell but that it do so promptly.

Justice Fortas resigned on May 14th of last year. For nearly nine months there has been a vacancy on the Supreme Court. This is an extremely unfortunate situation that greatly handicaps the Court in its work.

There are seven cases that were argued last term that the Court set for reargument early this term. Reargument has had to be postponed until there is a full Court. The cases are:

No. 5, Younger v. Harris.

No. 6, Boyle v. Landry,.

No. 7, Gunn v. University Committee to End the War in Vietnam.

No. 8, U.S. v. United States Coin and Currency.

No. 11, Samuels v. Mackell.

No. 13, Maxwell v. Bishop.

No. 20, Fernandez v. Mackell.

These are either cases in which the Court, with only eight members, found itself equally divided on cases that the Court considered to be so important that they should be heard by a full bench. It is impossible to to say how many other cases there may be, never yet argued, in which argument has been postponed awaiting the confirmation of a ninth Justice.

It is important for the Court and for the country that the Senate act promptly in its constitutional role of giving advice and consent to presidential nominations so that an important branch of government is not left shorthanded.

Respectfully yours,
CHARLES ALAN WRIGHT,
McCormick Professor of Law.

Mr. EASTLAND. Mr. President, this is not, by any means, the first time the President has nominated and the Senate of the United States has been called upon to consider the qualifications of this nominee for service in our highest public offices.

As early as 1958, at the age of 34, having served his Nation in war as a deck officer with Admiral Halsey in the Pacific, having established an outstanding reputation in the private practice of law, George Harrold Carswell was nominated for the position of U.S. attorney for the northern district of Florida by President Eisenhower.

In addition to the consideration given to this nomination by the President of the United States, his nomination was approved by both Senators from the State of Florida, considered by the Senate Judiciary Committee, reported favorably to and confirmed by the Senate. Upon his appointment by the President the nominee became the youngest U.S. attorney in the country.

In 1959, having established a notable reputation as a trial attorney and prosecutor in the Federal courts, the nominee was again considered and nominated by President Eisenhower for the position of U.S. district judge for the northern district of Florida. His nomination to this office was again approved by both Senators from his native State.

His nomination was further considered by the American Bar Association's Standing Committee on the Federal Judiciary, which notified the committee that upon investigation and consideration, the nominee was "well qualified" for the position.

Once again his nomination was considered by the Senate Judiciary Committee, which, after public hearings and due consideration in executive session, reported the nomination to the Senate with the recommendation that it be confirmed. Once again Harrold Carswell was confirmed by the Senate. Upon appointment by the President, the nominee became the youngest U.S. district judge.

Last year another President and another administration, having considered the public record and qualifications of this nominee, elevated Harrold Carswell to the Fifth Circuit Court of Appeals. Once again the President's choice was ratified by the American Bar Association's Standing Committee on the Federal Judiciary, which, after investigation and consideration of his record as a district judge, found the nominee "well qualified."

That term "well qualified" means something, Mr. President. Judges are rated in several ways. They gave him, not just a "qualified" rating, but a "well-qualified" rating.

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

Mr. EASTLAND. For a question.

Mr. BAYH. I do not like to interrupt the Senator's remarks. I am listening with a great deal of interest, but is it not true that Judge Carswell received a rating of "well qualified" to the appellate court when "exceptionally well qualified" was the highest qualification he could have received?

Mr. EASTLAND. Prior to the nomination of Arthur J. Goldberg to be Associate Justice of the Supreme Court, the American Bar Association's Standing Committee on the Federal Judiciary had one system for rating all nominees to the district and circuit courts, as well as nominees to be Chief Justice of the United States and Associate Justice of the Supreme Court of the United States. All nominees for lifetime judicial positions were rated as follows:

First, "exceptionally well qualified."

Second, "well qualified."

Third, "qualified."

Fourth, "not qualified."

In 1962, with the nomination of Arthur Goldberg to be Associate Justice, the ABA decided to discontinue the use of this rating system as to nominations to the Supreme Court.

The reasons for this change are stated in a letter I received on September 7, 1962, from Robert W. Meserve, chairman of the ABA Standing Committee on the Federal Judiciary. The letter speaks for itself and states as follows:

AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON FEDERAL JUDICIARY,
September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, United States Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Thank you for your telegram affording this committee an opportunity to express an opinion or recommendation on the nomination of Arthur J. Goldberg of Illinois to be an Associate Justice of the Supreme Court of the United States.

Our committee, as constituted at the time of the nomination, is of the view that Mr. Goldberg is highly acceptable from the viewpoint of professional qualification.

Since the form of this opinion differs from that previously used with regard to judicial nominations, a few words of explanation may be in order.

This committee has conceived its responsibility to be to express its opinion only on the question of professional qualification, which includes, of course, consideration of age and health, and of such matters as temperament, integrity, trial and other experience, education, and demonstrated legal ability. We intend to express no opinion at any time with regard to any other consideration, not related to such professional qualification, which may properly be considered by the appointing or confirming authority. This position is, of course, not in any way confined to Secretary Goldberg's case, or prompted by his nomination.

Furthermore, the committee is now of the opinion that, as to nominations for the office of Justice of the Supreme Court it would be unwise for the committee to continue to attempt to give comparative ratings such as "qualified," "well qualified," "exceptionally well qualified," which we use generally in our reports to your committee. As to nominations to this Court, we wish to confine ourselves to a statement that the candidate is, or is not, acceptable from the viewpoint of professional qualification without, in the future, the use of any adjective which might suggest a comparative rating. Once again, this is a matter which has been the subject of discussion in the committee for some time, and the decision to limit ourselves in this fashion is not related in any way to this particular nomination.

I trust that this explanation is adequate

and am gratified that your committee continues to ask for our opinion on such matters.

With kind regards.

Sincerely,

ROBERT W. MESERVE,
Chairman.

Thus, from the Goldberg nomination through the Haynsworth nomination the ABA had only two ratings for nominees to the Supreme Court: "highly acceptable from the viewpoint of professional qualification" or "not acceptable from the viewpoint of professional qualification."

During and following the Haynsworth nomination, but prior to the Carswell nomination, I understand there was some dissatisfaction among members of the Standing Committee on the Federal Judiciary as to the rating "highly acceptable from the viewpoint of professional qualification." It is my understanding that some members believed that rating to be too vague and meaningless.

Because of that dissatisfaction it was agreed that the committee would change its rating to "qualified" and "not qualified" as to nominees to the Supreme Court.

Following that decision the first nominee to the Supreme Court to be rated as such was Judge George Harrold Carswell to be Associate Justice of the Supreme Court, who was found to be "qualified" by letter to the committee of January 26, 1970, from Judge Lawrence E. Walsh, chairman, American Bar Association Standing Committee on the Federal Judiciary. I read that letter earlier in my remarks, and it appears on page 1–2 of the transcript.

Mr. BAYH. I appreciate the chairman's clarification of that point.

Mr. EASTLAND. At this time the Leadership Conference on Civil Rights notified the committee of its opposition to the nomination and requested to be heard. A public hearing was scheduled but no adverse witnesses appeared. At that time the committee extended to the Leadership Conference on Civil Rights additional time to file their objections. This was later done in the form of a letter accompanied by a memorandum concerning the nominee's civil rights decisions, prepared by Joe Rauh, and the so-called Curzan report, a doctoral dissertation prepared by a graduate student at Yale University which purported to show that the nominee was not pro-Negro or procivil rights.

The nomination was considered by the Judiciary Committee on June 18 and ordered favorably reported to and was subsequently confirmed by the Senate.

In January of this year, for the fourth time, this nominee was nominated by a President of the United States for a high position in our judicial system. The President, after due consideration, nominated George Harrold Carswell to be Associate Justice of the U.S. Supreme Court.

Notice of public hearings was placed in the CONGRESSIONAL RECORD on January 19 of this year notifying any interested citizen of the time, place, and date of the hearings and notifying the public that any witness desiring to be heard should notify the committee in writing prior to the opening of these hearings. Every citizen who gave timely notice, regardless of their standing or status in life, whether they spoke only for themselves or as representatives of a group or organization, was heard.

Other witnesses were called as the hearings progressed at the request of various Senators supporting and opposing the nomination.

Hearings were held on the 27th, 28th, and 29th of January and on the 2d and 3d of February. During this time 23 witnesses, including the nominee, were heard, and numerous letters, statements, and exhibits were admitted into the record.

Every courtesy and consideration was extended to each witness who testified. On a number of occasions committee rules requiring written statements of testimony were waived for witnesses opposing this nomination. No effort was made to limit the testimony of any witness no matter how irrelevant, immaterial, or disinteresting it might have been. Furthermore, the hearings were not closed until all members of the committee were satisfied that the record was complete and that all relevant and material testimony had been heard.

In addition to this, the committee afforded still another accommodation to those who still desired to express themselves for the record. In order to do so, the official transcript was left open for several days in order that additional statements and/or exhibits might be filed and printed in the body of the record. A number of statements, letters, and exhibits were accepted and printed during this extension of time.

Nor was this nomination taken up by the Judiciary Committee until the official printed record had been delivered to each Senator several days in advance, in addition to the fact that unofficial printed transcripts had been furnished to each member of the committee the morning following each day's testimony.

It should be noted here that prior to the opening of these hearings, Judge Carswell, without hesitation or complaint, submitted, in response to a request from the senior Senator from Indiana, joint income tax returns for himself and his wife for the entire period during which he has served in public office. In addition to that Judge Carswell filed with the committee a full financial statement as to his current assets and liabilities. With the nominee's consent these tax returns and financial records were made available for inspection by any Senator on the committee or his designated representative. A number of Senators availed themselves of this opportunity and obviously found nothing to the detriment of this nominee. I can say without fear of contradiction that the nominee completely cooperated with the committee in every way and promptly complied with every official request made of him.

In his testimony before the committee the nominee was subjected to a lengthy and gruelling interrogation. His response was open, forthright, and candid. His testimony was persuasive and articulate, making a favorable impression on the overwhelming majority of our Members. He was responsive to all questions put to him and his answers were clear, concise, and to the point.

Thus, Mr. President, this is the fourth time that George Harrold Carswell has been before the Senate of the United States. It is the fourth time that he has been nominated for high office by the President of the United States, and investigated and cleared by the FBI.

Let me emphasis that: Investigated and cleared by the FBI. Because when there is a full field investigation of any person who is about to be nominated, the FBI not only investigates the whole life of the man about to be nominated, but those of members of his family; and the investigation is full and complete. He was approved by the American Bar Association, approved by the Senators from his native State, approved by the Senate Judiciary Committee, and recommended for favorable consideration by the Senate.

It is not enough to say that this is the fourth time this nominee's public and private life has been scrutinized and his qualifications for high office considered by the Senate. This does not take into account the fact that this nominee, as was another recent nominee to the Court, has been faced from the day of his nomination with a hostile press.

This is not to say that the press viewed this nomination in an objective light and was turned hostile by subsequent revelations adverse to the nominee. Rather, he was faced with a press that started out with both the motive and intention "to get" this nominee. Immediately following the announcement of his nomination, scores of reporters were sent South to investigate with a vengeance every detail of his public and private life. They flooded the courthouse in Tallahassee and the record center in Atlanta, where every file of every case Judge Carswell sat on was studied for some evidence with which to discredit him.

Newspapers and records of real estate transactions were searched for some evidence to use against his confirmation. Every friend, associate, and casual acquaintance of the nominee was interviewed by professional hatchetmen whose only objective was to find some example of wrongdoing upon which to build a case of impropriety or insensitivity to the statutes or the American Bar Association's canons of judicial ethics.

They found nothing. Frustrated at this stratagem, they had no alternative but to look for other causes, other reasons upon which a case could be justified for rejecting this nomination. Thus the line was taken that the nominee was mediocre, as well as insensitive to the rights of minorities and convicted felons.

Now, Mr. President, this brings us to the question: Aside from the public clamor created by those determined to prevent the President from giving balance to the Supreme Court as he pledged to the American people in his campaign for the Presidency, what kind of man does the record show George Harrold Carswell to be?

First, let us inquire as to the opinion of the American Bar Association's Standing Committee on the Federal Judiciary and determine upon what criteria their recommendation is based. Judge Walsh's

letter to the committee of January 26 of this year, expressed to the chairman, speaks for itself. It states as follows:

DEAR SENATOR: Thank you for your telegram of January 21, 1970, inviting the comments of the American Bar Association Standing Committee on the Federal Judiciary with respect to Judge G. Harrold Carswell, who has been nominated for the office of Associate Justice of the Supreme Court of the United States. The Committee is unanimously of the opinion that Judge Carswell is qualified for this appointment.

This committee has previously investigated Judge Carswell for appointment to the District Court in 1958 and for appointment to the Court of Appeals for the Fifth Circuit in 1969. On each occasion Judge Carswell was reported favorably for these appointments.

The Committee has now supplemented these investigations within the time limits fixed by your telegram.

With respect to nominations for the Supreme Court, the Committee has traditionally limited its investigation to the opinions of a cross-section of the best informed judges and lawyers as to the integrity, judicial temperament and professional competence of the proposed nominee. It has always recognized that the selection of a member of the Supreme Court involves many other factors of a broad political and ideological nature within the discretion of the President and the Senate but beyond the special competence of this Committee. Accordingly, the opinion of this Committee is limited to the areas of its investigation.

In the present case the Committee has solicited the views of a substantial number of judges and lawyers who are familiar with Judge Carswell's work, and it has also surveyed his published opinions. On the basis of its investigation the Committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States.

Respectfully yours,

LAWRENCE E. WALSH,
Chairman.

Now, it is true that the opponents of the nomination have, by inference, questioned the integrity and sincerity of Judge Walsh and his distinguished colleagues who serve on the American Bar Association's standing committee on the Federal judiciary. For example, Stephen Schlossberg, general counsel for the UAW told the committee:

Predictably Judge Walsh and his blue ribbon panel have stamped their approval on this undistinguished nominee.

Mr. Schlossberg and others would have us believe that Judge Walsh and the members of the committee are no more than rubberstamps for the President. Yet Mr. Schlossberg, Mr. Rauh, and other spokesmen for organizations which make up the Leadership Conference on Civil Rights filed with, vouched for, and have quoted with approval the so-called Curzan report, a doctoral dissertation by a graduate student at Yale which on its face purports to be "A Case Study in the Selection of Federal Judges, the Fifth Circuit, 1953–63".

Certainly no objective reader of the Curzan report would question her credentials as a civil rights zealot. Any scholar who has reviewed the decisions of the district judges in the fifth circuit and ranks Frank Johnson of Alabama a "segregationist" can hardly be impeached by anyone as a rabid advocate of minority rights. Yet, even Miss Curzan pays tribute to Judge Walsh in her report. As stated by Miss Curzan:

Indeed, Judge Walsh, who replaced Rogers as Deputy Attorney General in 1958, had been a district judge in the Second Circuit when he was persuaded to leave the bench to come to the Department of Justice to oversee the recruitment of judges. He left the bench only because he felt that selecting competent federal judges was one of the few jobs more important than sitting on a federal court.

This is the same Judge Lawrence Walsh who was Deputy Attorney General when President Eisenhower nominated George Harrold Carswell to the district court of northern Florida and, might I add, the same Lawrence Walsh who was Deputy Attorney General when President Eisenhower nominated the most liberal judges, both district and appellate, in the fifth circuit today.

This is the same Judge Walsh whose standing committee on the Federal judiciary has within the past year found Judge Carswell "well qualified" for elevation to the Firth Circuit Court of Appeals, and in January of this year approved his nomination as Associate Justice of the U.S. Supreme Court.

We have considered the opinion of the American Bar Association's Standing Committee on the Federal Judiciary reached after obtaining "the opinions of a cross-section of the best informed judges and lawyers as to the integrity, judicial temperament, and professional competence of the proposed nominee" and "having solicited the views of a substantial number of judges and lawyers who are familiar with Judge Carswell's work" and having themselves surveyed "his published opinions."

Now, Mr. President, let us consider the views of those who know Judge Carswell best, his colleagues on the Fifth Circuit Court of Appeals. Perhaps they are in the best position of anyone to judge the nominee because they have reviewed his decisions during his tenure as a district judge and have served with him as a fellow member of the Fifth Circuit Court of Appeals.

These are independent men of different philosophies, with lifetime appointments to the second highest court in the land. They are financially secure for life and can expect no further elevation within our system of Federal courts other than elevation to the Supreme Court itself. They have no reason or motive to mislead us.

To the contrary, these are men who share a common respect and concern for the prestige of the Supreme Court of the United States. They have no ax to grind, no cause to advance, no reward to gain by any statement they might make for or against this nominee.

Now I call the Senate's attention to a speech delivered on the Senate floor on February 16 by the distinguished senior Senator from Maryland wherein he named a number of judges on the Fifth Circuit Court of Appeals, who are, in his own words, "imminent constitutional lawyers and who have demonstrated that they are judicious men, able to give any man a fair and impartial hearing."

Two of Judge Carswell's colleagues named by the distinguished senior Senator from Maryland were Judge Bryan Simpson and Judge Robert A. Ainsworth.

I agree with the senior Senator from Maryland when he describes these two eminent jurists, regardless of their legal philosophies, as "judicious men, able to give any man a fair and impartial hearing," and might I add that they are willing to give Judge Carswell "fair and impartial" consideration as nominee for Associate Justice of the Supreme Court.

Now what do these two judges say about George Harrold Carswell as a nominee for Associate Justice of the United States? Judge Bryan Simpson, in a letter to the committee of January 22, states as follows:

MY DEAR SENATOR EASTLAND: The purpose of this letter is to attest to you and the members of your committee, for whatever value it may have, my personal judgment of the qualifications of U.S. Circuit Judge G. Harrold Carswell to become an Associate Justice of the United States Supreme Court.

I have been closely associated with Judge Carswell as a brother Florida Federal judge since he became a district judge in the spring of 1958. We worked closely together over the years. In recent months that association has continued on the Court of Appeals. I knew him slightly, but mainly by reputation, in the early fifties when he was U.S. Attorney for the Northern District of Florida.

He possesses and uses well the requisite working tools of the judge's trade: industry, promptness, learning, attentiveness and writing skills. He is a competent and capable judicial craftsman, experienced in the diverse and complex areas of federal law as well as the almost limitless variety of cases coming to us under the diversity jurisdiction. In the six or seven months he has been a member of our Court and in extensive service thereon as a visiting judge over the prior years, he has shown a steady capacity for high productivity without the sacrifice of top quality in his work.

More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an open-minded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices. I have always found him to be completely objective and detached in his approach to his judicial duties.

"In every sense, Judge Carswell measures up to the rigorous demands of the high position for which he has been nominated. I hope that the Judiciary Committee will act promptly and favorably upon his nomination. It is a privilege to recommend him to you without reservation.

With kind personal regards, I am,

Sincerely,

BRYAN SIMPSON.

Mr. President (Mr. BYRD of West Virginia), let me say here that Judge Simpson, by those who judge the philosophy of a man, is considered to be a liberal judge.

Judge Robert A. Ainsworth, Jr., in a letter of January 23, says:

GENTLEMEN: I submit for your favorable consideration the recommendation for confirmation of Judge G. Harrold Carswell to be

a Justice of the Supreme Court of the United States. Judge Carswell is my colleague on the United States Fifth Circuit Court of Appeals. I have known him prior to this time as a Federal District Judge. He has served as a member of the Judiciary for more than eleven years. He is a person of the highest integrity, a capable and experienced judge, an excellent writer and scholar, of agreeable personality, excellent personal habits, fine family, a devoted wife and children, and relatively young, as judges go, for the position to which he has been nominated.

In my view, Judge Carswell is well deserving of the high position of Supreme Court Justice and will demean himself always in a manner that will reflect credit upon those who have favorably considered his qualifications. Undoubtedly he will be an outstanding Justice of the Supreme Court and will bring distinction, credit and honor to our highest court.

Those of us who have known him for so many years as a capable and efficient Federal Judge feel an obligation to inform you of the high opinion which we entertain of his ability and qualifications. I am very glad to give him the highest possible recommendation and sincerely trust that the Senate will look favorably upon him and grant him confirmation.

Sincerely,

ROBERT A. AINSWORTH, Jr.,
U.S. Circuit Judge.

The committee also heard from Judge Elbert B. Tuttle concerning this nomination. One could hardly name on one hand the most liberal judicial activists in our Federal system of courts without including Judge Tuttle.

Even Joe Rauh named Judge Tuttle, along with Wisdom and Brown, as men he considers "wonderful Southern judges . . . who would have been heroic additions to the Court" and judges "I could stand and cheer for."

Yet even Judge Tuttle, in a letter to the committee of January 22, said:

My purpose in writing is that I wish to make myself available to appear before the subcommittee at its hearing on the nomination of Judge Carswell, in support of his confirmation, if the committee would care to have me appear.

I have been intimately acquainted with Judge Carswell during the entire time of his service on the Federal bench, and am particularly aware of his valuable service as an appellate judge, during the many weeks he has sat on the Court of Appeals both before and after his appointment to our court last summer. I would like to express my great confidence in him as a person and as a judge.

My particular reason for writing you at this time is that I am fully convinced that the recent reporting of a speech he made in 1948 may give an erroneous impression of his personal and judicial philosophy, and I would be prepared to express this conviction of mine based upon my observation of him during the years I was privileged to serve as Chief Judge of the Court of Appeals for the Fifth Circuit.

The committee also received unsolicited endorsements for the nominee from Judges Dyer, Bell, Thornberry, and Jones, all colleagues of Judge Carswell on the Fifth Circuit Court of Appeals. These letters speak for themselves and I ask unanimous consent that they be printed in the RECORD at this point.

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

U.S. COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT,
Miami, Fla., January 26, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR EASTLAND: I commend to you and to your Committee Judge G. Harrold Carswell for confirmation as an Associate Justice to the Supreme Court of the United States.

I have enjoyed the privilege of serving with Judge Carswell on the Court of Appeals for the Fifth Circuit since he was appointed to our Court last June. He has discharged his judicial responsibilities with dispatch but always with painstaking concern that his approach to a case was impartial and that the decision he reached was the result of exhaustive research, analytical reasoning, and a careful consideration of the precedents.

Judge Carswell has exemplified these outstanding judicial characteristics during his long career as a district judge. His many attributes as a judge and as an individual are too numerous to attempt to chronicle. Suffice it to say that his election by all of the judges in the Fifth Judicial Circuit as their representative to the Judicial Conference of the United States is evident of the high respect in which he is held.

While the Fifth Circuit will sorely miss Judge Carswell, the Supreme Court and the country will be the beneficiaries of his great judicial talent and vigor.

With my continued high esteem,

Sincerely,

DAVID W. DYER.

U.S. COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT,
Jacksonville, Fla., January 23, 1970.

Hon. JAMES O. EASTLAND,
Chairman of the Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I regard Harrold Carswell as eminently qualified in every way—personality, integrity, legal learning and judicial temperament—for the Supreme Court of the United States.

With regards, I am

Sincerely yours,

WARREN L. JONES.

U.S. COURT OF APPEALS
FOR THE FIFTH CIRCUIT,
Austin, Tex., January 22, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Committee on Judiciary,
U.S. Senate,
Washington, D.C.

MY DEAR MR. CHAIRMAN: I trust that it is not presumptuous of me to express the hope that the Senate of the United States will advise and consent to the appointment of Honorable G. Harrold Carswell to be Associate Justice of the Supreme Court of the United States.

I have known Judge Carswell from the time I began to serve as United States District Judge. The first time I sat as Circuit Judge, Judge Carswell, as an invited District Judge, was a member of the same panel. Since he became a member of the Fifth Circuit Court of Appeals, he and I have been members of the same Administrative and Screening Panel of our Court. During these years, I have had an opportunity to observe and know him as a Judge and as a man.

Judge Carswell is a man of impeccable character. He is dedicated in his work and vigorous in its application. As a member of our Court, his volume and quality of opinions is extremely high. He has had an experience which adds to his numerous qualifications to be Associate Justice, as a lawyer, as United States Attorney, as United States District Judge and, now, as a Circuit Judge. As the record shows, he has had considerable experience on the Court of Appeals, having sat with our Court as an invited District Judge for eleven weeks before he was appointed to the Fifth Circuit. Judge Carswell has the compassion which is so important in a judge.

I believe Judge Carswell possesses the professional and judicial qualifications to be a distinguished Associate Justice of the Supreme Court of the United States.

Respectfully yours,

HOMER THORNBERRY,
U.S. Circuit Judge.

U.S. COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT,
Atlanta, Ga., January 26, 1970.

Re Hon. G. Harrold Carswell.

COMMITTEE ON THE JUDICIARY,
U.S. Senate,
Washington, D.C.

DEAR SIRS: This statement is in support of Hon. G. Harrold Carswell whom you are now considering for confirmation as an Associate Justice of the Supreme Court.

I have known Judge Carswell for 24 years and have frequently visited in his home as he has in mine. I am familiar with his career as a lawyer and a judge, and with his personal life. His character and integrity including intellectual honesty, is of the highest order. His intellect and ability are also of the highest order.

Judge Carswell will take a standard of excellence to the Supreme Court, based on many years of experience as a trial judge and the equivalent of two years as a circuit judge (considering sittings with the Fifth Circuit as a district judge), which will substantially contribute from the inception to that court. His particular experience cannot be matched by anyone presently on the court and will fill a need now existing on that court.

I recommend Judge Carswell for confirmation without any hesitation or reservation whatever.

Yours sincerely,

GRIFFIN B. BELL

Mr. EASTLAND. Mr. President, might I ask, Mr. President, what finer endorsement could the nominee have received from his colleagues than his election in April 1969 by the circuit and district judges of the fifth circuit as their representative to the Judicial Conference of the United States. This group of distinguished lawyers and judges includes every shade of judicial philosophy, from the most conservative view of strict construction and judicial restraint to the most liberal judicial activist in the Federal system of courts.

Yet, when they were called upon to select a man to represent them at the very judicial conference which would consider new rules of judicial ethics, financial disclosure, and permissible income from off-the-bench employment, they chose Judge George Harrold Carswell. These are men, most of whom have known the nominee both personally and professionally, and have judged him on that basis.

The committee also heard from several distinguished members of the Florida Bar Association. Mr. Mark Hulsey addressed the committee on behalf of the Florida Bar Association and informed us that the nominee had been unanimously endorsed by a written poll of the 41 members of their board of governors. Not only did Mr. Hulsey testify as the president and official representative of the Florida Bar Association, but on the basis of having known Judge Carswell "per-

sonally for over 17 years—on my observations of him as U.S. attorney when I was an assistant U.S. attorney—as a trial lawyer, practicing before him in his court."

In addition to praising Judge Carswell's integrity and professional ability as a lawyer and judge, Mr. Hulsey directed the following remarks to the charge of racism which had been raised earlier in the hearings. As stated by Mr. Hulsey:

And, Mr. Chairman, may I make just one last comment. If this were not so serious, this charge of racism against Judge Carswell, it would almost be funny. By that I mean it is certainly ironic, because you know in Florida many people regard certain parts of the northern district of Florida as a little bit to the right of Louis the 14th, and I can tell this committee in all sincerity and honesty that Harrold Carswell has displayed unusual courage I think and faithfulness to the law that he serves in his civil rights rulings, in an altogether hostile climate.

I think he is a very strong man. I was shocked to read the speech, the young man's speech he made, because in all of my dealings with Harrold Carswell including the *Brooks* case I would have thought he was just the opposite, and I would think most lawyers and most people who had dealings with him in Tallahassee feel that he is indeed a fine judge. He believes in liberty and justice for all, and there is no two ways about it.

Mr. Hulsey also directed his attention to several other charges which have been raised against Judge Carswell and I will refer to those remarks at a later point.

The committee also heard from the Honorable Leroy Collins, distinguished Florida attorney, former Governor of Florida, and former Director of the Community Relations Service, and later Under Secretary of Commerce in the Kennedy administration. Governor Collins brought with him impeccable liberal credentials in the field of civil rights.

The senior Senator from Maryland introduced this witness with the following remarks:

The first witness I would like to make reference to is Gov. Leroy Collins of Florida, in my judgment one of the great public servants of this generation. I would like for the record to make that comment for my brother members of this committee, and to formally welcome him to testify before this committee.

It has been my privilege to know Governor Collins since I first worked for Senator Jack Kennedy in the Florida campaign for the Presidency in 1960. Since then, my every experience with Governor Collins has shown me that he is a man of the highest integrity and, a great American.

Senator Bayh noted:

Mr. Chairman, I would like to say for the record what I previously did not have the good fortune to say in this forum, that of all the public servants I have had the good fortune to become familiar with, I know of no man I respect more than the witness who is presently before us.

Governor Collins' appearance before the committee in support of the nominee was unsolicited and his testimony based upon a lifetime acquaintance with Judge Carswell both personally and professionally.

Governor Collins told the committee that he had hired the nominee right out of law school as an associate in his Tallahasee firm and of his early conviction that Harrold Carswell was destined to become an outstanding lawyer. Governor Collins' words speak best for themselves, and this is what he said:

I knew this man well as a lawyer, both while he was associated with our firm and also after he had organized this new firm of his own. I knew him then as I have continued to know him since, as a man of untarnished integrity, a man with an extraordinary keen mind, and very importantly, a man who works prodigiously. And on top of all that, he has one of the finest and keenest senses of humor of any man I have never known. He is a delightful man to be around in every sense. * * *

As you know from the record here, Judge Carswell moved through three Federal posts of duty in the succeeding 16 years after his private law practice and he stands now with this Presidential appointment you have under consideration. I feel strongly that Judge Carswell's appointment deserves confirmation. I feel this way on the basis of my personal knowledge of the man, first of all, but, more importantly, on the basis of the overwhelming judgment of the bar of my State, on the basis of the judgment of his peers on the bench, and I think this is most important, on the basis of the judgment of the Members of the Senate and of this distinguished committee based upon your prior hearings and investigations.

Now, I listened to most of the questions and the testimony yesterday, Mr. Chairman, and in precious little of it did I feel that there was any substantive challenge of Judge Carswell's actual fitness and competence to serve on our highest court.

Not only was the testimony of these two distinguished Florida attorneys unsolicited and based upon personal and professional association with the nominee, but it stands uncontradicted by any member of the Florida Bar Association or by any attorney who has regularly practiced in Judge Carswell's court.

The committee was obviously impressed by the foregoing testimony and endorsements from these distinguished Federal judges and lawyers. Not only do they know the nominee, but they are in a position to understand the criteria by which the ability of a trial judge should be measured.

Since most, if not all, of the criticism by Judge Carswell's opponents has been directed to his service as U.S. district judge, I am compelled to here interject a few remarks which might place the consideration of the nomination in clearer perspective and perhaps explain, in part, the different judgment passed upon his record by judges and lawyers on the one hand and certain law professors on the other.

Most of Judge Carswell's professional life has been spent as U.S. district judge for the northern district of Florida. His duties and responsibilities have been those of a trial judge.

As a trial judge the nominee has been called upon day after day, week after week, month after month, and year after year to preside over trial after trial. We have in this country an adversary system of law in which the trial judge bears the heavy burden and responsibility for seeing justice done.

Unlike appellate judges or professors of law, his work is done in open court, before adversary litigants who are usually supercharged emotionally, convinced of the justice of their cause and often hostile toward the court as well as toward each other. The conduct of the trial judge is open to careful scrutiny by lawyers professionally committed to exhaust every legal remedy and employ every legal stratagem to win for their clients. It is commonplace for disappointed litigants and even lawyers to place blame for failure upon the trial judge.

As we have seen clearly demonstrated in the hearings upon the nomination of Judge Carswell and as I have seen demonstrated in the consideration of hundreds of nominations where trial judges are elevated to the appellate courts, disappointed litigants and immature lawyers often leave the courtroom in a bitter and vengeful mood. It is easier to cover up professional incompetence or lack of merit in a case by blaming the judge.

The Judiciary Committee seldom considers the elevation of a trial judge to a higher court without receiving impassioned and embittered letters of protest from lawyers and parties who have lost cases before him.

It is irrelevant that the trial judge possess the scholarship to find the law; he must know the law applicable to the facts and case at hand. During the course of a trial he is called upon to rule instantly on countless motions and objections. Once a motion is granted, an objection sustained, a jury instruction given from the bench, he cannot erase or second guess. Any mistake or combination of misjudgments along the long and tortuous road from a suit filed to a verdict rendered may prove reversible error, aborting and delaying justice as well as increasing the expense to litigants.

Not only must the trial judge rule, he must preside as well. He must possess the character, impartiality, patience, and leadership to keep a trial moving along in order and on the track. He must be in control of his court. He must maintain the respect and attention of lawyers, litigants, jurors, and even spectators, all the while balancing the scales of justice in order to protect the rights of all parties concerned.

Judge Carswell, as a trial judge, could not share the heavy strain, burden, and responsibility with fellow members of a panel or en banc court.

Those who have known Judge Carswell best, the lawyers who practice in his court, the appellate judges who reviewed his trial records, have shown the nominee to be a lawyers' lawyer, a judges' judge, a man of the law who has labored tirelessly in the vineyards of our judicial system.

Judge Carswell's record reveals a clear and accurate mind, a well-reasoned, plain spoken approach to the law. His decisions reflect more concern for immediate relevance than coining a cliche, more concern for resolving the rights of the litigants at hand than turning a clever phrase, more concerned with seeing justice done and announcing his decisions in a manner clear, concise, and to the point than flights into literary elegance.

Mr. President, a review of Judge Carswell's record, far from reflecting a mediocre man, reveals a trial judge in the best tradition of our adversary system of litigation. If Judge Carswell's record on the trial bench reflects a reluctance to enunciate new and novel legal concepts, to break new constitutional ground, or to anticipate new directions which may be taken by the appellate courts or legislative bodies, it is to his credit.

Strict construction and judicial restraint are qualities which should be demanded of any trial judge, whatever his judicial philosophy. Judge Carswell's decisions reflect these qualities, they reveal a jurist more concerned with the law as a fact than phrase, more interested in substance than form or style or manner.

Disraeli once described Gladstone as a "sophisticated rhetorician, inebriated with the exuberance of his own verbosity, and gifted with an egotistical imagination" whose main purpose was "to glorify himself."

Judge Carswell is not that man.

And while his decisions are unappreciated by Dean Pollak, they are appreciated by learned lawyers, judges, and legal scholars who really understand the role of a trial judge in our system of justice.

While Judge Carswell has been dismissed as mediocre by Dean Pollak, who by his own testimony based his opinion upon newspaper accounts of the hearing and requested to testify against the nomineee before, not after, he thumbed through some of his printed opinions, other legal scholars who based their testimony on a personal and professional acquaintance with the nominee gave another view.

The committee heard, for instance, from a truly distinguised law professor from Yale, James William Moore. Professor Moore's testimony was also unsolicited and based upon personal as well as professional knowledge of the nominee. I ask unanimous consent that a short biography of Professor Moore be inserted in the RECORD at this point:

James William Moore. Born Condon, Oregon Sept. 22, 1905; grew up in Montana; higher degrees—J.D., University of Chicago, J.S.D., Yale University, L.L.D., Montana State University; taught at the law schools of Utah, Minnesota, Chicago, Texas, and Yale, and holds a named Chair, Sterling Professor of Law, at Yale.

First recipient of Learned Hand medal, 1962.

Presently a member of the Supreme Court's standing Committee on Practice and Procedure. Prior thereto was chief research assistant for the Supreme Court's original Advisory Committee on Civil Rules and then later a member of that Committee. From 1944–48 was consultant on the revision of the Judicial Code.

Co-reporter in 1937 on bankruptcy and reorganization to the International Academy of Comparative Law, The Hague.

Author of: Moore's Federal Practice; Moore's Commentary on the Judicial Code; Collier on Bankruptcy (14th edition); Moore's Bankruptcy Manual; and other treatises and casebooks in the federal field of judicial administration, bankruptcy, jurisdiction and practice.

Of counsel for the State of Texas in the Texas 'Tidelands' oil litigation; counsel for the reorganization Trustees (now a single Trustee) of The New York, New Haven & Hartford Rail Co. since mid-1961; legal consultant for public groups and private lawyers.

Member of the bars of: the State of Montana; Supreme Court of the United States; Court of Apepals for the Second Circuit; United States District Courts for the states of Montana, Connecticut, and Southern District of New York, Interstate Commerce Commission.

Professor Moore told the committee:

I testify on behalf of Judge Carswell on the basis of both personal and professional knowledge.

About 5 years ago a small group of jurists, educators, and lawyers consulted me, without compensation, in connection with the establishment of a law school at Florida State University at Tallahassee. Judge Carswell was a very active member of that group. I was impressed with his views on legal education and the type of school that he desired to establish: a law school free of all racial discrimination—he was very clear about that; one offering both basic and higher legal theoretical training; and one that would attract students of all races and creeds and from all walks of life and sections of the country. Judge Carswell and his group succeeded admirably. Taking a national approach they chose, as their first dean, Mason Ladd, who for a generation had been dean of the college of law at the University of Iowa and one of the most respected and successful deans in the field of American legal education. And from the vision and support of the Carswell group has emerged, within the span of a few years, an excellent, vigorous law school.

For example, every member of the first graduating class of Florida State University Law School of about 100 passed the bar examination on the first go round. That makes my law school look like a member of the bush league.

From those and subsequent contracts I have formed the personal opinion that Judge Carswell is a vigorous young man of great sincerity and scholarly attainments, a good listener who wants to hear all sides, moderate but forward looking, and one of growth potential.

I have a firm and abiding conviction that Judge Carswell is not a racist, but a judge who has and will deal fairly with all races, creeds, and classes. If I had doubts, I would not be testifying in support, for during all my teaching life over 34 years on the faculty of the Yale Law School I have championed and still champion the rights of all minorities.

From the contacts I have had with Judge Carswell, and the general familiarity with the Federal judicial literature, I conclude that he is both a good lawyer and a fine jurist. Called to the bar about 20 years ago he has the background of private practice, public practice as a U. S. district attorney, and that of both district and circuit judge.

And while Judge Carswell has not been a circuit judge for a long time, he has Federal appellate experience since he has sat on the court of appeals as a district judge by designation, that goes back long before he become circuit judge. In fact I recall an example of an opinion written by him as early as 1961.

Having been in each of the 50 States, and having taught in most sections of this country, I have long been impressed with this country's diversity—economic, social, moral, and ideological. In my opinion the Supreme Court should be representative of that great diversity. And I believe at this time it is highly desirable that the next Justice should come from the section where Judge Carswell was born and has lived; and that Judge Carswell should be that justice.

Professor Moore's evaluation of the nomination was endorsed by Mason Ladd, visiting professor and former dean, Florida State University, and dean emeritus, University of Iowa. As was the case of Professor Moore, Professor Ladd did not base his opinion upon newspaper clippings or a sampling of Judge Carswell's published opinions. As a matter of fact, I do not believe either of these gentlemen would have been so presumptuous. In a letter of January 21, Professor Ladd told the committee:

MY DEAR SENATOR EASTLAND: I was much pleased when I heard of the nomination of Judge G. Harrold Carswell to the position on the Supreme Court, and I wish to urge early confirmation by the Senate.

I hold Judge Carswell in the highest respect and regard him as well qualified in every way for this highest position in the law. In one sense no one is fully qualified to assume the great responsibilities of a member of the Supreme Court but I believe Harrold Carswell will come as close to filling the needs as any who will be found. The Judge is the right age to grow into this position and to become a truly great Supreme Court Justice. He has an innate sense of fairness and has an open mind in considering the problems presented to him. He is a good listener and does not approach issues with predetermined conclusions. He is a careful student of the law, is a very hard worker. He is both scholarly and practical minded. He sees issues quickly but carefully explores the authorities and legal materials involved in reaching a decision. I regard Judge Carswell as free from prejudice upon the current issues of the day and feel that he will search for the right solution based upon the law and the facts.

The experience which Judge Carswell has had upon the Federal District Court and the Circuit Court of Appeals will be invaluable background for the responsibilities upon the Supreme Court. His active interest in the work of the Judicial Conference of the United States is also important. The Judge has been much interested in legal education and had an important part in the establishment of the new College of Law at Florida State University.

Judge Carswell's interests have been primarily in the law and in his family. It is fortunate that his other activities are free from objectionable conflicts of interest.

Judge Carswell is a delightful person, he has an ideal home life, and he has a wonderful wife and family. They spend a great deal of time together. It is a pleasure to visit at their home because you both see and feel the fine quality of these people.

I have come to know Judge Carswell very well in the last four years. I had been Dean of the College of Law at the University of Iowa for twenty-seven years and upon retirement came to Florida State University to establish a new College of Law. This brought me into close contact with the Judge; I liked him and we became good friends. I hold him in the highest respect as do the members of the legal profession in the State of Florida and I think quite widely in the south. I am sure he will do well and grow in national respect as a member of the Supreme Court. I recommend his early confirmation.

Most respectfully yours,

MASON LADD,
Visiting Professor and Former Dean, Florida State University; Dean Emeritus of Iowa.

The committee further considered the statement filed by Prof. William Vandercreek of Southern Methodist University. In a letter of February 3 Professor Van-

dercreek gave this evaluation of Judge Carswell:

An examination of Judge Carswell's decisions in civil rights cases demonstrate a fair and reasoned approach in keeping with the highest standards of judicial integrity. This is a significant accomplishment particularly because, as the committee is well aware, emotionalism and fervor so pervade the sensitive area of civil rights that many well meaning persons become totally intolerant of any view other than their own. . . .

It is my firm belief that Judge Carswell's rulings are not based or influenced by race, creed, or color in any way. Judge Carswell merely rules upon the facts and issues of the cases before him.

His record unequivocally shows that he rules fairly and without regard to the fervor and emotion of those on either side. Judge Carswell's records of over 4,500 civil and criminal cases clearly demonstrates an unusual skill of addressing his ruling to the issues at hand. He emphasizes the total picture. It seems that those who criticize his rulings are merely disappointed litigants who cannot evaluate Judge Carswell fairly in the light of their zeal for their cause.

It is not important to Professor Vandercreek that Judge Carswell's record show a "zeal for civil rights" as required by Dean Pollak. What seems important to Professor Vandercreek is that "he rules fairly and without regard to the fervor and emotion of those on either side." I agree with Professor Vandercreek and I believe the Senate will likewise agree.

In every law suit, and that includes civil rights litigation there are at least two parties. It is improper for a judge to show zeal for civil rights litigants as demanded by Dean Pollak. It is proper for him to be fair and impartial to everyone regardless of what he considers to be the moral justification or legal standing of the respective parties.

I ask unanimous consent to have Professor Vandercreek's letter printed in the RECORD at this point.

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

TALLAHASSEE, FLA.,
February 3, 1970.

Re confirmation of G. Harrold Carswell.

Senator JAMES EASTLAND,
Chairman, Senate Judiciary Committee, U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Judge Carswell should be confirmed as an associate Justice of the Supreme Court. I have been a law professor at Southern Methodist University since 1959 and have been a visiting professor at Florida State University since 1968. With deference to Lowenthal, Von Alystyne and Orfield, their statements as reported in the news media, do not present a rational basis for opposing or delaying Judge Carswell's confirmation.

An examination of Judge Carswell's decisions in civil rights cases demonstrate a fair and reasoned approach in keeping with the highest standards of judicial integrity. This is a significant accomplishment particularly because, as the committee is well aware, emotionalism and fervor so pervade the sensitive area of civil rights that many well meaning persons become totally intolerant of any view other than their own.

For example, on jurisdictional grounds Judge Carswell should be praised not condemned for his ruling in *Wescher* v. *Gadsden County*. The only issue therein properly before the court involved the construction of a removal statute. The 5th circuit remanded the case for further consideration because after the district court had ruled, the 5th circuit in two cases, *Rachel* v. *State of Georgia*, 347 F2 679, gave a broad interpretation of removal jurisdiction. Subsequently in line with Judge Carswell's earlier decision the Supreme Court reversed the 5th circuit in *Greenwood*, 384 U.S. 808, and on narrower grounds affirmed *Rachel*, 384 U.S. 780.

For the Supreme Court's decision in *Greenwood*, it would be absurd to say the Supreme Court justices are racial bigots and it would be equally absurd to apply the same type of fallacious reasoning to any other jurist.

It is my firm belief that Judge Carswell's rulings are not based or influenced by race, creed or color in any way. Judge Carswell merely rules upon the facts and issues of the cases before him.

His record unequivocally shows that he rules fairly and without regard to the fervor and emotion of those on either side. Judge Carswell's records of over 4,500 civil and criminal cases clearly demonstrates an unusual skill of addressing his ruling to the issues at hand. He emphasizes the total picture. It seems that those who criticize his rulings are merely disappointed litigants who cannot evaluate Judge Carswell fairly in the light of their zeal for their cause.

The civil rights of all men must be protected and I respectfully submit that Judge Carswell's record when properly viewed is highly commendable. I say this not only as legal educator but as an attorney who has appeared in cases before the 5th circuit and the Supreme Court. (For example see habeas corpus appeal in *Brooks* v. *Beto* 366 F2d, involving the issue of whether purposeful inclusion as distinguished from purposeful exclusion of blacks on a grand jury violated many clients constitutional rights.)

Judge Carswell would bring humility and skill, which coupled with his outstanding judicial experience will provide a basis for his making a significant contribution to our highest court.

I would be pleased to testify under oath in support of Judge Carswell if the committee would be so inclined.

Respectfully,

WILLIAM VANDERCREEK.

Mr. EASTLAND. Mr. President, the committee further received letters from Joshua M. Morse III, dean of Florida State University Law School, and Frank E. Maloney, dean of University of Florida Law School. I ask unanimous consent that these letters likewise be printed in the RECORD.

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

THE FLORIDA STATE UNIVERSITY,
Tallahassee, January 22, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I write in support of the nomination of Judge G. Harrold Carswell to the position of Associate Justice of the Supreme Court of the United States.

While I have known Judge Carswell personally for only six months, I am impressed with his ability, energy, enthusiasm and dedication to duty. I feel that he approaches every case without pre-judgment, prejudice or bias. I would give him the highest recommendation for the position.

The experience as United States Attorney, United States District Judge, and United States Court of Appeals Judge will be invaluable in the duties of the new office.

I recommend highly his early confirmation.

Very truly yours,

JOSHUA M. MORSE III.

UNIVERSITY OF FLORIDA,
Gainesville, January 21, 1970.

Hon. JAMES O. EASTLAND,
U.S. Senator, Chairman, Committee on the Judiciary, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: It was with extreme pleasure that I read of the nomination of Judge G. Harold Carswell to the Supreme Court. Judge Carswell is not a graduate of this school, however, it has been my pleasure to be acquainted with the Judge for about twenty years. During that time I have observed him distinguish himself in private practice and public duties in a manner which has always reflected credit on the entire bench and the Bar of this state.

Because of the high esteem I have for the Judge's personal and professional characteristics, as I know them, I would like to add my voice of support to the many others which I am sure you have already heard favoring this confirmation.

Sincerely yours,

FRANK E. MALONEY, *Dean.*

Mr. EASTLAND. Mr. President, we have now considered the opinion of the American Bar Association's Standing Committee on the Federal Judiciary which, might I add, was unanimously reconfirmed after all of the testimony was in and after each member of the committee had an opportunity to study the full printed record.

We have now reviewed the opinions of distinguished attorneys such as Mark Hulsey and Leroy Collins, as well as the studied opinions of legal scholars and law professors whose testimony was based on both personal and professional acquaintance with Judge Carswell.

We have considered the views of those men who are perhaps best suited to judge the nominee, his colleagues on the Fifth Circuit Court of Appeals who know him both as a lawyer and a judge.

I have made some observations of my own concerning Judge Carswell's record in light of his responsibilities and duties as a trial judge.

Having done so, I believe that any fair-minded man who considers the foregoing aspects of this nomination will be compelled to conclude that the charges that have been raised against Judge Carswell are no more than diversionary tactics which their authors hope will confuse the public and the Senate as to the real issue involved. But it is not my intention to dismiss these charges out of hand, but to analyze and thus reveal them for what they are.

Now this cannot be done without some difficulty. It is difficult to determine which of these charges should be given priority because Judge Carswell's opponents cannot even agree among themselves. It is difficult to determine which of these charges they are willing to stand by and vouch for since they are unable to do so themselves.

As a matter of fact, trying to come to grips with the case which has purportedly been made against Judge Carswell is somewhat like viewing a kaleidoscope. Every time you look at it—it appears in a different pattern.

According to Time magazine of March 2, 1970, having reviewed all of the testimony and charges which have been raised, the issue boils down to "the mediocrity factor," dismissing the charge of racism as acts which "only conform to

the unfortunate facts of life in the old South" and pointing out that "Earl Warren, after all, once helped put thousands of Japanese-Americans into detention camps." Time magazine sums up the issue this way:

> While much of the argument over Carswell's nomination has centered on his questionable civil rights record, an increasing number of legal scholars and Senators are asking whether he has the kind of legal mind that would enhance the nation's highest court.
>
> A more troublesome aspect of Carswell's career is his lack of distinction on the federal bench.

Time magazine proceeds to reinforce this view by referring to an often repeated quote of Dean Pollak of Yale Law School who told the committee:

> I don't begin to suggest that I have read the entire range of his work or indeed his opinions on the court of appeals, there is nothing in these opinions that suggests more than at very best a level of modest competence . . .

Dean Pollak further told the committee:

> I submit to the committee that in nothing that I have read of the judicial work of the nominee are there any signs, and I say this with great deliberation, aware of the importance of what I am saying, are there any signs of real professional distinction which would arise one iota out of the ordinary.
>
> On the basis of the nominee's public record, together with what I have read of his work product, I am forced to conclude that the nominee has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court.
>
> I am impelled to conclude, with all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century; and this century began, as I remind this committee, with the elevation to the Supreme Court of the United States of the Chief Justice of Massachusetts, Oliver Wendell Holmes.

This issue was also raised by Mr. Schlossberg, general counsel of the UAW, wherein he testified:

> I know he has written some very pedestrian court opinions, because I have read them. I know he helped to write an application for a club, for a country club which would subvert the bill of rights of the U.S. Constitution. He has not written a law review article. He has not written a book . . .
>
> This man, who graduated from the third best law school in Georgia, I believe there are four, has not grown. To read his opinions is not to read opinions by a scholar, by a jurist, or by one who loves the law and follows the law. It is to read the opinions of a pedestrian man . . .

This is testimony which has been widely repeated and referred to with approval by the New York Times and Washington Post.

Now let us discuss for a moment the testimony of Dean Louis H. Pollak. Let me preface my remarks by recalling that Dean Pollak apologetically began his testimony saying:

> Arrogant as perhaps this seems, I wanted to come before this Committee and express my deep concern.

And having reviewed Dean Pollak's testimony, I must agree that it does indeed seem arrogant and presumptuous.

To begin with let us determine the depth and scope of Dean Pollak's knowledge in regard to the nominee.

Unlike the other witnesses who testified in Judge Carswell's behalf, lawyers, professors, and distinguished judges, Dean Pollak's testimony was not based upon his personal or professional acquaintance with the nominee. Then upon what was his harsh denunciation based?

First of all, Dean Pollak says he decided to oppose the nomination after "reading press accounts of the testimony." At this point Dean Pollak felt compelled to notify the committee of his desire to testify against the nominee. It is interesting to note that Dean Pollak requested to testify prior to the time, according to his own testimony, that he had even made a summary review of any of Judge Carswell's opinions. According to his testimony he began reading Judge Carswell's opinions on the evening that he asked to testify. Even upon his appearance before the committee it is to his credit that he admitted:

> I don't begin to suggest that I have read the entire range of his work or indeed his opinions on the court of appeals . . .

So we start off with a witness who was opposed to the nomination prior to reading any of his opinions, who did not read any of his opinions on the court of appeals, and who admits he briefly reviewed some of his opinions on the district court which were published in the Federal Supplement.

Now I understand that Dean Pollak's colleagues and proteges at Yale University consider him to be a brilliant man and I would not quarrel with that for one moment. But his testimony reminds me of an observation made by Louis Nizer in the introduction to his book, "My Life in Court." Mr. Nizer, as I recall, observed, from his lifetime as a lawyer, that preparation makes the dull appear bright and the bright brilliant.

Dean Pollak has demonstrated to us that lack of preparation makes the brilliant appear ridiculous. So even though his testimony has little bearing upon the merits of this nomination, it does contain a lesson for students of the law which may be beneficial to them, and in that light perhaps his testimony has served some purpose.

Dean Pollak has also given us an interesting lesson, an insight into the workings of the news media. If Dean Pollak has shown himself to be a poor witness, he has revealed himself as a skillful propagandist. He understands not only how to use the prestige of his title, but also undertsands the headline value of a rash, though unsupported, accusation.

Thus the careful, deliberate, and considered judgment of other witnesses who testified on the basis of their personal and professional knowledge of the nominee, and even those who testified against the nominee on the basis of having studied his record, did not receive the same attention from the news media that was paid Dean Pollak.

It is an unfortnuate fact of life, I suppose, that the actions of a zealot and the words of a demagog are more newsworthy than those of other acknowledged men of worth.

Now I do not want to belabor the testimony of Dean Pollak. Even though it has been widely quoted, it can hardly bear upon the judgment of any fair-minded man who takes the time to carefully consider it. But Dean Pollak's testimony is interesting in that it gives us some insight into the mind and motive of an extremist—in this case a man with extreme or, to use Dean Pollak's term, zealous concern for the expansion of civil rights or, in Dean Pollak's case, minority rights and criminal rights.

His quick decision to oppose the nominee and testify against him before reading a single case gives us a clearer insight into the compulsive and emotional reaction of Dean Pollak and others like him to any man or issue that can be identified along liberal-conservative lines. He reveals to us a state of mind which is shared among those within the philosophical orbit of the Washington Post-New York Times axis.

I think it is revealing, for instance, to consider Dean Pollak's attitude when questioned by Senator HRUSKA concerning the nomination fight over Judge John Parker. In reply to Senator HRUSKA, Dean Pollak refers to, "the adjectives you use in referring to Judge Parker, the brilliance, the excellence, the ability that you properly ascribe to him." Dean Pollak admits that, in regard to Judge Parker, "I thought him indeed a very able judge." Again, in reference to Judge Parker, Dean Pollak says:

> He was a very able judge, of very considerable distinction.

It is interesting to note Dean Pollak's acknowledgment of Judge Parker as a great jurist, but not surprising. 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.

In view of those acknowledged tributes, one would obviously conclude that Dean Pollak, a self-styled historian of the Court, would view his rejection as a mistake. But even in view of all this, Dean Pollak will not admit that Judge Parker's rejection was a mistake. He will only begrudgingly acknowledge that, "it has been to my mind a very real question as to whether the Senate was not in error in declining to consent to his nomination."

Again when pressed upon this subject, Dean Pollak says:

> I have long entertained doubts whether it was not a great mistake to fail to confirm Judge Parker's nomination.

But Dean Pollak cannot bring himself to admit or acknowledge that it was, in fact, a mistake.

Why?

Dean Pollak gives us a clue when he says:

> He wrote a number of opinions with which I disagree.

That is the truth of the matter. Even in the case of an acknowledged jurist of true greatness like Judge Parker, Dean Pollak and those like him simply will not admit that they have a place on the Supreme Court of the United States.

And this is the heart of the matter with regard to this nominee, "he wrote a number of opinions with which I disagree," therefore there is "a real question in my mind" whether he should hold any office of authority within our system of government.

And to show that they learn nothing and never change, consider the editorial of April 23, 1930, wherein the New York World summed up the case against John J. Parker to be Associate Justice of the Supreme Court:

> It is Judge Parker's total lack of a distinguished record of public service and the total lack of proof that he has any distinction as a jurist which seems to us above all else to justify the Senate in saying that his nomination does not measure up to the standards which the American public rightly exepcts to see attained in the nomination of a Supreme Court justice.

Now they begrudgingly admit this man they called mediocre to be, along with Learned Hand and a handful of others, to be among the truly great jurists of our time.

And it is further revealing to note that Judge Carswell is not even the first nominee they have blamed with this charge of mediocrity within the past year. When the Haynsworth nomination was sent to the Senate, the Washington Post said the President "has not distinguished himself in his first two opportunities to name judges to the Supreme Court," and called for men who were "truly distinguished."

So now we have it laid out. According to the Washington Post, Chief Justice Warren Burger was not distinguished. According to the Washington Post Judge Clement Haynsworth was not distinguished. And now, we are told that Judge Carswell is not distinguished.

If only they had the courage and simple honesty to admit that they do not regard anyone distinguished until they have adopted their views.

Thus, District Judge Frank Johnson of Alabama becomes a "truly distinguished judge" on no other basis than the fact he has followed "the line," has not written any opinions with which Dean Pollak and his friends can disagree.

Of course, the charge of mediocrity is so transparent and absurd when viewed in the light of other testimony and in light of Judge Carswell's duties and responsibilities as a trial judge that any fairminded man without an ax to grind, cross to bear, or a cause to champion, will dismiss it out of hand.

Mr. President, I will speak again later in the debate on Judge Carswell.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SPONG). Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, may I ask the distinguished Senator from Indiana if at this moment he has any other speakers in mind? We have had a quorum call that has been going on for 15 minutes. I wonder whether or not any Senator in opposition is ready to speak.

Mr. BAYH. Mr. President, we have a colleague who wishes to speak but who has had difficulty getting here from a luncheon appointment. I trust he will arrive in short order. In his absence, if I may seek recognition, I might make one or two observations with respect to the remarks made earlier by two of our colleagues.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, I listened with a considerable amount of interest to the comments made by our distinguished colleagues from Colorado (Mr. ALLOTT) and Mississippi (Mr. EASTLAND), the distinguished chairman of the Committee on the Judiciary, in support of the nominee. I must say those two colleagues of ours make worthy advocates and strong supporters of any nomination.

I thought perhaps, on behalf of some of us who are concerned about this nomination, it might be helpful to try to put some of the points that were raised in a little different perspective, at least from the standpoint of some of us who are not in complete agreement with the points raised by the two previous speakers this morning.

Our distinguished colleague from Colorado kept discussing the fact that during the presidential campaign the now President of the United States stressed repeatedly, the need to provide a strict constructionist, someone who would provide balance to the Court. In reviewing some of the Court's decisions, I suppose it is within the realm of reason to suggest that a bit of balance is needed.

I have not yet determined in my own mind how one defines the term "strict constructionist," but I think it would not do the President justice to let his campaign speeches, and indeed the pledge that he made upon being elected, stand with just the term "strict constructionist," because he went further, and I think accurately so, and suggested that he was going to nominate strict constructionists who were men of distinction.

I would hope that the boyhood ideals of the President to whom he referred repeatedly, men like Justice Cardozo, Justice Brandeis, and Justice Holmes, would be more in the stature of men of distinction than the nominee presently before us.

I personally do not quarrel with the President's right to choose a strict constructionist, but I think there must be strict constructionists who would not arouse the deep concern of literally hundreds of learned lawyers, law school deans and faculty members of our institutions of higher learning across the country. That has been the result of the present nomination—deep and dedicated concern that often has not been easy for those who have signed various letters and petitions, and indeed, some advertisements that have been brought to my attention.

In fact, it has been brought to the attention of the Senator from Indiana that some persons who have signed the various documents expressing concern have been personally threatened with punitive measures, and that even one or two institutions at which they taught had been threatened with certain punitive measures, if the names were not removed and a denial were not forthcoming from the professors who had expressed their concern.

I think it is important for us to recognize that we are choosing one of nine members of the Supreme Court of this country. I would hope it would be possible for the President of the United States to find a man who was a strict constructionist, who was a man of distinction, worthy to sit on this High Bench with eight of his colleagues.

As one looks at the record of the present nominee, I wonder in my own mind whether in fact he even fits the criterion ascribed to him by our distinguished colleague from Colorado as a strict constructionist. A strict constructionist is one who does indeed try to strictly apply the law and apply the constitutional provisions involved to the facts of each case. It seems that, instead of following that principle, the nominee has tried to set out on a course of his own, not to sit passively and determine what he feels the Constitution should be, but actively to pursue his own basic philosophy as applied to the cases in question. Why else would he have been reversed as many times by the Fifth Circuit Court of Appeals—two and one-half times the rate of other southern Federal district judges—as has been the case?

Very distinguished adversaries, if I may categorize them as that, the Senator from Colorado and the Senator from Mississippi, made much of the fact that this nominee had been before our Judiciary Committee and before the Senate on three previous occasions. I think that is accurate.

But I call attention to the fact that on the first occasion, when the nominee was nominated as a Federal district attorney, there were no hearings at all held by any committee. The second time, when the then district attorney was nominated to the post of district court judge, the record of the hearings, which I have before me, discloses that the committee met at 10:40 and adjourned at 10:55 the same day. In other words, there were 15 minutes of hearings held. The same is true of the record at the time the nominee was proposed for the circuit court of appeals.

I think it is fair to say that, rightly or wrongly, the only time the Senate of the United States has had the opportunity thoroughly to explore the qualifications of the present nominee is now. And when a man is nominated for a position on the Supreme Court, it is only fair to suggest that his record on the bench, his past life, and what he stands for should be subject to closer scrutiny than when he is nominated for a lower post. I think that, to be consistent, he should have been held to the same standards; and perhaps the Senate erred in not finding earlier some of the information which was disclosed only after the nomination to the High Court was made.

The Senator from Mississippi, the distinguished chairman of the Committee

on the Judiciary, has provided for the RECORD the number of cases which have been postponed as a result of one judgeship being vacant. Mr. President, this is also a matter that concerns the Senator from Indiana. But I wonder if the the Senate is the body totally responsible for that; because, indeed, if the President had sent down the name of a different nominee on the first occasion, or even this time, I think our experience with the confirmation of the nomination of present Chief Justice Burger would reasonably lead one to believe that another nomination might well have been confirmed a long time ago.

Although I am concerned about the number of cases that have been postponed, and the fact that it is incumbent upon us, as quickly as we can consistent with the responsibility we bear, to fill this vacancy, we must recognize that whom we appoint is at least as important as when we appoint him; and that the present nominee, if confirmed, will probably sit on that Court for 25 years, long after the man who nominates him leaves the White House, and long after those of us who support him or oppose him will no longer be privileged to serve in this body. If history has taught us anything over the past decade or so, it has certainly taught us that the decisions of the Supreme Court have had a more far reaching and lasting effect on the course of our history and on the lives of our people than perhaps all the activities of the other branches put together. For that reason, I think it is absolutely imperative, although it is important that we fill the vacancy as rapidly as we can consistent with our responsibility, that we do not overlook the fact that this is an appointment for life. It is important that we get the best man we can to put on that great bench.

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. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. PROXMIRE. Mr. President, on January 27 of this year I announced in this Chamber that "I will vote against Judge Carswell for the Supreme Court, because Supreme Court appointees should meet a standard of excellence, and Carswell does not."

I pointed out then, Mr. President, that the Supreme Court is one of the three coequal branches of the Federal Government, enjoying enormous power, importance, and prestige. The Supreme Court is the final voice in the interpretation of the Constitution of the United States. As such, it has the power to invalidate acts of both Congress and the President.

The Supreme Court of the United States epitomizes the country's dedication to the concept of the "rule of law." In times of severe stress and upheaval, the court has stood for orderly change within the existing legal framework. The strength of the Supreme Court comes from its remarkable flexibility, which allows for expansion and development in the interpretation of the Constitution of the United States, as demanded by changing political, social, and economic values.

The Constitution of the United States has managed to serve as a framework for our form of government longer than any other similar document in the history of mankind. And why? Mr. President, I think in large part the answer is because of the role of the Supreme Court. The Court has served to accommodate the existing system to change—placing the emphasis on evolution rather than revolution.

The Supreme Court has been the mainstay of hope for those Americans who felt left out of American life but who, because of the very existence of the Court, decided to try to make the system more responsive to their needs; these people looked to the Court for protection; they turned to the Court to redress legitimate grievances against outmoded philosophies in all areas from the political sphere, to economic relationships, to social customs.

In recent times the Supreme Court as well as the entire legal structure has come under sharp attack from extremist elements on both the political right and left. For this reason alone, a new appointee to the Supreme Court of the United States must have within him a quality which inspires trust and confidence. His background should not be such as to make him unacceptable to significant segments of our society.

Mr. President, I regret that Judge G. Harrold Carswell is not such a man. As I said in January:

> In my view it is not enough for a Supreme Court Justice to have no strikes against him. He must have a positive record of distinction. He must be among the very top in the legal profession. He must have demonstrably high intellect and understanding.

While we may not necessarily agree with his judicial views in a particular case, when it comes to a Justice of the Supreme Court, we should at the very least be able to respect his judgment, integrity, and intellect. We must be able to respect his reasoning processes. Above all, we must have confidence in his legal ability.

In examining Judge Carswell's credentials I found them to be "distinguished by their mediocrity. They show the heights to which an average intellect can reach by riding the coattails of political favoritism." His blatantly racist political speech in 1948, together with his continued inability to overcome his racial beliefs in reaching judicial decisions, as well as his general lack of distinction, demonstrate a shallowness in the judicial temperament so necessary for a Justice of the Supreme Court if he is to interpret and refine the Constitution as demanded by the rapid evolution of political, social, and economic values.

As I stated previously, Mr. President:

> I have regretfully come to the conclusion that Judge Carswell does not have the means or the vision to serve effectively on the Supreme Court. . . . Supreme Court nominees should meet a standard of excellence, and Carswell does not.

Though no one has argued that Harrold Carswell's record as a judge indicates any particular legal competence or brilliance, it has been said that his record indicates Carswell has some technical understanding of the law. But to become an Associate Justice of the Supreme Court of the United States, mere technical competence in the law is not enough. It is not enough to be free from moral or ethical conflicts in one's business ventures. It is not even enough to share the President's view of constitutional construction. All of these may be important, but they are not enough. An Associate Justice of the Supreme Court must have something more.

I think all of us know that with the overwhelming majority of lawyers and judges, the greatest distinction they aspire to is to be a Justice of the Supreme Court. The number of people who would like to be on the Court is very great. There are scholars representing every kind of viewpoint—conservative, liberal. There are scholars in all parts of the country. There are able lawyers and judges who would be brilliantly qualified—and I mean hundreds of them. That is why this nomination by President Nixon—who, incidentally, has made some very distinguished appointments in other areas—is so disappointing.

The appointments which a President makes to the Supreme Court can and often do affect American life long after that President's term in office expires. Two of the present members of the Court were appointed by a President who died in office 25 years ago. In making his Supreme Court selections, then, a President must look beyond the immediate political battlefield and project his vision years, even decades, ahead. What is President Nixon's attitude with regard to the Court? What role does he expect it to play?

On the question of whether the Supreme Court should interpret or make law, President Nixon said:

> Now it is true that every decision to some extent makes law; however, under our Constitution the true responsibility for writing the law is with the Congress. The responsibility for executing the law is with the Executive and the responsibility for interpreting the law resides in the Supreme Court. I believe in a strict interpretation of the Supreme Court's functions. In essence this means I believe we need a Court which looks upon its function as being that of interpretation rather than of breaking through into new areas that are really the prerogative of the Congress of the United States.

In discussing appointments to the Court, the President made it clear that it is important to get extremely qualified men on the Court. He said:

> The President cannot and should not control the decisions of the Supreme Court. On the other hand, the President does have some effect on the future of the Court because of his prerogative to appoint its members. In addition to getting an extremely qualified man, there are two important things I would consider in selecting a replacement to the Court. First, since I believe in a strict interpretation of the Supreme Court's role, I would appoint a man of similar philosophical persuasion. Second, recent Court decisions

have tended to weaken the peace forces, as against the criminal forces, in this country. I would, therefore, want to select a man who was thoroughly experienced and versed in the criminal laws and its problems.

When running for Governor of California in 1962, Richard Nixon further expanded his views of judicial appointments saying:

I think judicial appointments first should be made on the basis of the qualifications of the potential appointee. I think the recommendations of the Bar Association should be given great weight. There should also be a thorough check on the part of the Governor's staff itself supplementing the Bar Association because lawyers are not, I find, the best judges in this instance. They are good judges on technical grounds and technical qualifications but they sometimes miss other factors that can have a great bearing on the judge's appointment.

The other point that I feel very strongly about is that judicial appointments, above all others, should be made on the basis of legal qualifications rather than on the basis of party. If I have two people that are equally qualified, I obviously would hope to appoint a Republican. But there will be Democrats as well as Republicans appointed.

And again in 1968 Richard Nixon the presidential candidate said:

But my general standard I will lay out for . . . the appointment of justices, and this is going to surprise you. I think Felix Frankfurter perhaps stated it best. Felix Frankfurter was a liberal in his thinking . . . during the 1930's, and yet in his last 10 years on the Court was a strict constructionist.

It was his view that the Congress had the right and responsibility to write the laws and it was the court's responsibility to interpret the laws . . . I believe in that kind of appointment.

I'm not so concerned about whether a man is a liberal or a conservative. I am more concerned about his attitude toward the Constitution.

When President Nixon selected Chief Justice Warren Burger in May 1969, the Washington Post complimented him for not naming a personal or political friend and for setting high judicial standards for his appointees. The Post commented editorially May 25, 1969:

Aside from its self-righteous overtones, President Nixon's explanation of his appointment of Judge Burger to the chief justiceship may have an important influence on executive-judicial relations in the years immediately ahead. The President appears to have committed himself to the principle of not naming close personal or political friends or associates to the Supreme Bench. It is clear that the avoidance of cronyism in the choice of a chief justice was directly related to the Fortas case. But Mr. Nixon also said that Attorney General Mitchell and other close personal and political friends are not under consideration for the Fortas seat.

All in all, the President has set high standards for his own appointments to the bench. These standards will have fresh currency every time he has an important judgeship to fill. But the proof of high qualifications—and the ultimate test of the President's intentions—will lie not in words but in the demonstrable experience, the proven integrity, the self-evident mental capacity and the actual judicial attitudes of the President's nominees.

In an off the record interview given to reporters after the Burger appointment was announced, President Nixon said he felt it was vitally important to nominate a man to the Court who, if possible, could be approved by the Senate without violent controversy—hopefully with a strong vote of approval. In the same interview the President went on to say that of all Supreme Court Justices he most admired Justices Holmes, Brandeis, Cardoza, and Frankfurter; and that he agreed most with the famous Holmes-Brandeis dissents.

On the basis of his statements we can conclude that President Nixon would appoint men to the Supreme Court who are "strict constructionists, thoroughly experienced and versed in criminal law, and extremely well qualified." He feels strongly that judicial appointments "should be made on the basis of legal qualifications rather than on the basis of party." He is "not so concerned whether a man is a liberal or a conservative" but he is concerned about his attitude toward the Constitution. The President also finds it desirable to nominate, if possible, someone whom the Senate can approve without violent controversy.

Now in the matter of G. Harrold Carswell it can possibly be said, if a reading of his opinions reveals any legal philosophy, that he tends to be a strict constructionist. But he is far from being well versed in criminal law and he is certainly not extremely well qualified. If anything can be said of Carswell, it is that he was chosen on the basis of party rather than on the basis of legal qualifications, thus inverting the President's prescription. Since the President does not care if his nominee is liberal or conservative, Carswell's conservative racist background is no disqualification. But, unfortunately, the President's nomination does not seem to have avoided violent Senate controversy.

I am puzzled though as to why a President of the United States who chooses as his judicial idols such giants as Justices Holmes, Brandeis, Cardozo, and Frankfurter should nominate a man of the caliber of G. Harrold Carswell to the Supreme Court. In suggesting Carswell as a Supreme Court nominee, clearly the President's chief political and legal advisors failed to consider the President's own views on judicial appointments.

In August 1948, Harrold Carswell as a candidate for political office delivered a speech. In his speech, Carswell said, in part:

In the midst of all this, we look to the land of the U.S., great, prosperous, the richest and most powerful nation on earth, and ask, 'America, are you ready to resume your leadership? Are you prepared to defend it if need be your birthright?' It is a sad picture.

Foremost among the raging controversies in America today is the great crisis over the so-called Civil Rights Program. Better be called, 'Civil-Wrongs Program.'

As part and parcel of this same rotten vote-getting scheme, the F.E.P.C., the so-called Fair Employment Practices Committee, is a sham. Every businessman should realize the serious implications of such a piece of preposterous legislation. It would mean that here in Gordon, if we are hiring two telephone operators, both white, and some Negro girl applies for the job, we may get in court with the Federal Government because we have supposedly 'discriminated'. It would take thousands of Federal agents to enforce such foolish measures and we shall not tolerate it.

I am a Southerner by ancestry, birth, training, inclination, belief and practice. I believe that segregation of the races is proper and the only practical and correct way of life in our states. I have always so believed, and I shall always so act. I shall be the last to submit to any attempt on the part of anyone to break down and to weaken this firmly established policy of our people.

If my own brother were to advocate such a program, I would be compelled to take issue with and to oppose him to the limits of my ability.

I yield to no man as a fellow candidate, or as a fellow citizen, in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed.

Though he now specifically renounces and rejects these words which he finds abhorrent, the fact that remains that G. Harrold Carswell gave that speech.

Many people have attempted to pass the speech off as the speech of a youthful politician. But as Louis Pollak, dean of the Yale Law School, observed, had Carswell's speech attacked Jews or Catholics, Carswell's name would have been withdrawn as soon as this speech had been unearthed. I would like to quote from Dean Pollak's testimony before the Judiciary Committee dealing with the 1948 speech in which he not only points out that the Carswell nomination would have been withdrawn had he attacked any group other than Negroes but also shows why the analogy between Carswell and Justice Black is weak and falls flat.

I would ask the committee to address once again the significance of the nominee's now notorious speech of 1948, a speech which he, I am happy to say, has forthrightly repudiated. I do not think, I would add that I have never thought, that the 1948 speech standing alone irretrievably disqualified the nominee, but what that speech did do was to sharpen the question which this committee and the Senate faces with respect to every nominee for the Supreme Court. Has the nominee given evidence of the highest level of professional and public responsibility save only the Presidency, which lies within the gift of the American people? That is the question which is sharpened, put in sharper focus by the 1948 speech.

Here the question is sharpened in the sense that, confessedly, this nominee began his professional career with a set of beliefs wholly antithetic to the central purposes of our constitutional democracy. It might be possible to surmount such a handicap. There has been discussion by prior witnesses and by members of this committee of the example of Mr. Justice Black. Certainly a complete analogy does not lie. The Justice did have a connection with the Klan, but at very much the same time he was himself a lawyer emphatically and vigorously representing black citizens of his own State. More to the point, of course, before Justice Black was called to the Supreme Court of the United States, he had become a well-known figure of national consequence. There could hardly be doubt of what his basic principles were when he was appointed to the U.S. Supreme Court 33 years ago.

One might, I suppose, go back to the elder Justice Harlan. That distinguished Justice was, it is hard to remember it but he was, an outspoken foe of the 13th amendment to the Constitution, and yet before the Justice came to the Court he too had become a figure, a great public figure of distinction, and one whose own public views were clearly transformed into commitment to and support of the fundamental principles of the post-Civil War amendments, and so he lived to be the Justice who dissented with such distinction in the civil rights cases in Plessy vs. Fergeson.

Can we find in the present nominee any comparable demonstration? To ask the question, as Mr. Chief Justice White was wont to say, is to answer it.

I wish the committee to understand that I do not question Judge Carswell's good faith in repudiating a speech of which he and of which all of us I am sure are ashamed. What I ask is, What symbolism would attach to Senate confirmation as Associate Justice of the Supreme Court of the United States of a lawyer whose later career offers so meager a basis for predicting that he possesses judicial capacity and constitutional insight of the first rank? What symbolism, I ask, and in answering the question I remind you of the dictum of the late Mr. Justice Jackson: One takes from a symbol what one brings to it.

I put it to this committee that if the nominee's unfortunate speech, and I say this advisedly, if that speech had been an attack on Jews or an attack on Catholics, his name would have been withdrawn within 5 minutes after the speech came to light. We are asked to ignore the speech he actually gave, a speech declaring in effect that America is a whites-only country. We are asked to ignore it as a youthful indiscretion, just the kind of thing one had to say if one wanted to get ahead in Florida politics vintage 1948.

I submit with all respect that to confirm the nominee on this record is to make a statement of a different sort. That lukewarmness to the rights embodied in the Constitution, and most especially rights of black people, is not just Georgia politics vintage 1948 but American politics vintage 1970, and on that reckoning it is not Judge Carswell who is accountable, not his good faith which is in question. What is called into account is the constitutional commitment of the American people today, and most particularly on the U.S. Senate, because it is in your hands, you as Senators of the United States. It is you who must choose whether to consent to this nomination.

One gets out of a symbol what one brings to it even if that symbol is our highest court, even if that symbol is the constitution of the United States to which we all owe true faith and allegiance.

Many prominent lawyers, both practicing and teaching have come out in strong opposition to Carswell. In another part of his testimony before the Judiciary Committee, Dean Pollak said:

I submit to the committee that in nothing that I have read of the judicial work of the nominee are there any signs, and I say this with great deliberation, aware of the importance of what I am saying, are there any signs of real professional distinction which would arise one iota out of the ordinary.

On the basis of the nominee's public record, together with what I have read of his work product, I am forced to conclude that the nominee has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court. I am impelled to conclude, with all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this country; and this century began, as I remind this committee, with the elevation to the Supreme Court of the United States of the Chief Justice of Massachusetts, Oliver Wendell Holmes.

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

Mr. PROXMIRE. I yield.

Mr. LONG. Mr. President, is the Senator aware of the fact that any time a judge says he finds the law to be clear and holds it to be what the Founding Fathers always intended it to be and follows legislative history, there is nothing out of the ordinary involved. He will not be famous for doing what is obviously right.

It is when some upside down thinker upsets the law and tries to be a usurper that he does something out of the ordinary.

So, when we get down to it, when a judge is hearing cases where the law is established and clear, it should not be considered to be out of the ordinary or to appear to be out of the ordinary, having just to carry out his job.

It is when a judge seeks to change things that he attracts a great amount of attention.

Mr. PROXMIRE. Mr. President, I read the colloquy the Senator from Louisiana had yesterday with the Senator from Indiana and others. And the Senator from Louisiana is, I think, without peer in the Senate for his eloquence and persuasiveness. I have said that a number of times and I feel it. But I simply cannot understand how the Senator with his eloquence can say that we ought to confirm a man's nomination for the Supreme Court because he is an ordinary fellow, a C student instead of an A student. Rather than obtain a man with distinguished ability, intellect, and capacity, the Senator says, "Let us get the ordinary fellows and put them on the Supreme Court."

I think the Senator knows far better than I—and I am not a lawyer—that the Supreme Court has tremendously complex and demanding problems to solve.

It is not a matter of whether a man is a strict constructionist or a liberal constructionist of the Constitution. It is a matter of whether a man possesses clear intellectual distinction.

Mr. LONG. Mr. President, is the Senator a lawyer?

Mr. PROXMIRE. I am not a lawyer—one of my few clear qualifications for the Senate.

Mr. LONG. Mr. President, I want to have it clear in my mind because I want to address the Senator in one capacity or another.

Is the Senator aware of the quotation from Washington's Farewell Address in which that great President and leader of this Nation said that if one wishes to change the law, he should do it in the manner provided in the Constitution and the law, and he should not do it by usurpation? Is the Senator aware of that?

Mr. PROXMIRE. I am not aware of that specific quotation. But I think there is a very strong argument to be made in favor of that kind of construction of the Constitution. And, indeed, President Nixon has indicated his support for that, as many others have. I have no particular argument with that view. I think it is desirable that the Constitution be used as a vehicle that can accommodate change.

I think this is one of the reasons why it has been preserved for so many years and is the only Constitution that has lasted as long as it has. But I think the Senator can make a good case for strict construction. But that is not my argument.

The fact that this man is a strict constructionist is all right. I argue with him on the ground that he is not a distinguished attorney or judge. And I think that the Supreme Court deserves men of distinction and outstanding, intellectual capacity.

Mr. LONG. Mr. President, if the Senator will be kind enough, may I try to make the point I intended to make?

Fundamental to a government under the law and to law and order in this Nation is the fact that no branch of this Government should engage in usurpation.

I have always felt that it is very bad for the Court to engage in legislation. The Court should not invade the legislative branch, just as Congress should not invade the judicial branch.

Is the Senator aware of the fact that the Constitution forbids us to issue a bill of attainder?

Mr. PROXMIRE. Yes, indeed.

Mr. LONG. Mr. President, does the Senator know what a bill of attainder is?

Mr. PROXMIRE. Yes, indeed.

Mr. LONG. What is it?

Mr. PROXMIRE. Mr. President, the Senator from Louisiana always comes on the floor and does this to me—usually when I am dealing with the subject of oil. However, I welcome it on this occasion, too.

A bill of attainder is an attempt by legislative action to affect a particular, specific individual on the basis of the legislative action—for example, to punish an individual or to penalize an individual for some action he has taken rather than to pass a law which would have general application to all citizens. And the law would therefore have to be enforced by the executive branch and perhaps interpreted for its constitutionality by the courts.

Mr. LONG. Mr. President, if we sought to do that, we would be invading the role of the judiciary in its job of saying whether someone is guilty of committing a crime. That is not our job. We would be doing something evil. We would be engaged in an act of usurpation.

When one goes on that Supreme Court and proceeds to hold that the Constitution says something that it does not say, or proceeds to rule that it does not mean what the Founding Fathers intended, he is guilty of an act of usurpation.

Whether the Senator wants to admit it or not, men have been put on that Court for the express purpose of reversing prior decisions. And in my judgment, that is an act of usurpation.

Some of our liberal friends have happily supported men of that sort.

In my case, when the name of Judge Fortas was submitted to the Senate for his confirmation as Chief Justice of the United Sttaes, even though I was one of the party leaders for the Democrats, I had to inform the President—who was a very dear friend of mine and also a very dear friend of Judge Fortas—that I could not support him. Justice Fortas came up with some innovative ideas that played a major part in the judgment of this Senate; that helped to increase murder, armed robbery, and rape by 100 percent in this country for over a 10-year period. According to your statement, he was the sort we need on the court. I

made the statement to my people that I could not vote to make a man Chief Justice or even to continue a man on the court if one were guilty of that kind of intellectual mischief, brilliant and intellectual conduct though it might be.

I might say to the Senator that all we are talking about here is confirming a man who has a way of saying, "Here is what the law is although some people may not like it. If that is not what the laws is, Congress should change it." I must applaud that lack of distinction.

Mr. PROXMIRE. May I say to the Senator from Louisiana that I applaud his ingenuity in getting away from the point. I am not talking about Justice Fortas or Justice Holmes; I am talking about Judge Carswell. I am not criticizing him for being a strict constructionist. I would support a strict constructionist if he were qualified. I said nothing about his being a strict constructionist.

What I am opposing him for are his blatantly conspicuous racist attitudes; and I am opposing him because he is a man who, on the basis of his record, is not qualified.

Mr. LONG. Was the Senator talking about that country club episode?

Mr. PROXMIRE. I am talking about a whole series of episodes.

Mr. LONG. The country club episode is one I find to be somewhat amusing. That episode was about 1955.

Mr. CASE. It was 1956.

Mr. LONG. 1956. In 1964, 8 years after that, we had the Civil Rights Act of 1964, which was the big one, on the floor of the Senate. I personally offered an amendment to make crystal clear that a private club could discriminate in its membership in any fashion it felt like, if it were truly a private club, and that amendment was agreed to by the unanimous vote of the Senate.

Mr. PROXMIRE. But in that episode they took a public facility and made it private.

Mr. LONG. And you voted to make it 100 percent legal to do that. You voted for that. Explain why you should be voted back in the Senate when you say a man should not be on the Court for doing what you voted to do. You voted for that. How do you contend you should be a Senator and he should not be a judge?

Mr. PROXMIRE. The Senator could not be more wrong. I did not vote that we should turn public facilities into private clubs for the purpose of preserving segregation of the races and to keep black members from enjoying the public facilities.

Mr. LONG. Senator, you had a bill on this floor now known as the Civil Rights Act of 1964. It was managed by Hubert Humphrey who stood in this place and managed it. I remember the language. It said: "This does not affect bona fide private clubs."

It was said someone might question whether a club was in good faith if one of its purposes was to maintain segregated facilities, and I substituted the words "in fact" for the words "bona fide" with the advice of the same people who were advising Mr. Humphrey. Hubert Humphrey agreed, and the Senate voted for it unanimously. Why did you vote for it?

Mr. PROXMIRE. I did not vote for that at all.

Mr. LONG. It was unanimous. Would you like to stand here and say you did not know what you were doing?

Mr. PROXMIRE. I think the Senator knows perfectly well that when I voted for the Civil Rights Act of 1964 I did not vote to take a specific public golf course and make it a private club so that he could exclude blacks from membership in that golf course.

Mr. LONG. You voted to make legal in 1964 what that man did in 1955.

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

Mr. LONG. It absolutely is beyond my comprehension why a man would take the floor now and say someone should not be confirmed to be on the bench because he did what you voted for.

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

The PRESIDING OFFICER (Mr. HOLLAND). Does the Senator yield?

Mr. PROXMIRE. I yield.

Mr. CASE. Almost the only happy aspect of this unhappy episode is the ability that his colleagues have to observe the extraordinary mental agility of the Senator from Louisiana. It takes a situation as difficult as this to bring him to his full power. And yet even he is not capable of handling this job.

It is obvious that to have voted or not to have voted for language which was intended from the beginning to make it clear that a really true private club was not within the reach of the Civil Rights Act has nothing whatever to do with the question of whether public facilities should be taken by people deliberately and turned into a private club for the purpose of excluding blacks who formerly by law had the right to use those facilities.

This is perfectly clear to my friend from Louisiana as his benign countenance already indicates. I do not think that saying it 10 times is going to make it more true than saying it one time. I think I will stop.

Mr. PROXMIRE. I think the Senator is saying what I was trying to say and that he said it better.

Mr. CASE. Not as well, but I wanted to rest the Senator's vocal cords for a moment.

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

Mr. PROXMIRE. If the Senator is going to say it again, he may say it again but I will say what the Senator from New Jersey and I have been saying. What Mr. Carswell did was to take a public facility that was open to Negro citizens to use, and by making it into a private club denied them using it. That is different than voting for the Civil Rights Act; and all the eloquence of the Senator from Louisiana—and he can talk many days on it and I expect he will—will not make that equivalent to voting for the Civil Rights Act.

Mr. LONG. Seeing the Senator from Washington present in the Chamber reminds me of an occasion when one of our friends took the floor to proclaim his outrage about the fact that someone made a speech. A labor leader—and I believe it was Walter Reuther—was visiting on Capitol Hill at the time. The man held a press conference to make a statement and a Senator demanded to know who authorized that man to go into that room to make that statement. At that particular time the distinguished chairman of the Committee on Commerce leaned over to me and said, "It is just a room. People can do all sorts of things in a room. How do you know what a man is going to do when he goes into a room?"

The Senator is talking about a piece of property; somebody sells the property. At one time all the property in this country belonged to the Government once we captured it from the Indians and when we successfully revolted against the Crown. Perhaps the Senator would hold that the U.S. Government is responsible for all the mischief that people have conducted on property that was once part of the United States in all history. I would hate to think that. People sell property; people do what they want with property. Sometimes they obey the law and sometimes they do not.

What the Senator was talking about was within the law and the Senator voted to make it clear it was legal 8 years after it happened. Now he wants to condemn somebody else for doing what he endorsed. I find it difficult to follow that rationale.

Mr. CASE. I do not want to paint this lily, or carry coals to Newcastle, or do any other exaggeration, but I am reminded of the remark of the Duke of Wellington, who was a very unpleasant fellow when he wanted to be, and who, when a preposterous statement was made in his presence would say, "Well, if you believe that, you can believe anything."

Mr. PROXMIRE. I thank the Senator for that conclusion to our part of the colloquy.

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

Mr. PROXMIRE. I yield.

Mr. MILLER. I believe the Senator a moment ago said something to the effect that Judge Carswell and his group organized a corporation to take over a public facility and transform it into a private, segregated facility. Is that about what the Senator said?

Mr. PROXMIRE. He organized a private club to take over the public facility. That is right.

Mr. MILLER. And to make it into a segregated facility?

Mr. PROXMIRE. He was one of those who took part in that.

Mr. MILLER. And in that operation, I think the Senator said, to make it into a segregated, private facility?

Mr. PROXMIRE. It was widespread public knowledge at that time that that was his purpose.

Mr. MILLER. I would appreciate it if the Senator would refer to the evidence he has as the basis for that statement.

Mr. PROXMIRE. I will be happy to do that. I do that later in my speech. I will be happy to accommodate the distinguished Senator from Iowa.

Mr. MILLER. Well, the Senator from Iowa can hardly wait for the evidence. The Senator from Iowa does not want to disturb the continuity of my colleague's

speech, but I am interested in where in the printed record this evidence will be found.

Mr. PROXMIRE. I will be very happy to supply it to the Senator. I am working on it now.

Mr. MILLER. I will be waiting.

Mr. PROXMIRE. Mr. President, I will say to the Senator from Iowa that the appendix of the hearing is replete with documentation of the connection of the nominee with the Capital City Country Club, the purpose of which was to segregate the golfing facilities to prevent blacks from using it. Let me give the precise pages, pages 333 through 373. That is 40 pages of documentation in the appendix.

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

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

Mr. PROXMIRE. I yield first to the Senator from Indiana, because he has worked closely on this.

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

Mr. PROXMIRE. Before I yield to the Senator from Iowa, I think the Senator from Indiana may help clarify the situation.

Mr. BAYH. Mr. President, I thought the question of our distinguished colleague from Iowa went to the question of whether this was public knowledge or not. If the matter that concerns the Senator is the real intent and purpose of the change in status of the golf course, I will be glad to help because I know he is a real stickler for not getting anything out of perspective, and I compliment him for that. The Senator from Indiana listened to the evidence on the deed to which the nominee added his name as a subscriber, and had the opportunity to read the front-page story in the Tallahassee newspaper, which described in some detail the confrontation that had gone on within the city council, and in which the first time the city council took this matter up, I think one of the councilmen—I think a Mr. Easterwood—objected to it, and they put it over. In that interim, Mr. Easterwood left the city council and was elected a county commissioner. Then, when he was no longer on the city council, the city council went ahead and passed this act. Mr. Easterwood was quoted as saying the city council should recognize the fact that the reason for this was to try to provide a segregated facility for a public facility which, by Supreme Court edict, could no longer be maintained.

Mr. MILLER. Mr. President, will the Senator from Wisconsin yield so I can ask the Senator from Indiana a question?

Mr. PROXMIRE. I yield.

Mr. MILLER. Is the Senator from Indiana referring to that newspaper account on page 261 of the hearings record?

Mr. BAYH. Yes, that is one of the stories to which I referred.

Mr. MILLER. May I say to my colleague from Indiana that I am familiar with that story, but I do not see the relevance of the story on page 261 to the statement made by the Senator from Wisconsin, as to which I asked for evidence to support his statement that Judge Carswell's corporation had organized a private club for the purpose of obtaining from the city a public facility, to transform it into a segregated private facility.

I do not believe that the Senator has been helpful by citing the story on page 261, because that story relates to a lease for $1 a year from the city of Tallahassee to a private corporation to which Harrold Carswell had no relationship at all.

Mr. PROXMIRE. Mr. President, may I say to the Senator from Iowa that all he has to do is read the first four sentences of that newspaper article. Here is what it says:

> For the price of $1 greens fee the city commission yesterday leased the municipal golf course—
>
> The municipal golf course—
>
> to the Tallahassee Country Club, a private corporation.
>
> The vote was 4 to 1, with Mayor J. T. Williams registering the objection.
>
> On a motion by Commissioner Fred Winterle, the commission also agreed to make the same deal on a Negro golf course—
>
> A Negro golf course, Mr. President—
>
> now under construction to "any responsible group" that wants to take it over.
>
> Asked if the course would be open to the public, Robert Parker, who represented the country club group, said "any acceptable person will be allowed to play."

This is the front page of the Tallahassee newspaper. If it was not public knowledge that the purpose of this corporation was to provide segregated facilities for white persons to use to play golf, I would like to know what that article means.

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

Mr. PROXMIRE. I yield.

Mr. MILLER. The Senator might be right in his interpretation of that. Of course, he is reading something into it. But it is all irrelevant, unless the Senator is claiming that Harrold Carswell was a member of the Tallahassee Country Club.

Mr. BAYH. He was a director of the corporation.

Mr. MILLER. I am sorry, but the Senator's statement on that point is not supported by the record at all.

Mr. PROXMIRE. I am sure it is.

Mr. BAYH. He was a subscriber.

Mr. MILLER. He was not even a subscriber. The Tallahassee Country Club was the original old corporation, organized back in 1924, which did, indeed, get a lease of the golf course, for $1 a year. But Carswell was never a member of that. Carswell was a member of the Capital City Country Club, Inc.

Mr. BAYH. Which was designed to take over that other corporation.

Mr. MILLER. I grant it did take over the other corporation, but that is not what this newspaper article is about at all.

Mr. BAYH. May I go through this from A to E, F, or G, so that perhaps I can make it clear?

Mr. PROXMIRE. I yield to the Senator from Indiana for that purpose.

Mr. MILLER. I believe the Senator from Wisconsin is confusing corporations.

Mr. BAYH. I do not think he is doing so intentionally.

Mr. MILLER. I do not think he is, either.

Mr. BAYH. I think it is easy to look at the record and become confused. But I think what we need to keep in mind is what was sought to be accomplished here, which I think is very clear.

Mr. MILLER. This article on page 261 talked about the Tallahassee Country Club. That has nothing to do with any corporation of which Harrold Carswell was a member. If the Senators will look at page 260, they will find an article relating to the corporation of which Judge Carswell was, indeed, a subscriber. We are talking now about the Capital City Country Club. The Senator will find that about a year after this article appearing on page 261, there appeared another article, which appears on page 260, which talks about the fact that the public can play:

> Although the new club is now a private organization, the golf course facilities are open to the public at daily, monthly or yearly green fees.

There are no cute words or phraseology such as in the other article the Senator from Indiana has talked about—which is not relevant—cute phrases such as "Any acceptable person will be allowed to play."

That is a phrase relating to that private corporation of which Judge Carswell was not a member.

Mr. BAYH. I think the Senator from Iowa should look a little bit more carefully at the whole thrust of what was sought to be accomplished, and put it all in perspective. At the time the Supreme Court of the United States had said that public facilities could no longer be segregated, and this was at the time a Pensacola case, I think it was, was decided in Florida. That was the time that this effort was made right there in Tallahassee.

Mr. MILLER. When was that?

Mr. BAYH. I call the Senator's attention to two affidavits that are contained in the hearing record on page 274, one by Christene Ford Knowles, and the other by Mr. and Mrs. Clifton Van Brunt Lewis, in which they express their feeling that it was general public knowledge that the purpose of this corporation was to provide segregated facilities.

There was a fellow by the name of Smith, I think it was Julian Smith—I cannot put my finger on it, but at some place in this record, I recall, during the hearings it was pointed out that Julian Smith said that he was one of the cosubscribers with Judge Carswell and Smith said that this was in the back of his mind, that he knew this was what it was for, and he was one of the fellows who signed the document to which the Senator from Wisconsin referred.

Mr. MILLER. Did the affidavits on page 274 relate to the Tallahassee Country Club Corp., which obtained the $1-a-year lease from the city, or did they relate to the corporation of which Carswell was a member?

Mr. BAYH. They relate to the general feeling in the community that the whole thrust of this venture was to try to create a facility that black people could not participate in.

Mr. MILLER. Recognizing the affidavits for what the Senator from Indiana suggests they say, it seems to me that a point should be made that when the Tallahassee Country Club got this course for a dollar a year from the city on February 15, 1956, the statement was made, in answer to a question as to whether or not the public would be permitted to take advantage of these facilities, by a representative of the Tallahassee Country Club—which Carswell had no membership in at all; he was not a subscriber, and he had no relationship to it at all—that "Any acceptable person will be allowed to play."

I think that most of us know that "any acceptable person" can be interpreted many ways. But I am wiling to suggest that the proper interpretation to be placed on it is in the same light as that suggested by the Senator from Indiana.

But that is not what we are talking about here. We are not talking about the corporation at all. We are talking about another corporation, to which Carswell was a subscriber, and that corporation was known as the Capital City Country Club, Inc.

The article in the newspaper that referred to this corporation came along on September 5, 1956. The other article, of February 15, 1956, related to the Tallahassee Country Club. But on September 5, 1956, we have an article that relates to the corporation Carswell was in. And what do we find, after Carswell gets into the corporation and that corporation gets into the picture? We find an article on the front page of the Tallahassee newspaper, that says:

Facilities are open to the public at daily, monthly, or yearly green fees.

And no cute phraseology about "any acceptable person" being allowed to play.

It looks to me as though quite a change in attitude has taken place between the time the Tallahassee Country Club took over, to which that article on page 261 refers, and the time that the Capital City Country Club, took over, which is Carswell's corporation, and to which the article appearing on page 260 relates. I would suggest to my friend from Indiana that if, in fact, Judge Caswell had anything to do with any of the policies relating to the club, it looks to me as though he had a very affirmative effect, because of the change in terminology relating to the public's ability to play in this course.

But here, again, all I can find from the record is that he had no activity in the club at all. He was so inactive that after they organized this Capital City Country Club, Inc., they proposed 42 names from whom the members were going to select 21 as "original incorporators," and he was not even selected as one of those 21, because he had been so completely inactive.

So I do not see how we can impute any policy or any ideas to him with respect to the way this club is going to operate, except that I do invite the attention of my colleagues to the fact that there was quite a change in the front page stories regarding the public's ability to play. I think the article appearing on page 261 shows—when you talk about acceptable people—that in the setting you could very well be talking about whites only. But there is no equivocation on the new club in the article appearing on page 260.

(At this point Mr. SPONG took the chair as Presiding Officer.)

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

Mr. PROXMIRE. I yield.

Mr. BAYH. I think that if we examine the record carefully, we will find that we are talking about the same general transaction. The first corporation was established as a profitmaking corporation; and since they had been operating as a public facility prior to that time, they soon found out—I think it was in about a year's time—that they could not make a go of it as a profitmaking corporation. Then they tried to incorporate, and did incorporate, as a not-for-profit corporation.

The whole proof of the pudding is in the eating.

If the Senator from Iowa knows anything contrary to this, I wish he would tell me, because I certainly do not want to put anything over on him or anybody else.

The fact was that black people were not permitted to play on this golf course at any time, except in the early mornings, when they did permit the Florida A&M golf team to practice. Black people were not permitted to use the facilities.

I do not care whether it is for profit or not. It is only recently that black people were permitted to be a part of that golf course.

I think this is what the Senator from Iowa would be concerned about: What, indeed, was the practice of this institution?

Mr. MILLER. The Senator from Iowa is very definitely interested in that aspect of it. He is interested in looking at the evidence. If there are inferences to be drawn from the evidence one way or the other, the Senator wants to know what those inferences are. But when a statement is made that Judge Carswell and his group did this and this and this, the Senator just wants to know what the evidence is.

I know that the Senator from Indiana is also conscientiously trying to evaluate the evidence, but when he talks about a profitmaking corporation going into a nonprofit corporation, I must tell him that he is not talking about anything that is responsive to the Senator from Iowa's problem. The nonprofit corporation was organized after Judge Carswell got out of the profit corporation. I think that some of the opponents are not following the record very carefully.

Let me point this out to my friend from Indiana. There was a profit corporation which was the old Tallahassee Country Club, organized back in 1925. Then in 1935 it turned the course over to the city, during the depression. Later on, in 1954, 1955, or 1956, they said to the city, "The course is rundown. We want it back."

Finally, after the city council had met on it, they said, "Okay. Take it back for a dollar a year. We're losing $14,000 a year in the operation of this thing. It is rundown; and nobody likes the way it is going. Take it on for a dollar a year. You save us $14,000 out of the city budget."

So this private corporation took it on. Later on, another private corporation, for profit, known as the Capital City Club, Inc., of which Judge Carswell was a subscriber, came along and took it over from the previous private corporation for profit. Two private corporations for profit are in the picture so far—Tallahassee Country Club and Capital City Club, Inc.

Judge Carswell, of course, was only in this thing for a few months, put a hundred dollars in, and asked for his refund the following February. Then along came the third corporation, after he was long gone, known as Capital City Country Club, a nonprofit organization.

So when the Senator starts talking about a nonprofit country club, he is talking about stuff that has nothing to do with what we are talking about.

Mr. BAYH. If the Senator from Wisconsin will yield—I hate to try his patience like this—I share the concern of the Senator from Iowa that we not leave any misrepresentation here.

As I said yesterday in my remarks, I do not think we ever dealt with this particular item. But with respect to the covenant, the transfer of the property, I think the same thing can be said for that as can be said for this. I speak for myself and no one else. If we take one of these instances as an isolated instance, it is relatively inconsequential. But what some of us are struggling with is to try to find evidence to support the fact that Judge Carswell no longer shares the thoughts that he shared and expressed, most unfortunately, back in 1948. In that context, as a Federal district attorney, he participated in this corporation for a short period of time, and in which I think we have ample evidence, whether it is a profit or not-for-profit corporation, to prove the fact to the satisfaction of the Senator from Indiana, that the purpose of this incorporation, the whole thrust of this action was designed to maintain separate facilities. I think the fact that black people were not given equal access to this facility is ample proof of their motives relating to the incorporation.

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

Mr. PROXMIRE. May I say to the Senators that I think we have gone over this enough now, so that the situation is pretty clear. The Senator from Iowa takes the position, as I understand it, that Judge Carswell was not one of the original incorporators or subscribers of the Tallahassee Country Club, that he was a subscriber of the Capital City Club.

Mr. MILLER. That is correct.

Mr. PROXMIRE. The Senator from Indiana points out that, regardless of when Judge Carswell came into the act, this device was used to create a private club that excluded blacks from playing golf, except under extraordinary circumstances. They were allowed to play early in the morning, and they were

allowed to play only in the last few years. But they were not allowed to play in 1956, 1957, and so forth. Judge Carswell was a subscriber to the golf club.

I think the contribution of the Senator from Iowa is useful. It does give me a clearer and better picture than I had before of the country club situation. Frankly, I do consider this to be a very minor element here, and I want to tell the Senator from Iowa——

Mr. MILLER. The Senator from Iowa does not consider it minor.

Mr. PROXMIRE. If Judge Carswell had never made a speech in 1948, if he had never indicated any racist bias, if he was a swinging liberal from the standpoint of civil rights, I would not vote for him under any circumstances, because he is not qualified to serve on the Supreme Court. That is the brunt of my position. This man does not have the legal distinction, he does not have the ability, the brains, the capacity to serve this country on the highest court we have. That is the thrust of my position.

If the Senator wants to talk on this matter on his time, fine; but I really do not think I should yield much further.

Mr. MILLER. Mr. President, will the Senator yield for a comment?

Mr. PROXMIRE. On this issue, yes.

Mr. MILLER. The point I am making is this. I do not think we should leave the Senator from Indiana's statement hanging in the air, when he says that whatever you call it, regardless of what corporations they are, they were in there for a purpose, and that was to segregate a private facility.

Assuming that that is exactly what went on in Judge Carswell's mind at the time he paid $100 for a share of stock—assuming that—it would seem to me that in fairness we should say that after he found out what the situation was, he got out in a matter of 4 or 5 months. Why not give him credit for that? Certainly, if that was exactly what went on in his mind, give him credit for getting out of the thing; whereas, many other people stayed in it. I think we might give him credit as well. If you want to blame him, blame him; but give him credit where credit is due.

I think we are trying to read a person's mind here too much. But if we are going to indulge in mindreading, let us give both sides, so that the people will know there are two sides and two interpretations. Give him a black mark here and a white mark here.

But let us keep a balance. What I am trying to bring into this discussion is some perspective. May I say to my friend from Wisconsin that so far as Judge Carswell's competence and all that is concerned, I read the testimony of some of the witnesses who appeared and I read the testimony of others. There is no group of lawyers that cannot get into a difference of opinion over who is competent and who is not to serve as a Supreme Court Justice. I do suggest to my friend from Wisconsin that I do not believe there are very many Members of the Senate who are qualified by their own background to stand up here and say that that judge is not competent to be on the Supreme Court.

Mr. PROXMIRE. We have to vote on this nomination. It will be up to us. We cannot evade our responsibility. We cannot say, "I am not qualified, so I will not vote, so I will delegate my vote to JACK MILLER who is better qualified." We have to make up our own minds on the best way to solve our problems. We have to do it. That is our job. That is why we are discussing this now.

Mr. MILLER. Competence can be based on what someone else says, someone who is in a better position to know more about it than we are.

Mr. PROXMIRE. I do not believe the Senator thinks that we have such weak minds and that——

Mr. MILLER. Is it not better to have the testimony from practicing lawyers, from law schools, and deans and professors, in the record?

Mr. PROXMIRE. That is part of it, but I think it is only one part of it. Frankly, Mr. President, I think we have to take many things into consideration. The fundamental point is that President Nixon stated he would appoint extremely qualified men to the Supreme Court, and that is right. He should. Especially when we consider the thousands and thousands of lawyers and judges who would give their eyeteeth to serve on the Supreme Court. Thus, the President has a great opportunity here in such an appointment to demonstrate that, whether a man be a strict constructionist, a liberal—whatever—he should be a man with outstanding intellect and distinction. There is no question that this man is not.

Now, Mr. President, the Senator from Florida (Mr. HOLLAND) has been waiting patiently to discuss this subject. As we have been discussing Florida for some time now, I am happy to yield to him.

(At this point, Mr. BELLMON took the chair as Presiding Officer.)

Mr. HOLLAND. I thank the Senator very much for yielding to me.

Mr. President, in the first place, I know a good deal about this country club. I served 8 years in the State Senate, which meant that I was in Tallahassee for a good many months, with my wife, and we attended social affairs there. The country club at that time was the center of such social affairs. It was an old wooden building which looked like a bungalow which had been moved there and it was completely inadequate. It was the subject of frequent conversation not only among the people of Tallahassee, whom we knew well, but also among the visitors to the country club. I suppose I have attended 30 or 40 receptions at that old country club, along with Mrs. Holland, receptions given by the President of the Senate, and the Speaker of the House, and various others, during the course of the 4 sessions of the State legislature that I attended.

Later, as the Senator from Wisconsin knows, I served as Governor of the State of Florida and thus lived in Tallahassee for 4 years. That old wooden building was still there, even more decrepit than it had been before. There was much talk of having a better country club building created there. The site was a beautiful one. But the club had run down very badly, not just the building itself, but the golf course as well. Although I am not a golfer, I heard this repeatedly, as we took a house that fronted the golf course, and I saw what was going on, that the club was run down terribly.

Now, Mr. President, first, I ask unanimous consent that the testimony of Julian Proctor of Tallahassee, Fla., which begins on page 107 of the hearings be printed in the RECORD at this time.

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

TESTIMONY OF JULIAN PROCTOR, OF TALLAHASSEE, FLA.

Mr. PROCTOR. Mr. Chairman, I am Julian Proctor. I am from Tallahassee, Fla. I have lived in Tallahassee all of my life with the exception of the time when I was away at the university—for 2 years I lived in Hartford, Conn.—and the time I spent in the Navy.

I am married. I have six children. I am an automobile dealer. I am not a lawyer. This is all new to me. I came here for some records on the Capital City Country Club, which I think speak for themselves. I will be happy to turn the records over.

The CHAIRMAN. As I understand it, there was a country club organized in 1924, is that correct?

Mr. PROCTOR. The original Country Club of Tallahassee was, yes, a private country club organized in February of 1924.

The CHAIRMAN. What was the name of it?

Mr. PROCTOR. Tallahassee Country Club.

The CHAIRMAN. All right, and what became of that?

Mr. PROCTOR. On August 27, 1935, the Tallahassee Country Club deeded the property to the city of Tallahassee for financial reasons. They were having a hard time operating the club. There were few members, very few people, citizens playing golf. It was a financial burden, so they turned it over to the city for a very small, nominal sum to operate.

The CHAIRMAN. And the city did not operate it satisfactorily, is that correct?

Mr. PROCTOR. Well, that is correct.

The CHAIRMAN. Senator Holland tells me that when he was Governor it was more like a big barn there.

Mr. PROCTOR. The country club itself, the house, was an old frame building. It was run down. Termites were in it; it needed rebuilding. This was one of the few places in Tallahassee that was large enough to have parties when the legislature used to come to Tallahassee.

The CHAIRMAN. State whether or not there was a provision in the deed that it could be sold to another group.

Mr. PROCTOR. In the deed transferring the property there was a clause that stated that if at any time the ctiy of Tallahassee decided to lease the property to others, or dispose of the property, that the original stockholders would have the right of reacquiring the property on a lease basis.

The CHAIRMAN. All right. Now, was that exercised?

Mr. PROCTOR. Yes, sir. It was exercised on February 14, 1956.

The CHAIRMAN. What was the reason it was exercised?

Mr. PROCTOR. The reason for it, the members of the country club had been unhappy with the operation of the old club. As I previously stated, the country club itself was run down. The golf course needed work. The city was not willing to spend money either to renovate or rebuild the country club because it had been a losing proposition with the city, and so the——

The CHAIRMAN. The city refused to rebuild it?

Mr. PROCTOR. To build a new club?

The CHAIRMAN. Yes.

Mr. PROCTOR. Yes, sir. They refused to build. They wanted a swimming pool, and the city

said that they could not afford to do it or would not do it, so for that reason the original stockholders went to the city and requested that they lease the club and the golf course back to the original stockholders.

The CHAIRMAN. All right. Now was another charter taken out then?

Mr. PROCTOR. Yes. At that time the members who were active, the golfers—I would not say members of the club because they actually got together and formed a new country club. That was on April 24, 1956, the Capital City Country Club filed a certificate for a charter with the secretary of state of the State of Florida.

The CHAIRMAN. How did you finance it?

Mr. PROCTOR. We went around to the citizens of Tallahassee who were interested in the growth and the development of Tallahassee. We told them that we needed a new golf course or at least to rebuild the golf course and develop it. We also needed a country club. So a group of I guess about 25 citizens went around to probably 350 or 400 citizens of Tallahassee, asking if they would subscribe to the country club, and if they would subscribe to the club if we could get it off the ground.

The CHAIRMAN. You got $100 out of Judge Carswell and Governor Collins?

Mr. PROCTOR. That is right. At that time we were asking for a $300 membership fee with $100 of it paid. We went to Judge Carswell, we went to Governor Collins, all the prominent citizens of Tallahassee, including the Supreme Court, the Cabinet, and everyone interested, and signed them up to join the country club, with a guarantee of the payment of $300 over a period of time. At the time when we had got the club started, they would pay the first $100. Judge Carswell was one of those, one of the persons that we went to, and who agreed to subscribe to the stock.

The CHAIRMAN. All right. Now then what happened,

Mr. PROCTOR. Then we began operating on May 4 of 1956. The old Tallahassee Country Club assigned its lease from the city to the Capital City Country Club, Inc. On August 23, we mailed out the notice of the first annual meeting of the Capital City Country Club. During the time before that, or at least prior to that time, we picked out 21 subscribers, and asked these subscribers to go ahead and pay the $100, and we wanted, when we petitioned, that we name them as the original subscribing board of directors. Judge Carswell's name was on this list.

Judge Carswell himself was not active. He never attended a meeting to my knowledge. I happened to be one of the original founders of the club. I attended all of the meetings, and I don't think Judge Carswell ever attended a meeting of the founders of the country club.

In September of 1956 we took over the course. On September 4 we had the first annual meeting. We elected the first board of directors of the Capital City Country Club. We submitted 42 names—of those 42 names, to select 21. Judge Carswell's name was on the 42, that is on the list of 42 names. He was not elected to the board of directors of the country club. We elected seven directors for 3 years, seven for 2 years, and seven for 1 year. On January 29, we petitioned the court, the local court, to change the Capital City Country Club from a profit organization to a nonprofit organization.

The CHAIRMAN. That was the second charter, was it not?

Mr. PROCTOR. Yes; we petitioned the change.

The CHAIRMAN. Yes.

Mr. PROCTOR. Of the second charter. It of course was not granted on that date. The second charter was acknowledged in August, on August 6, 1957. On February 1, 1957 Judge Carswell requested that his name be withdrawn from the club, and asked that his original subscription or payment of $100 be refunded. I believe the record shows that he was refunded $76, and that was on February 12 of 1957.

As I mentioned, on August 6, 1957 the Capital City Country Club became a nonprofit corporation, and the name was changed from Capital City Country Club, Inc., to Capital City Country Club.

The CHAIRMAN. And that is the corporation?

Mr. PROCTOR. Right.

The CHAIRMAN. Any questions?

Senator BURDICK. To get the chronology straight here, this country club was established in 1924?

Mr. PROCTOR. 1924, yes, sir; by a small group of interested citizens.

Senator BURDICK. In 1935 you had money difficulties?

Mr. PROCTOR. Right.

Senator BURDICK. Because of the depression, I presume?

Mr. PROCTOR. The depression.

Senator BURDICK. Then in 1956 the city had money troubles?

Mr. PROCTOR. Well, in 1956, Senator, yes, I guess you might say the city had financial troubles, but they were not willing to spend money on a golf course. They were not willing to build a new golf club or house.

Senator BURDICK. Then by 1956 they were a little more affluent than they were in 1935 and they took it over in 1956 again?

Mr. PROCTOR. Right.

Senator BURDICK. And that has been the continuity?

Mr. PROCTOR. And of course Tallahassee has grown. Back in the days of 1935 I would say there were probably less than 50 interested citizens. At the time that they formed the country club, I do not know how many.

The CHAIRMAN. This corporation, to which there was subscribed $100, relinquished its charter and you got another charter?

Mr. PROCTOR. That is right.

The CHAIRMAN. And that is the equivalent operation.

Senator BURDICK. That was in August 1957?

Mr. PROCTOR. That is right. We petitioned in January.

Senator BURDICK. Is that corporation still in being?

Mr. PROCTOR. I beg your pardon?

Senator BURDICK. Is that in being today?

Mr. PROCTOR. Yes, in being today, and we have, approximately, between 450 and 500 members.

Senator BURDICK. Did Judge Carswell have any further interest after his stock was picked up in February of 1957?

Mr. PROCTOR. Yes. Let's see. August the 29th of 1963 Judge Carswell became a member, and he remained a member of the club until September 7 of 1966, at which time we accepted his resignation.

Senator BURDICK. But all during these years from 1924 on, this club was located in the same property, and had the same name except that it was changed to Capital City from Tallahassee in 1957?

Mr. PROCTOR. Right.

Senator BURDICK. Located in the same place?

Mr. PROCTOR. The same place.

The CHAIRMAN. You did build a swimming pool and you added 9 holes to your golf links, is that correct?

Mr. PROCTOR. Yes, we built the swimming pool later, as soon as we got the club. That was one of the first things that we did. It took a little time to get it.

The CHAIRMAN. And you enlarged the golf course?

Mr. PROCTOR. Well, we rebuilt the golf course. We put in a watering system, and we have replanted our fairways, and of course, we built a very nice new country club, for which we are heavily in debt.

The CHAIRMAN. Are there any further questions? [No response.]

Thank you, sir.

Mr. PROCTOR. Thank you, sir.

The CHAIRMAN. Prof. James W. Moore.

(At this point in the hearing a short recess was taken.)

The CHAIRMAN. The committee will come to order. Prof. James W. Moore.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MOORE. I do.

The CHAIRMAN. You may sit down. Please identify yourself for the record and give us your background.

Mr. HOLLAND. Mr. President, I have known Julian Proctor since he was a small boy. He is a highly reputable citizen. He came here as an officer of the present country club to testify, with the records of the club, and did testify before the committee. I was not able to stay to hear his testimony, although I did introduce him to the committee, as will be shown from the record.

His testimony, I think, is completely correct and bears out the recent statements of the Senator from Iowa (Mr. MILLER), as to the fact that there were three different country clubs. As to the chronology of those clubs, the testimony will speak for itself, so I am not going to go into that in detail. But I do know that eventually the place became further run down, so that something had to be done about it. When the original Tallahassee Country Club had deeded its property to the city, hoping for a better situation there, it included in the deed, as Mr. Proctor told me—I have not seen the deed, but I believe him implicitly—a provision that in the event the city sought to lease it, or convey it to someone else, it should come back to the members of the original club, which was done. As the testimony will show, it came back. I know nothing about the racial problem that was involved but I do know something about the club and about the golf course.

Mr. PROXMIRE. May I say to the Senator from Florida that——

Mr. HOLLAND. Mr. Proctor makes it clear that it came back among other things first as to the need for a representative building, which they did build. It is a very fine country club, which I have frequently visited since that time. Also, for the purpose of reconditioning the golf course; and Mr. Proctor states in his testimony that that was one of the first things that was done. The Senator will find that at the bottom of page 110 of the printed hearings. It also came back to them because of the need for a swimming pool. They did all these things with contributions, as Mr. Proctor states in his testimony, and so I believe from having talked with numerous people, including my own relatives, who live in Tallahassee, that this was done by contributions also of many people, during which time Judge Carswell was district attorney.

Governor Collins, who is certainly anything but a racist, and many other people, including the people of my kinship there by marriage, and whom I completely believe, say that this was done with contributions of some 300 or 400 of the outstanding people of Tallahassee, to get a really representative country club built there, and to get a swimming pool, and

a golf course put back in reasonable condition, all of which things were done.

I shall not comment further on the testimony because I think it is very clear. It completely bears out the statement of the Senator from Iowa (Mr. MILLER). I believe that this point has been badly misunderstood and badly overplayed. I just want to say that. I also want to say that I, as one who still has some of his own living relatives right there in Tallahassee, both by blood and by marriage, and who has kept in close touch with the situation there, cannot conceive of Governor Collins' coming here to tell us about his good faith participation in this effort, and his contribution of $100, and have any thought in my mind that this was all a conspiracy simply to carry these assets away from use by colored people.

I remember it, because I was present when Judge Carswell testified that he said he had seen people of color there on occasions when he had attended receptions there. The Senator will find that in his testimony.

All the Senator from Florida can say now is that he believes implicitly the testimony of Julian Proctor, whom I consider to be a good and decent man and a public-minded citizen. I do not see how anyone can read that testimony and fail to believe it.

I thank the Senator from Wisconsin.

Mr. PROXMIRE. I thank the Senator from Florida. I think his statement is especially useful because, as he says, while he has firsthand personal knowledge over many years of the club situation, he did say that he is not indicating whether he has any specific knowledge about the racial element involved, which is the heart of it.

I call to his attention once again an article from the front page of the Tallahassee Democrat which pertains to this—and I want to make it clear that this pertains to the Tallahassee Country Club, not to the Capital City Country Club—which states:

For the price of $1 greens fee the city commission yesterday leased the municipal golf course to the Tallahassee Country Club, a private corporation.

The vote was 4 to 1, with Mayor J. T. Williams registering the objection.

On a motion by Commissioner Fred Winterle, the commission also agreed to make the same deal on a Negro golf course now under construction to "any responsible group" that wants to take it over.

Asked if the course would be open to the public, Robert Parker, who represented the country club group, said "any acceptable person will be allowed to play."

The action came after a two-month cooling off period following the proposal's first introduction. At that time Former City Commissioner H. G. Easterwood, now a county commissioner, blasted the lease agreement.

He said racial factors were hinted as the reason for the move.

When we get this kind of a frank statement in a front page article in the Tallahassee paper, I think it is proper to take notice that this was an element that we should consider.

At that point I think it is fair to say, as the Senator from Iowa properly emphasized, that Carswell was not in it. He came in later as a subscriber to a successor corporation. And it is not as obvious and blatant as some of us thought. However, it nevertheless has a connection.

Mr. HOLLAND. The fact is that that later organization, as shown by the record, was formed to promote the interest of the good citizens who wanted to have a decent clubhouse built there. And it was built there. I was later present in the new edifice, which is a fine one. I have not swum in the swimming pool, but I have seen it. It was not there before.

I do not play golf, but I am told by my relatives who do that the golf course has been reconditioned and is now a good golf course. I cannot support that statement from personal knowledge by having played there. But I do know that the place was as run down as anything I have ever seen in the city of Tallahassee at the time these remedial measures were taken.

I thank the Senator for yielding. I thought that I should contribute these things which are of my own knowledge.

Mr. PROXMIRE. Mr. President, I thank the senior Senator from Florida.

I yield now 2 minutes to the junior Senator from Florida.

Mr. GURNEY. Mr. President, I have never been too impressed with playing the numbers game concerning Judge Carswell and saying that he is good because 500 lawyers say so or that he is bad because 501 lawyers say he is.

It is like those people who in deciding a case say that the party with the largest number of attesting witnesses should prevail.

I do not think it would be fair in judging Judge Carswell to have him bear the weight of so many unfair criticisms from those who do not know him without making a part of the RECORD the many endorsements he has received from the bench and bar.

In light of unfavorable statements from lawyers who do not know Judge Carswell, I ask unanimous consent that there be printed at this point in the RECORD some of the many telegrams I received yesterday and this morning from Florida judges and attorneys who do know Judge Carswell personally and have a high regard for his judicial ability.

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

TALLAHASSEE, FLA.,
March 16, 1970.

Senator GURNEY,
Senate Office Building,
Washington, D.C.:

As a lawyer who is a member of the Tallahassee and Florida Bar Associations who has practiced before the Hon. Harrold Carswell both in my capacity as a private attorney and previously as an assistant United States attorney in which capacity I practiced for 2½ years I wish to make known my very strong support on behalf of Judge Carswell and urge the Senate to confirm his nomination to the Supreme Court. He is known to me as a brilliant jurist whose integrities and capabilities could never be accurately attacked.

MURRAY M. WADSWOTH.

TALLAHASSEE, FLA.,
March 16, 1970.

Senator EDWARD GURNEY,
Washington, D.C.:

As a practicing attorney and one who has for the past decade been very active in local bar affairs I am personally aware that Harrold Carswell possesses all of the necessary qualities to serve with distinction on the U.S. Supreme Court. This opinion is shared by all of the qualified practicing members of this bar.

MARION D. LAMB, Jr.,
Vice President, Tallahassee Bar Association.

TALLAHASSEE, FLA.,
March 16, 1970.

Senator EDWARD GURNEY,
Washington, D.C.:

As a practicing attorney before Judge G. Harrold Carswell I unequivocally endorse him for the United States Supreme Court.

STEVE M. WATKINS.

SARASOTA, FLA.,
March 16, 1970.

Senator EDWARD GURNEY,
Washington, D.C.:

We the undersigned circuit judges of twelfth judge circuit, Florida join with the many other Floridians urging confirmation of Honorable Harrold Carswell to Supreme Court bench.

JOHN D. JUSTICE,
LYNN N. SILVERTOOTH,
ROBERT E. WILLIS,
ROBERT E. HENSLEY.

SANFORD, FLA.,
March 16, 1970.

EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.:

As practicing attorneys we urge confirmation of Hon. G. Harrold Carswell to Supreme Court.

PHILIP H. LOGAN,
A. EDWAIN SHINHOLSER.

TALLAHASSEE, FLA.,
March 16, 1970.

Senator EDWARD J. GURNEY,
Washington, D.C.

As a practicing attorney before Judge G. Harrold Carswell I unequivocally endorse him for the United States Supreme Court.

STEVE M. WATKINS.

GAINESVILLE, FLA.,
March 16, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senator,
New Senate Office Building,
Washington, D.C.

I urge the confirmation of Judge Harrold Carswell as Justice of the Supreme Court. I have known him for many years. It is my considered judgment that he posssses the intellectual capacity, the moral fiber, and innate sense of justice that would fit him for this high position.

JOHN A. H. MURPHREE,
Presiding Judge,
Eighth Judicial Court of Florida.

TITUSVILLE, FLA.,
March 16, 1970.

Senator EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

As a member of Florida and Federal Bar I urge your continued support of Judge Carswell.

STANLEY R. ANDREWS.

MIAMI, FLA.,
March 16, 1970.

Senator EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

As a member of the American Florida and Dade County Bar Associations I heartily endorse the nomination of Judge G. Harrold Carswell to fill the existing vacancy in the United States Supreme Court.

THOMAS D. WOOD.

TALLAHASSEE, FLA.,
March 16, 1970.

Senator GURNEY,
Washington, D.C.:

As an attorney I unequivocally endorse Judge G. Harrold Carswell for the United States Supreme Court.

JOHN F. MILLER, Jr.

MELBOURNE, FLA.,
March 16, 1970.

Senator EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

As a member of the Florida Bar and American Bar Association urge your continued support of Judge Harrold Carswell and your best efforts at securing senatorial confirmation from fellow Senators. As a law clerk for Judge Carswell for two and a half years I can attest to his competence, fairness and integrity.

KIKE KRASNY.

ORLANDO, FLA.,
March 16, 1970.

Senator ED GURNEY,
Senate Office Building,
Washington, D.C.:

Urge your confirmation of Justice Carswell.

Very truly yours,

ROBERT EAGAN,
State Attorney.

ORLANDO, FLA.,
March 16, 1970.

Hon. EDWARD GURNEY,
U.S. Senator,
Washington, D.C.:

Request your affirmative vote for Judge Carswell appointment Supreme Court United States.

B. C. MUSYNSKI,
Circuit Judge.

EAU GALLIE, FLA.,
March 16, 1970.

Senator EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

I wholeheartedly approve of the nomination of Harrold Carswell to the United States Supreme Court.

E. TOM RUMBERGER,
Circuit Judge,
18th Judicial Circuit of Florida.

CORAL GABLES, FLA.,
March 15, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

After sixteen years of observing the career of Judge Carswell I strongly urge his confirmation as Supreme Court Justice.

Judge TOM BARKDULL.

PANAMA CITY, FLA.,
March 17, 1970.

Hon. ED GURNEY,
U.S. Senate,
Washington, D.C.:

I wholeheartedly indorse and recommend Honorable G. Harrold Carswell for the position of Justice of the Supreme Court of the United States. I am a member of the American Bar Association and have been a member for more than 15 years. I have been engaged in the private practice of law for more than 20 years in the Northern District of Florida and practiced before Judge Carswell all during the time he was U.S. District Judge. I am a former member of the board of governors of the Florida bar and a former member and former chairman of the Florida board of bar examiners. I know Judge Carswell has the legal ability, temperment, experience, integrity and energy necessary to be an outstanding member of the Supreme Court of the United States.

ERNEST W. WELCH.

JACKSONVILLE, FLA.,
March 17, 1970.

Senator EDWARD GURNEY,
Washington, D.C.:

You have our unqualified endorsement in urging the confirmation of Judge Carswell.

MARTIN SACK,
GERALD TJOFLAT,
LAMAR WINEGEART,
CHARLES LUCKIE,
ALBERT GRAESSLE,
HENRY MARTIN,
MARION GOODING,
THOMAS LARKIN,
Judges.

FT. LAUDERDALE, FLA.,
March 17, 1970.

Senator EWARD J. GURNEY, Jr.,
Washington, D.C.:

I urgently and respectfully request your favorable consideration and affirmative vote for confirmation of Judge Carswell's nomination.

H. JOHN MOORE,
Circuit Judge.

FORT MYERS, FLA.,
March 16, 1970.

Hon. EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.:

We sincerely endorse Judge G. Harrold Carswell for Associate Justice of the United States Supreme Court.

LYN GERALD,
Circuit Judge.
ARCHIE M. ODOM,
Circuit Judge.

TALLAHASSEE, FLA.,
March 17, 1970.

Senator GURNEY,
Washington, D.C.:

I have practiced law for six years in Judge Carswell's court here in Tallahassee, Florida. I know him to be a fair and impartial judge eminently well qualified by judicial temperament, education, and experience to serve as Associate Justice of the Supreme Court of the United States. I urge you to vote for and support his confirmation.

F. PERRY ODOM.

ORLANDO, FLA.,
March 17, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senate
Washington, D.C.:

I respectfully solicit your continued support for the nomination of Judge Carswell now in debate.

KEITH YOUNG MATEER,
Frey Young and Harbert.

PANAMA CITY, FLA.,
March 17, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senate
Washington, D.C.:

By way of identification I've practiced law in Florida for approximately thirty two years and am a member of the Florida bar and American Bar Association. Thirty one years of this practice has been in the United States District Court for the northern district of Florida. I was previledged to try numerous cases while the Honorable G. Harrold Carswell presided. I can attest to his honesty, integrity, and legal ability. He has the knack for understanding the legal points involved and litigation before him more rapidly than most judges before whom I have appeared. His elevation to the Supreme Court is highly desirable to me. As I am sure that he would serve with honor, distinction and fairness.

CHARLES F. ISLER, Jr.

EAU GALLIE, FLA.,
March 16, 1970.

Senator EDWARD GURNEY,
Senator Office Building,
Washington, D.C.

DEAR SENATOR: As a member of the American and Fla. Bar Assoc. I whole heartedly endorse Judge Carswell.

Sincerely,

JAMES A. NANCE.

EAU GALLIE, FLA.,
March 16, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: As a member of the American and Florida Bar Assoc. I whole heartedly endorse Judge Carswell.

Sincerely,

SAMMY CACCIATORE.

PANAMA CITY, FLA.,
March 16, 1970.

Re Nomination of Judge G. Harrold Carswell
U.S. Supreme Court

Hon. EDWARD J. GURNEY,
U.S. Senate, Washington, D.C.

DEAR SIRS: This is to advise of my wholehearted support to the confirmation of the nomination of Judge Carswell to the United States Supreme Court. I am a relatively young attorney admitted to practice in the States of Georgia and Florida and have been so engaged for the last nine years. I am likewise a member of the American Bar Assn. and have been priviledged to practice before Judge Carswell in the United States District Court for the Northern District of Florida for the past five years. I have found Judge Carswell to be able, abundantly fair and possessed with superior judicial accumen. Our Federal judicial system will be the ultimate benefactor by his investiture as justice of the United States Supreme Court.

LYNN C. HIGBY.

WINTER PARK, FLA.,
March 17, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senate, Washington, D.C.

Judge G. Harrold Carswell has the support of every member of the Florida Bar I am acquainted with. I know you will do all you can to assure Senate confirmation of his appointment.

DAVID W. CUNNINGHAM.

Mr. PROXMIRE. Mr. President, I yield to the Senator from Indiana.

Mr. BAYH. Mr. President, I have been very interested in the colloquy which has transpired. We are all trying to make certain that everything is in the record so that we may each make a final determination on this matter.

I thought it might be helpful—and I have never seen a more patient soul than the distinguished Senator from Wisconsin—to point out that it was on November 7, 1955, that the U.S. Supreme Court ruled that the city of Atlanta in refusing to permit Negroes to use the municipal golf course was a direct violation of the equal protection clause of the Constitution and ordered that the golf course be integrated. This was in the case of Holmes against the City of Atlanta.

Shortly thereafter, another suit entitled Augustus against the City of Pensacola was filed in the northern district of Florida. That is the same district represented by our nominee.

It seems to me there was ample evidence at that particular time, late in 1955, before the story of February 16,

1966—as the Senator from Wisconsin points out—that there was public knowledge of what was going on.

I would like to read excerpts from one affidavit which appears on page 274, and I ask unanimous consent that the affidavit of Clifton Van Brunt Lewis, because I think it goes directly to the case in question, as well as the previous affidavit of Christene Ford Knowles be printed in the RECORD, as it also deals with the same subject.

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

AFFIDAVIT

STATE OF FLORIDA,
County of Leon:

Before me the undersigned came and appeared on 1 February, 1970 who after being duly sworn, did depose and say that:

I am an adult White citizen who has been a life-long resident of Tallahassee and whose family has domiciled in the city for several generations. I am the wife of the Chairman of Florida's oldest bank, The Lewis State Bank of Tallahassee.

My interest in the Tallahassee Golf Course goes back to my early childhood, as my father was one of the early golfers of Tallahassee and had, in fact, helped to plan the course itself.

When the original club deeded the course to the City of Tallahassee it was known as the Municipal Golf Course—for some 21 years. The city acquired the spendid 205 acres through an agreement whereby the city paid off a 6,500 dollar note and agreed to obtain funds to improve the property. The agreement stipulated that the funds should be 35,000 dollars of WPA money! The 1935 agreement also gave the club first option to lease the land, which it did in 1956 at the rate of one dollar a year for 99 years!

My husband and I were invited to join the Capital City Country Club at its inception. We refused the invitation because we wanted no part in converting public property to private use without just compensation to the public—and because of the obvious racial subterfuge which was evident to the general public.

My husband and I have been members of the interracial Tallahassee Council on Human Relations since its inception several years before the Country Club fiasco. In this Council I knew first hand from Charles U. Smith, Professor of Sociology at Florida A&M University of the desire of specific Tallahassee black citizens to play on the city golf course.

This discussion with Mr. Smith was one of many that I had with a variety of parties during that period on the subject of the golf course, the issue being of wide civic concern. I would have been surprised if there was any knowledgeable member of the community who was unaware of the racial aspect of the golf course transaction. The controversy appeared in the local newspaper of the time, and a city commissioner was known to have raised questions about the racial implications involved.

CLIFTON VAN BRUNT LEWIS.

Subscribed and sworn to before me this 1st day of February 1970.

AFFIDAVIT

STATE OF FLORIDA,
County of Leon, SS:

Before me the undersigned authority came and appeared on 1 February 1970, who after being duty sworn, did depose and say that:

I am an adult Black citizen residing in Tallahassee, Florida, who has worked as an Administrative Assistant to the Reserve Officers Training Corps for 5½ years, ten years public high school teacher, ½ year Business Manager of Tallahassee A and M Hospital, and at the present 2 years and 10 months as Educational Specialist, Federal Correctional Institution, all of Tallahassee, Florida. (I reside at 819 Taylor Street, Tallahassee, Florida).

I remember in 1956, deeply resenting the transfer whereby 205 acres of what was formerly municipal property converted to private ownership. At the time, Reverend C. K. Steele, myself, and other members of the Local SCLC chapter were disturbed at what was clearly an attempt to bar Black people from using the golf course. It was evident to us that the transaction, that is the leasing of the course to a private group, had but one real intent. Tallahassee was in a racial uproar over the bus boycott and other protests—bringing a reaction of fear to the white community. The word "private" had increasingly become a code name for segregation.

The Capital City Country Club incorporation proceedings were well publicized and the racial overtones were necessarily clear to every knowledgeable citizen in the area, and it would have been surprising to me if an intelligent man, particularly an incorporator was not aware of the repeatedly emphasized racial aspects of this case.

We did discuss this corporation widely at the time, and had we not been so preoccupied with other protests, we would have undoubtedly moved against the corporation in civil suit.

CHRISTENE FORD KNOWLES.

Subscribed and sworn to before me this 1st day of February 1970.

DULUTH H. BAKER, Jr.

Mr. BAYH. Mr. President, I am particularly impressed by the affidavit of Clifton Van Brunt Lewis. It says in part as follows:

I am an adult White citizen who has been a life-long resident of Tallahassee and whose family has domiciled in the city for several generations. I am the wife of the Chairman of Florida's oldest bank, The Lewis Bank of Tallahassee.

This lady is no insignificant citizen in the community.

She said further:

My husband and I were invited to join the Capital City Country Club at its inception. We refused the invitation because we wanted no part in converting public property to private use without just compensation to the public—and because of the obvious racial subterfuge which was evident to the general public.

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

Mr. BAYH. I yield.

Mr. PROXMIRE. Mr. President, was the Capital City Country Club the club that was formed with Judge Carswell as one of the subscribers?

Mr. BAYH. The Senator is correct.

There has been some concern expressed about whether there was discrimination. I do not know. I have never played on that course. But I thought the closing remarks of Mrs. Van Brunt Lewis would be appropriate to read. She closes by saying:

I would have been surprised if there was any knowledgeable member of the community who was unaware of the racial aspect of the golf course transaction. The controversy appeared in the local newspaper of the time, and a city commissioner was known to have raised questions about the racial implications involved.

Mr. PROXMIRE. Mr. President, I thank the Senator from Indiana. I think that is an excellent and very helpful clarification.

Mr. President, I ask unanimous consent that I may yield to the Senator from Michigan without losing my right to the floor.

Mr. GRIFFIN. Mr. President, I thank the Senator from Wisconsin. He certainly is very patient. I appreciate the opportunity to deliver my statement at this time.

Mr. President, some of the arguments leveled against the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court bring to mind a passage from Alice in Wonderland, which goes like this:

"He's in prison now, being punished," said the White Queen, "and the trial doesn't even begin 'til next Wednesday; and of course the crime comes last of all."

"Suppose he never commits the crime?" asked Alice.

"That would be all the better, wouldn't it?" the Queen replied.—Alice in Wonderland by Lewis Carroll.

Of course, as a Senator, I respect the sincerity of those colleagues who argue that the nominee is not qualified. But, in all candor, I must say that most of the criticism simply presupposes something which no one can predict—that he will not be a great Justice of the Supreme Court.

Such a prejudgment not only runs counter to fundamental concepts of fairness, but it does a great disservice to the historical role of the Senate in the exercise of its advice and consent responsibility.

That is not to say, of course, that the Senate has never judged a nominee unfairly. It has.

But, in general, when the Senate has worked its will with respect to Supreme Court nominations, it has proceeded with a sense of balance and fairness.

Perhaps no nominee suffered more abuse than did Justice Louis D. Brandeis. Among the numerous witnesses to protest his nomination were seven former presidents of the American Bar Association, who stated that:

Taking into view the reputation, character and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States.

Nevertheless, in its wisdom, the Senate saw fit to confirm that nomination and, needless to say, Justice Brandeis went on to serve the Nation and the Court with great distinction.

Chief Justice Charles Evans Hughes was bitterly opposed by some who felt that his prior legal representation of large corporations had committed him to their philosophy. As the noted scholar, Joseph P. Harris, has observed:

It was anomalous that most of the arguments against him dealt with decisions of the Supreme Court in which he had no part, on the unsupported assumption that had he been a member he would have sided with the conservative majority of the Court. The opposition served a useful purpose, though had it prevailed the country would have been deprived of the services of a Chief Justice who now ranks with Marshall and Taney.

No one in this Chamber could be more pleased than this speaker to observe that the Senate is once again taking very seriously its advice and consent power. But history tells us that we should proceed

with caution—that a nominee subjected to intense criticism may well prove to be a distinguished selection.

In 1930, the Senate rejected President Hoover's nomination of Judge John J. Parker. Union leaders opposed the nominee on the ground that he harbored an antilabor bias. Negro groups opposed the nominee because of a statement he had made 10 years before in the heat of a political campaign. As a candidate for Governor of North Carolina in 1920, Parker had said:

The participation of the Negro in politics is a source of evil and danger to both races and is not desired by wise men in either race or by the Republican Party of North Carolina.

Significantly, despite those unfortunate remarks, the judgment of history now is that:

In retrospect, it is generally agreed that both organized labor and Negroes were mistaken in their opposition and defeated a nominee who was liberal in outlook and sympathetic both to organized labor and to Negroes.

The role of the Senate in passing upon such a nomination was aptly described in 1945 by Senator AIKEN during the debate on President Roosevelt's nomination of Aubrey Williams to be the REA Administrator. At that time, the distinguished Senator from Vermont said:

The main issue involved in the vote which we are soon to take is whether a man can come before this Senate for approval and have that approval granted or refused on the basis of the evidence presented, or whether such judgment will be influenced by policies, prejudice, racial and religious discrimination, and all the other evils which Members of the United States Senate should rise above.

The pending nomination has been the target of much criticism. Charges have been made that the nominee is not sympathetic to civil rights causes; some assert that he is openly hostile to such causes.

In my opinion, the record of hearings and the evidence simply do not fairly support such conclusions.

It is well known that the nominee did make a speech in the course of a campaign for public office in 1948—a speech that contained racist comment.

But some critics who seem determined to portray the nominee as a racist ignore the nominee's statement that—

When this was first brought to my attention and found upon the records of the little Irwinton Bulletin paper, I really was a little aghast that I had made such a statement . . . I state now as fully and completely as I possibly can, that those words themselves are obnoxious and abhorrent to me. I am not a racist. I have no notions, secretive, open, or otherwise, of racial superiority. That is an insulting term in itself and I reject it out of hand. (Hearings, page 10.)

A former Justice Department official advised the Judiciary Committee that—

Shortly following the controversial *Brown* decision (in 1954) on segregation I held a conference in Washington of all the Southern U.S. attorneys to help the Department of Justice to implement the decision. Harrold Carswell was the only (Southern) U.S. attorney who was helpful to me and the department in this respect. (Hearings, p. 327.)

Of particular interest, I believe, is a telegram in the hearing record from Mike Krasny, a former law clerk of the nominee. I reads in part:

I was Judge Harrold Carswell's law clerk from February 1960 to June 1962, a period of approximately two and a half years. I believe I was his law clerk longer than any other law clerk he had before or since . . .

As a member of the Jewish faith and consequently a member of a minority, I sincerely believe that the day to day association which I had with Judge Carswell, both in and out of the courtroom, would have revealed any racist tendencies or inclinations, had there been any. Without the slightest hesitation, I can assure you and the members of your committee that the litigants in the United States Federal District Court in Tallahassee were not judged by their race, creed or color. Judge Carswell's integrity and honesty is beyond question in this regard

He dealt fairly, honestly and respectfully with all those who came before him. His judicial manner was not altered by the race or color of those who appeared before him. I believe that I am more qualified to judge this man than are his accusers. I would be willing, at my own expense, to testify under oath that none of the decisions rendered by him during my tenure of office were tainted in any manner with a so-called racist philosophy, nor were civil rights lawyers or litigants treated in any manner other than the respectful manner accorded to all litigants and attorneys appearing before him.

Although I do not necessarily agree with all of the nominee's decisions as a judge, I share the view expressed by the distinguished columnist, Carl Rowan. Mr. Rowan comment in part as follows:

I am far more impressed by Judge Carswell's frank and unambiguous repudiation of white supremacy in 1970 than by his endorsement of racism as a 28-year-old law school graduate struggling to defeat an uncompromising white supremacist.

At age 28 or 38 you could find Lyndon B. Johnson endorsing segregation and making the racist noises expected of a Texas politician. But at age 58 Johnson was the greatest friend of civil rights and the black man ever to occupy the White House. That says a lot about human redemption.

As a Senator who has had the privilege of voting for every civil rights law passed by the Congress in the past 14 years, quite frankly, I am very conscious of the civil rights concern of some who oppose this nomination.

But a Senator has the obligation to assess equitably the evidence which is presented. Although I would have preferred a nominee with a more distinguished civil rights record, I do not believe Judge Carswell can fairly be considered an extremist or racist.

Some people have asked how I can support the pending nomination in light of my prior opposition to the nominations of Justice Fortas and Judge Haynsworth.

My views on the Fortas and Haynsworth nominations have been publicized. In those cases, my position related to questions of ethics—and did not relate to the very different philosophies of the nominees.

Although an individual Senator is free, of course, to oppose a nomination for any reason, the Senate, as a whole, has been reluctant to reject nominations for the Supreme Court on the grounds of philosophy alone.

But opponents also challenge the credentials of this nomineee.

During the Senate's consideration of the nomination by President Truman of Tom Clark, the Washington Post stated editorially that the selection did not meet the highest judicial standards and that Clark's name would not have appeared on any "list of distinguished jurists such as a conscientious President usually assembles before making an appointment to the Supreme Court."

The Richmond Times-Dispatch characterized Clark as a "political partisan and a legal lightweight" who "would reflect no credit upon that tribunal."

As we know now, Justice Clark served admirably on the High Court.

Quite frankly, it is difficult, if not impossible, to answer or to rebut charges such as those leveled against Justice Clark—and presently leveled against the nominee.

A charge of mediocrity, by its very nature, is incapable of close analysis. By what standard does an individual Senator evaluate such a nebulus concept as potential for greatness?

Would the public interest have been better served by the Senate's rejection of the nomination of Justice Clark on such grounds? Obviously not.

As the Washington Daily News, a Scripps-Howard newspaper, has commented:

As for measuring what a man will do once on the Supreme Court, we recall Justice Felix Frankfurter, the darling of the liberals who wound up as the strictest constructionist of modern times. And think of Justice Hugo Black, now regarded as a great justice, who began his Supreme Court career under the cloud of having once been a member of the Ku Klux Klan . . .

Mr. President, history has a way of putting things in perspective. Even those who do the nominating may misjudge a nominee. At one point, President Theodore Roosevelt was so disappointed in the performance of one of his appointees to the Supreme Court, Justice Oliver Wendell Holmes, that he commented:

I could carve a judge with more backbone out of a banana.

Mr. President, the pending nomination has been of deep personal concern. As a member of the Judiciary Committee, I have carefully followed the hearings and have carefully reviewed his record as a Federal judge.

As one Senator, I do not believe the record justifies opposing the nomination.

Accordingly, I shall vote to confirm G. Harrold Carswell to be an Associate Justice of the Supreme Court.

Mr. PROXMIRE. Mr. President, William Van Alystyne, a professor of law at Duke University, opposed Carswell's confirmation in testimony before the Judiciary Committee. Van Alystyne told the committee that he supported the nomination of Judge Haynsworth but strongly opposed the Carswell nomination. I would like to present to you, Mr. President, some parts of Professor Van Alystyne's testimony:

A short time ago, as you gentlemen recall, this committee was asked to report to the Senate its recommendations as to whether the Senate should consent to the nomination of Judge Clement Haynsworth as Associate Justice of the Supreme Court. At that time, I felt some obligation to file a

statement because of a profesional familiarity with Judge Haynsworth's judicial record which I believe might be of assistance to the Senate. I was prompted to appear as well because of a substantial belief, formed after a review of Judge Haynsworth's opinions and decisions during 12 years on the court of appeals, that the extent of the criticism then being made by others was not in fact justified. While it was not possible to review and to report on any large number of Judge Haynsworth's decisions in my filed statement, I did attempt to examine a sufficient number fairly to reflect in my statement what I believed to be of principal interest to this committee and to the Senate. On that basis, I concluded that Judge Haynsworth was an able and conscientious judge, that his decisions manifested a greater degree of judicial compassion within the allowable constraints of proper discretion than others had taken the care to acknowledge, and that even in instances where I could not personally find agreement, private or professional, with a particular result, I could, nonetheless see from the quality of the opinion that that result had been arrived at with reassuring care and reason.

In the little time available prior to this hearing, I have sought to review Judge Carswell's work in an equivalent fashion. My impressions are sharply different from those I held of Judge Haynsworth, however, even without regard to additional circumstances which have made this an extraordinary case.

Reference has been made to an earlier published statement by Judge Carswell in 1948. I would agree with those who believe that unless that statement can be significantly discounted by clear and reassuring events since that time, 20 years ago, it would be uniquely inappropriate for the Senate to consent to his nomination as an Associate Justice of the Supreme Court. But an examination of his decisions and opinions as a district judge since that time, even laying his earlier statement entirely aside, provides no feeling for a basis of reassurance whatever. Again, without beginning to exhaust all that might be mentioned in this regard, a brief review of several particular cases may illustrate the lack of any reassuring quality in the opinions or results.

In the case of *Due* v. *Tallahassee Theatres, Inc.*, for instance, several Negro plaintiffs sued to enjoin an alleged conspiracy by the local sheriff and others to perpetuate segregation in public facilities by means of harassment and discriminatory law enforcement against blacks. The decision by Judge Carswell granting summary judgment in favor of the sheriff without a hearing was reversed in the court of appeals on grounds that it was "clearly in error," that the allegations readily supported a cause of action under various civil rights acts and preexisting Supreme Court decisions, and that a hearing should have been held.

In *Singleton* v. *Board of Commissioners of State Institutions*, suit was brought by four Negro children sent to a segregated institution after conviction for participation in a sit-in, to enjoin that segregation and to have the State statute requiring such segregation declared unconstitutional. The suit was dismissed as allegedly being moot by Judge Carswell, but the court of appeals reversed in an opinion further indicating that relief on the merits should have been granted to the plaintiffs.

In *Dawkins* v. *Green*, Negro plaintiffs sought to enjoin police and municipal officers from seeking to enforce certain statutes on a discriminatory basis to intimidate and harass Negroes, and to prevent them from exercising certain constitutional rights. Without holding any hearing to provide the plaintiffs an opportunity to establish that the officials were in fact acting maliciously and in bad faith, Judge Carswell granted summary judgment against the plaintiffs based only on conclusory affidavits submitted by the officers. Again the court of appeals reversed, holding that this preemptory use of summary judgment was in error, and remanding the case for a hearing on the merits.

In *Steele* v. *Board of Public Instruction*, Judge Carswell accepted an extremely grudging desegregation plan submitted by the county in 1963 and approved its continuing operation in 1965, to be reversed by the court of appeals on the basis that the plan was constitutionally inadequate.

In *Augustus* v. *Board of Public Instruction of Escambia County*, suit was brought on behalf of Negro children to enjoin segregation in the county schools and racial assignment of the teachers. Judge Carswell's opinion manifested a severely restricted interpretation of the Supreme Court's opinion in *Brown* v. *Board of Education*, concluding that it applied only to the segregation of children, not the teachers, finding no basis at all for the proposition that the racial assignment of teachers may also violate equal protection owing the students, and he denied them an opportunity to establish that systematic racial assignment of teachers may obviously bear on the quality of the student's own education. In reversing, the court of appeals held that it was error not to allow the plaintiffs an opportunity to show to what extent they may be injured by racial segregation of teachers.

Let me interrupt my prepared statement at this point to point out that when the identical issue came before Judge Haynsworth he, as the fifth circuit judge, of course recognized that the students were in a suitable position to contest that issue and granted full relief on the merits.

In a companion case brought before Federal district court Judge Simpson in the middle district of Florida on the same issue Judge Simpson also recognized that that was the point.

In short, gentlemen, Judge Carswell's opinion on this issue stands unique as a severe and restrictive and subsequently reversed interpretation on a principal point of constitutional law.

It is correct also, of course, that there are several cases in which relief was not denied to plaintiffs suffering injury from unlawful racial discrimination (see, for example, *Brooks* v. *City of Tallahassee*, 202 F. Supp. 56 N.D. Fla. 1961, *Pinkney* v. *Meloy*, 241 F. Supp. 933 N.D. Fla. 1965). They have been repeatedly mentioned here as the *Air Terminal* and *Barber Shop* cases.

Senator BAYH. Are there others that have come to your attention?

Mr. VAN ALYSTYNE. Respectfully, Senator, those were the only two that I was able to find in 72 hours of research. It is also possible that opinions were overlooked in that these cases are nowhere indexed by judges names.

Senator BAYH. If you find others—I do not speak for the whole committee—I would hope you would bring those to our attention as well.

Mr. VAN ALYSTYNE. I would wish to do so in any case from a private sense of responsibility to this committee. Respectfully however, while relief was not denied in these cases, it was only in circumstances where heavily settled higher court decision and incontestably clear acts of Congress virtually compelled the result, leaving clearly no leeway for judicial discretion to operate in any other direction. I would respectfully invite the committee's particular attention to the particular opinions to establish that conclusion.

More disturbing in the cases generally, and by generally I mean not to restrict myself to the area of race relations at all, although intrinsically far more difficult to illustrate in the nature of the shortcoming, there is simply a lack of reasoning, care, or judicial sensitivity overall, in the nominee's opinions.

There is, in candor, nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States.

It is, moreover, in this context and on the basis of this subsequent record that the Senate must resolve fair doubts in assessing the significance of an acknowledged statement made by the nominee under public circumstances, as a mature man of 28 years, with a graduate education in the law and experience in business affairs, now to be considered for the highest judicial office in the United States. This is not the time, in this public room, for any of us to weigh these words for all their impact. Rather, it is for each of you to go to some private place, to these words again, slowly and aloud, listening again, then to decide the future of the Supreme Court and the advice of the Senate:

"I yield to no man, as a fellow candidate or as a fellow citizen, in the firm vigorous belief in the principles of white supremacy and I shall always be so governed." (G. Harrold Carswell)

I have not come here to damn Judge Carswell. I do not know him personally.

I merely wish to volunteer this observation if I could. It was really after a great deal of personal agonizing that I decided to appear at all. I was concerned, however, that with the relative brevity of time for others to make some systematic and professionally responsible review of the judge's decision there might be no one else who could attempt to advise members of this committee in terms of your own question, Senator, whether there were reassuring events in this 20-year hiatus of time, so that one could honorably, as I should want to do as well, wholly dismiss and discount the utterance of 1948.

Discussing the dissimilarity between the nominations of Justice Black and Judge Carswell, Professor Van Alystyne goes on to say this:

As county prosecutor of Bessemer County in Alabama, Hugo Black prosecuted the mayor and chief of police for extorting confessions from Negroes. That is a reassuring event in my mind. As a U.S. Senator, he had ample opportunity to take a political position under very public circumstances on a variety of constitutional and civil liberties issues. In one case, for instance, he voted against the Smoot-Hawley tariff, a very complicated bill, and primarily on the basis that it gave a certain power to one of the customs masters to screen out certain forms of writing from the United States; that is to say, his was the first amendment objection.

This matter was carefully reviewed by people of politically liberal persuasion at the time, and they did find a repeated series of reassuring events at this time, so to indicate that at the very worst then Hugo Black's affiliation with the KKK was one of convenience, given their overwhelming political control of the area, but neither by public utterance nor by private conduct nor by subsequent participation in the U.S. Senate or otherwise in public or private life was there lacking the presence of reassuring events or any presence of things more detrimental.

There is, however, a different distinction as well, Senator; 1948 is not 1933. The race issue was not a major issue in 1933. The affiliation of convenience may not speak particularly well of a man, but this was by no means so serious a matter in 1933 as in 1948. In 1948 civil rights legislation was before Congress. This was in the context of all the political controversy. The President had just desegregated the military in which Mr. Carswell himself had been matured in part. The Nation had just then read President Truman's special report "To Secure These Rights." The issue was now central, the oc-

casion to reflect was far better provided than in 1933.

We have to look at the situation in terms of distinction in point of time: When Senator Black was before the Senate for confirmation to the Supreme Court, and the relative unimportance, although I say that with regret, the relative public unimportance of the race issue, and the posture of the Supreme Court, and the difference in quality today.

If the Warren court will be historically a monument, it will probably be principally because it at least gave that initial push to the momentum of concern in the United States dating from 1954. There has been in my view a unique and admirable unanimity on this crucial question since that time.

I can think of no more regrettable insult to the Warren court, unless the committee is virtually reassured that this was merely a forgivable incident, and can find those reassuring events, in the absence of that kind of evidence I tell you in all respect that it will be a major insult to the legacy of the Warren court if this nomination is confirmed.

I find no similar situation in the circumstances of the confirmation of Senator Black.

And just last week a group of almost 500 prominent lawyers, including Democrats and Republicans, liberals and conservatives, as well as the deans of the law schools at Harvard, Yale, and the University of Pennsylvania, and the president of the Association of the Bar of New York City—and incidentally also the president of a bar association from the State of the distinguished Senator from Michigan, the Detroit Bar Association—signed a statement asking the Senate to reject the Carswell nomination and at the very least to reopen hearings.

These outstanding lawyers feel that Carswell has neither the legal nor mental qualifications necessary for service on the Supreme Court, or for that matter on any high court. Their analysis of his record indicates that Harrold Carswell still believes in the separation of the races as the proper way of life.

In a letter to Senators accompanying the statement these lawyers write:

We respectfully urge that, although this is a second nominee for the vacancy, the Senate has a greater constitutional duty to exercise independent judgment in judicial appointments than it has in executive appointments. We believe that, in the exercise of that duty, the Senate should confirm an appointment to the Supreme Court only if the nominee is of outstanding competence and superior ability. Judge Carswell does not, in our opinion, meet that test.

The Senate has recognized this obligation in repeated instances. For example, the 71 Supreme Court nominations sent to the Senate during the nineteenth century by the Presidents, more than one-fourth were denied Senate approval (Charles Warren: The Supreme Court in United States History, Vol. II, pp. 758–762).

In my view, Mr. President, this group of outstanding lawyers has developed powerful and cogent arguments why the nomination of G. Harrold Carswell should be rejected. Considerable study is given to Carswell's role in leasing a public golf course to a private club in an obvious attempt to exclude Negroes from using the facilities. The statement in question is so significant and so convincing that I would like to read it to the Senate.

The understigned members of the Bar, in various sections of the United States, and of differing political affiliations, are deeply concerned about the evidence in the hearings of the United States Senate Judiciary Committee on the confirmation of Judge G. Harrold Carswell as an Associate Justice of the Supreme Court of the United States.

The testimony indicates quite clearly that the nominee possesses a mental attitude which would deny to the black citizens of the United States—and to their lawyers, black or white—the privileges and immunities which the Constitution guarantees. It has shown, also, that quite apart from any ideas of white supremacy and ugly racism, he does not have the legal or mental qualifications essential for service on the Supreme Court or on any high court in the land, including the one where he now sits.

The testimony has shown no express or implied repudiation of his 1948 campaign declarations in favor of "white supremacy" and of his expressed belief that "segregation of the races is proper and the only correct way of life in our State"—until his confirmation for the United States Supreme Court was put in jeopardy by their disclosure. On the contrary, it shows a continuing pattern of reassertion of his early prejudices.

That pattern is most clearly indicated by his activities in 1956 in connection with the leasing of a public golf course in his city to a private club, for the purpose of evading the Constitution of the United States and excluding blacks from its golf course.

We are most deeply concerned about this part of the testimony. He was then no longer the youthful, enthusiastic campaign orator of 1948 running on a platform of "white supremacy" and "segregation as a way of life." He was then a mature man, holding high Federal office.

Unfortunately, insufficient public attention has been paid by the media of public information and by the public in general to this episode.

The testimony as to the golf club is particularly devastating, not only because of the nominee's lack of candor and frankness before the Senate Committee in attempting to explain it, but because his explanation, if true, shows him to be lacking the intelligence of a reasonable man and to be utterly callous to the implications of the scheme to which he was lending himself.

The circumstances surrounding this golf club incident are extremely important, and should be made clear. By 1955, the Supreme Court of the United States had declared that it was unconstitutional for a city or state to segregate any of its public recreational facilities, such as golf courses. As a result of this decision, a common and well-publicized practice had grown up in the South, in order to keep blacks off municipal golf courses, by which the cities would transfer or lease the public facilities to a private corporation, which would then establish rules for exclusive use by whites. This was, of course, a palpable evasion—and universally understood so to be.

By 1956, many cases had already been filed in various cities of the South to invalidate these obvious subterfuges. Several lower United States Courts had already struck them down as unconstitutional. These cases were well publicized at the time when United States Attorney Carswell, who had been, of course, sworn as a United States Attorney to uphold the Constitution and laws of the United States, became involved in the matter of the municipal golf club in Tallahassee, Florida, where he lived.

By the date the Tallahassee incident occurred, five lawsuits had already been started in different cities in the State of Florida to desegregate municipal recreation facilities, including, among others, golf clubs; and it was clearly evident that Tallahassee and its municipal golf club would soon be the target of such a suit.

Therefore, to circumvent the results of such a suit, some white citizens of Tallahassee incorporated a private club, to which the municipal golf course was thereupon leased for a nominal consideration. Affidavits, dated in February 1970, were submitted and read to the Senate Committee, signed by both blacks and whites who were residents of Tallahassee at the time, showing that it was generally understood that this transfer was being made solely for the purpose of keeping black citizens off the course.

One of these affidavits (TR 610)* was by a Negro lady, a public high school teacher for ten years, the business manager of Tallahassee's A&M Hospital for one-half year, and presently an Educational Specialist at the Federal Correctional Institution in Tallahassee. It said in part:

"Tallahassee was in a racial uproar over the bus boycott and other protests—bringing a reaction of fear to the white community. The word 'private' had increasingly become a code name for segregation.

"The Capital City Country Club incorporation proceedings were well-publicized and the racial overtones were necessarily clear to every knowledgeable citizen in the areas, and it would have been surprising to me if an intelligent man, particularly an incorporator was not aware of the repeatedly emphasized racial aspects of this case.

"We did discuss this corporation widely at the time; had we not been so preoccupied with other protests, we would have undoubtedly moved against the Corporation in civil suit."

Another affidavit (TR 611) was signed by a white lady, "a life-long resident of Tallahassee whose family has been domiciled in the city for several generations," "the wife of the chairman of Florida's oldest bank, the Lewis State Bank of Tallahassee." It stated that: (1) the golf course had been developed and improved by a grant of $35,000 of WPA funds; (2) she refused to join in the new club "because we wanted no part in converting public property to private use without just compensation to the public, and because of the obvious racial subterfuge which was evident to the general public"; (3) that she had discussions at the time of the lease "with a variety of parties during that period on the subject of a golf course, the issue being of wide civic concern." She stated:

"I would have been surprised if there was any knowledgeable member of the community who was unaware of the racial aspect of the golf course transaction. The controversy appeared in the local newspaper of the time and a city commissioner was known to have raised questions about the racial implications involved."

There was then received in evidence (TR 613), a clipping from page 1 of the local newspaper referred to, the Tallahassee Democrat, for February 15, 1956. This contemporaneous clipping corroborated the affidavits in showing the community discussion of the racial purpose of the lease. Reporting the fact that the lease had been entered into by the City Commission with the private club, it stated:

"The action came after a two-month cooling off period following the proposal's first introduction. At that time former City Commissioner H. G. Easterwood, now a county commissioner, blasted the lease agreement.

"He said racial factors were hinted as the reason for the move.

"Under the arrangement, the country club group would take over the operation of the course September 1. The lease is for 99 years, running through 2055, and calls for a $1.00 a year payment."

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*References are to the transcript of the hearings on the nomination before the Senate Committee on the Judiciary.

The then United States Attorney, now seeking to become an Associate Justice of the Supreme Court of the United States, became an incorporator and director of that private club to which the golf club was to be leased. Here was a high Federal public official, thoroughly cognizant of the decisions of the Federal courts, participating in a scheme to evade the Constitution.

The answer of Judge Carswell to the disclosure of this was that: (1) he thought that the papers he signed (with a subscription of $100) were for the purpose of fixing up the old golf club house; (2) that he at no time discussed the matter with anyone; and (3) that he never believed that the purpose of this transaction had anything to do with racial discrimination or keeping blacks off the course.

Some of the Senators at the hearings were as incredulous as we are. We think that a few short extracts of the Judge's testimony on this matter will give a clearer picture of the man who now seeks a seat on the Supreme Court of the United States—the final guardian of the individual rights of all of us:

Judge CARSWELL (In answer to a question by Senator Kennedy as to whether the Judge was testifying that the transaction was principally an effort to build a club house): "That is my sole connection with that. I have never had any discussion or never heard anyone discuss anything that this might be an effort to take public lands and turn them into private lands for a discriminatory purpose. I have not been privy to it in any manner whatsoever." (TR 65)

Senator KENNEDY (TR 149): Mr. Nominee, I think the document speaks for itself in terms of the incorporation of a club, a private club . . . I think, given the set of circumstances, the fact that they were closing down all recreational facilities in that community at that time because of various integration orders, I suppose the point that Senator Bayh is getting to and some of us asked you about yesterday is whether the formation of this club had it in its own purpose to be a private club which would, in fact, exclude blacks. The point that I think he was mentioning and driving at, and Senator Hart talked to, and I did in terms of questions, is whether, in fact, you were just contributing some $100 to repair of a wooden house, club house, or whether, in fact, this was an incorporation of a private club, the purpose of which was to avoid the various court orders which had required integration of municipal facilities. . . .

"Now, I think this is really what, I suppose is one of the basic questions which is of some interest to some of the members and that we are looking for some response on."

Judge CARSWELL: "Yes sir, and I hope I have responded, Senator Kennedy. I state again unequivocally and as flatly as I can, that I have never had any discussions with anyone, I never heard any discussions about this."

Senator BAYH: "You had no personal knowledge that some of the incorporators might have had an intention to use this for that purpose?" (TR 150)

Judge CARSWELL: "I certainly could not speak for what anybody might have thought, Senator. I know that I positively didn't have any discussions about it at all. It was never mentioned to me. I didn't have it in my mind, that is for sure. I can speak for that." (TR 150)

Senator Bayh then asked whether there were then any problems in Florida relating to the use of public facilities and having them moved into private corporations. Judge Carswell answered:

"As far as I know, there were none there and then in this particular property."

Senator Bayh then asked whether Judge Carswell was not aware of other cases in Florida?

Judge CARSWELL: "Oh, certainly, certainly. There were cases all over the country at that time, everywhere. Certainly I was aware of the problems, yes. But I am telling you that I had no discussions about it, it was never mentioned to me in this context and the $100 I put in for that was not for any purpose of taking property for racial purposes or discriminatory purposes." (TR 151)

Senator KENNEDY: "Did you have any idea that that private club was going to be opened or closed?

Judge CARSWELL: "The matter was never discussed."

Senator KENNEDY: "What did you assume?"

Judge CARSWELL: "I didn't assume anything. I assumed that they wanted the $100 to build a club house and related facilities if we could do it. . . ." (TR 153)

Senator KENNEDY: "When you sent this and you put up the money, and you became a subscriber, did you think it was possible for blacks to use that club or become a member?"

Judge CARSWELL: "Sir, the matter was never discussed at all."

Senator KENNEDY: "What did you assume, not what was discussed?"

Judge CARSWELL: "I didn't assume anything. I didn't assume anything at all. It was never mentioned."

Senator KENNEDY: "Did you in fact sign the letter of incorporation?"

Judge CARSWELL: "Yes, sir. I recall that. . . ."

Senator KENNEDY: "Did you generally read the nature of your business or incorporation before you signed the notes of incorporation?"

Judge CARSWELL: "Certainly I read it, Senator. I'm sure I must have. I would read anything before I put my signature on it, I think [sic]."

We cannot escape the conclusion that a man, in the context of what was publicly happening in Florida and in many parts of the South—which the nominee says he knew—and what was being discussed locally about this very golf club, would have to be rather dull not to recognize this evasion at once; and also fundamentally callous not to appreciate and reject the implications of becoming a moving factor in it. Certainly it shows more clearly than anything else the pattern of the Judge's thinking from his early avowal of "white supremacy" down to the present.

Particularly telling—as showing the continuing pattern of his mind which by the time of the golf club incident, if not before, had become clearly frozen—are the testimony and discussion of fifteen specific decisions in civil and individual rights cases by the nominee as a United States District Judge (TR 629, et seq.). These fifteen were, of course, only a few of the decisions by the nominee. A study of a much fuller record of his opinions led two eminent legal scholars and law professors to testify before the Senate Committee that they could find therein no indication that the nominee was qualified—by standards of pure legal capacity and scholarship, as distinguished from any consideration of racial prejudices—to be a Supreme Court Justice.

These specific fifteen cases are all of similar pattern: they involve eight strictly civil rights cases on behalf of blacks which were *all* decided by him against the blacks and all *unanimously* reversed by the appellate courts; and seven proceedings based on alleged violations of other legal rights of defendants which were all decided by him against the defendants and all *unanimously* reversed by the appellate court. Five of these fifteen occurred in one year—1968.

These fifteen cases indicate to us a closed mind on the subject—a mind impervious to repeated appellate rebuke. In some of the fifteen he was reversed more than once. In many of them he was reversed because he decided the cases without even granting a hearing, although judicial precedents clearly required a hearing.

We do not dispute the Constitutional power or right of any President to nominate, if he chooses, a racist or segregationist to the Supreme Court—or anyone else who fills the bare legal requirements. All that we urge is that the nominee reveal himself, or be revealed by others, for what he actually is. Only in this way can the Senate fulfill its own Constitutional power to confirm or reject; only in this way can the people of the United States—the ultimate authority—exercise an informed judgment. That is the basic reason for our signing this statement, as lawyers, who have a somewhat special duty to inform the community of the facts.

We agree with Judge Carswell that a nominee for the Court should not ordinarily be compelled to impair his judicial independence by explaining his decisions to a Senate Committee. But this was no ordinary situation. It involved a consistent and persistent course of judicial conduct in the face of continual reversals, showing a well-defined and deeply ingrained pattern of thought.

We believe that—at the very least—the hearings should be reopened so that an official investigation can be made by independent counsel for the Committee, empowered as it is to subpoena all pertinent records, including the files of the Department of Justice and the records of Judge Carswell's court. So far, the evidence in opposition—compelling as it is—has been dug up solely by the energy and efforts of private citizens or groups, without power of subpoena. For example, the episodes of the 1948 pledge to "white supremacy" and the country club lease were both dug up by independent reporters.

Are there any other incidents like the golf club, or other public or private statements about "white supremacy"? Are there additional, but unreported, decisions in the files of Judge Carswell's court, not readily available to lawyers who can search only through the law books for cases which have been formally reported and printed? What information can be found in the files of the Department of Justice, unavailable, of course, to the opposition but readily subject to a Committee subpoena?

One vote out of nine on the Supreme Court is too important to rely on a volunteer investigation, on the efforts of private, public-spirited lawyers and reporters, although they have already uncovered evidence clearly indicating, in the absence of a more credible explanation, rejection of the nomination.

The future decisions of the Supreme Court will affect the lives, welfare and happiness of every man, woman and child in the United States, the effectiveness of every institution of education or health or research, the prosperity of every trade, profession and industry. Those decisions will continue to be a decisive factor in determining whether or not ours will, in the days to come, truly be "a more perfect Union," where we can "establish Justice, insure domestic Tranquility, . . . promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

We urge that the present record clearly calls for a refusal to confirm by the Senate of the United States.

Signed:

BRUCE BROMLEY,
Former Judge, Court of Appeals, State of New York.

FRANCIS T. P. PLIMPTON,
President, the Association of the Bar of the City of New York.

SAMUEL I. ROSENMAN,
Former President, the Association of the Bar of the City of New York.

BETHUEL M. WEBSTER,
Former President, the Association of the Bar of the City of New York.

Mr. CASE. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I am happy to yield to the Senator from New Jersey.

Mr. CASE. I asked the Senator to yield only to underscore the fact that these four principal signers of the statement he has just read are, indeed, among the most distinguished, able, and well-known lawyers in the country. Except for Judge Rosenman, they are all Republicans. All of them, perhaps including Judge Rosenman, are conservative people—certainly very solid people.

We do not get a Bruce Bromley, leader of the New York Bar, or a Webster, or a Judge Rosenman, or a Plimpton—he is presently president of the Association of the Bar of the City of New York, and active in all good works, among other things, a longtime trustee of Columbia University—we do not get people like that making statements of this sort lightly.

Their consciences were outraged by this appointment. I must confess that mine was outraged, too.

Appointments of this sort are never good or acceptable. They are especially unacceptable now, if the Senator would yield further, if I am not interrupting him——

Mr. PROXMIRE. No. This is a very good time for me to yield——

Mr. CASE. I did not wish to interrupt the flow of the Senator's thoughts. I thought this might be a good time to say something since he has finished reading the rather long statement by these lawyers.

Mr. PROXMIRE. I thank the distinguished Senator. His point is most useful because there is an assumption that people opposing the nominee are wild-eyed liberals——

Mr. CASE. That they are long-haired liberals and——

Mr. PROXMIRE. But these are solid members, as the Senator from New Jersey has stated, of the President's own party who are men, I am sure, who would not take a position lightly. They would like very much, as would the Senator from New Jersey and the Senator from Wisconsin, to support a nomination for the Supreme Court if they could possibly do so.

Mr. CASE. Mr. President, I appreciate the Senator's giving me this chance to say this. Since I have interrupted, there is one other point that I would like to underscore, if I may, at this time.

Many arguments have been made that less than wholly distinguished people have been appointed and in some cases have come to be acceptable or even good judges. The thought has been expressed that this might be true in the instant case.

I think we have to go a little on the law of averages. And we will get a better Court if we do the best we can. No selection process is perfect. Even with the best of intentions and with the highest criteria and the highest intelligence, one can make a mistake sometimes on how a person will turn out. But certainly the chances are greater that a selection from the top drawer will be more successful as far as the outcome is ultimately concerned than if the selection were made as our friend, the Senator from Louisiana suggested, from A, B, and C groups, with some idea that we need a representation across the board.

Even if this were so, let us leave everything else aside and let us assume that this man, having been appointed and seated on this Court, has a whole change in his views about race and develops an unusual diligence and surprises all of us with latent powers that he has not yet shown. Still, we would be taking a chance on that.

Let us assume that he worked out. It would still be a most unfortunate appointment, because it represents something wholly unnecessary. There are many other conservative people from the South that could be selected. It represents wholly unnecessarily a slap in the face to the black community of this country.

It represents a most unfortunate repudiation of those black moderate leaders who have been doing their best to help this country stay on an even keel.

It is irresponsible to do this at this time, and the argument that this man might change his mind on these matters would not correct the deep wound that would be caused in this area at a time when this country needs no further wounds, but, rather, a healing, an understanding, and an encouragement to the members of the black and white communities who are doing their best to help us over this most difficult period.

Mr. PROXMIRE. Mr. President, I thank the Senator. I am honored to have been on the floor when he made this extremely eloquent and moving statement. I think it is one that we ought to dwell on.

This is a wholly unnecessary insult and wound to the black community, as the Senator has said.

I think a point that we should consider is that the great need in our country is to persuade those who have been denied justice. And certainly all of us know that the blacks in this country have been denied justice.

They have been told that they should work within the system for change. How can they work for a change? One way is to blow up a courthouse. Another is to start a riot. Another is to work through the Supreme Court of the United States. And that way has been found to be enormously effective.

We have made great progress in civil rights in the last 16 years, since 1954.

But what kind of hope for progress by working within the system can we hold up to the American blackman when people like Carswell are nominated, men with his background?

As the New York Times said when the nomination was announced by President Nixon:

> It may well be that an appointment to the Supreme Court will do G. Harrold Carswell a world of good.

Maybe it will. But this is an incredible justification for appointing a man to the highest court of our land.

We can only judge him on the basis of what he has been, what he has done, and what he has stood for.

We cannot get a more distinguished group of lawyers and jurists than the 500 who have appealed to the Senate not to confirm Judge Carswell.

And these eminent men point out that not only has he acted and spoken in favor of segregation, but also his court opinions clearly reflect this again and again. He has decided against black persons who have appeared before his court again and again. And he has been reversed, and reversed in many cases unanimously.

I should like to document further the point made by the Senator from New Jersey by pointing out some of the many distinguished men who have signed this appeal to the Senate that it should not under any circumstances confirm the nomination of Judge Carswell.

Charles S. Desmond, former chief judge, New York State court of appeals, Buffalo, N.Y.

John G. Buchanan, first chairman, American Bar Association committee on the judiciary; former president, Allegheny County Bar Association, and Pennsylvania Bar Association, Pittsburgh, Pa.

Dean Robert F. Drinan, S. J., Boston College Law School, Boston, Mass. He is a man who we have had testify before many Senate commitees with great distinction. He is recognized as a legal scholar and an expert.

Cyrus Vance, partner, Simpson, Thacher & Bartlett, New York, N.Y.

Simon H. Rifkind, former judge, U.S. district court, New York, N.Y.

Chauncey Belknap, former president of the New York State Bar Association, New York, N.Y.

Haskell Cohn, president of the Boston Bar Association, Boston, Mass.

Warren Christopher, partner in O'Melveny & Meyers, Los Angeles, Calif.

We then have a number of distinguished professors and the dean and faculty of Yale University Law School. Yale University Law School is certainly one of the most eminent law schools in our country. Many people feel it is the best. The dean and a number of the members of the faculty have supported this statement.

John W. Douglas, former U.S. Assistant Attorney General, Washington, D.C. Mr. Douglas is a son of former Senator Douglas.

Robert M. Morgenthau, former U.S. attorney for the southern district of New York, N.Y. He recently submitted his resignation.

Sumner T. Bernstein, past president of the Maine State Bar Association, Portland, Maine.

We have the dean and a number of the faculty members of the Notre Dame Law School, Notre Dame, Ind.

We have a number of distinguished men from California, New Jersey, and Montana, and a number of distinguished members of the faculty of Ohio State University at Columbus, Ohio.

We have the dean and a large number of the faculty members of Columbia University. The dean is William C. Warren.

Professor Harold Havighurst, certainly one of the most distinguished legal scholars in the country.

Theodore Chase, former president of

the Boston Bar Association, Boston, Mass.

We have distinguished lawyers from Chicago, Ill., and Detroit, Mich., and many other parts of the country.

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

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

LIST OF LAWYERS OPPOSING NOMINATION OF G. HARROLD CARSWELL

Charles S. Desmond, Former Chief Judge, New York State Court of Appeals, Buffalo, New York.

John G. Buchanan, First Chairman, American Bar Association Committee on the Judiciary; Former President, Allegheny County Bar Association and Pennsylvania Bar Association, Pittsburgh, Pennsylvania.

Dean Robert F. Drinan, S.J., Boston College Law School, Boston, Massachusetts.

Cyrus Vance, Partner, Simpson, Thacher & Bartlett, New York, New York.

Simon H. Rifkind, Former Judge, U.S. District Court, New York, New York.

Chauncey Belknap, Former President, New York State Bar Association, New York, New York.

Haskell Cohn, President, Boston Bar Association, Boston, Massachusetts.

Warren Christopher, Partner, O'Melveny & Myers, Los Angeles, California.

Dean and Faculty, Yale University Law School, New Haven, Connecticut: Louis H. Pollak, Dean; Boris I. Bittker; Ralph S. Brown, Jr., Associate Dean; Arthur A. Charpentier; Thomas I. Emerson; William L. F. Felstiner, Associate Dean; Daniel J. Freed; Abraham S. Goldstein, Dean Designate; Joseph Goldstein; Friedrich Kessler; Ellen A. Peters; Charles A. Reich; Eugene V. Rostow; Robert B. Stevens; Clyde W. Summers; Harry H. Wellington.

John W. Douglas, Former U.S. Assistant Attorney General, Washington, D.C.

Robert M. Morgenthau, Former U.S. Attorney for the Southern District of New York, New York, New York.

Sumner T. Bernstein, Past President, Maine State Bar Association, Portland, Maine.

Dean and Faculty, Notre Dame Law School, Notre Dame, Indiana: William B. Lawless, Dean; Frank E. Booker; Leslie A. Foschio, Assistant Dean; Godfrey C. Henry; Charles W. Murdock; Thomas L. Shaffer, Associate Dean.

Robert H. Fabian, San Francisco, California.

Burrell Ives Humphreys, Former Deputy Attorney General, State of New Jersey, Wayne, New Jersey.

Richard A. Bancroft, San Francisco, California.

Gardner Cromwell and Lester R. Rusoff; Professors, University of Montana School of Law, Missoula, Montana.

Samuel H. Hofstadter, Former Justice, Supreme Court, State of New York, New York, New York.

Walter S. Hoffmann, Wayne, New Jersey.

Faculty, Ohio State University College of Law, Columbus, Ohio: Merton C. Bernstein, Mary Ellen Caldwell, Howard P. Fink, Michael Geltner, Lawrence Herman, Michael Kindred, P. J. Kozyris, Stanley K. Laughlin, Jr., Richard S. Miller, John B. Quigley, Jr., Keith Rosenn, Peter Simmons, Roland J. Stanger, R. Wayne Walker.

Harold E. Kohn, Partner, Dilworth, Paxson, Kalish, Kohn & Levy, Philadelphia, Pennsylvania.

Ramsey Clark, Former Attorney General of the United States, Washington, D.C.

Eli Frank, Jr., President, Maryland State Bar Association, Baltimore, Maryland.

Harold C. Havighurst, Professor, Arizona State University College of Law, Tempe, Arizona.

Robert M. Landis, Partner, Dechert, Price & Rhoads, Philadelphia, Pennsylvania.

Theodore Chase, Former President, Boston Bar Association, Boston, Massachusetts.

Dean and Faculty, Columbia University School of Law, New York, New York: William C. Warren, Dean; Harlan M. Blake; William L. Cary; George Cooper; Robert M. Cover; Henry de Vries; Harold S. H. Edgar; Sheldon H. Elsen; Tom J. Farer; E. Allan Farnsworth; Wolfgang G. Friedmann.

William R. Fry, Assistant Dean; Mrs. Nina M. Galston; Richard N. Gardner; Walter Gellhorn; Frank P. Grad; R. Kent Greenawalt; Milton Handler; Robbert Hellawell; Louis Henkin; Alfred Hill; N. William Hines; William Kenneth Jones.

Harold J. Rothwax; John M. Kernochan; Victor Li; Louis Lusky; Willis L. M. Reese; Albert J. Rosenthal; Benno C. Schmidt, Jr.; Edwin G. Schuck; Hans Smit; Abraham D. Sofaer; Michael I. Sovern; Telford Taylor; H. Richard Uviller; Herbert Wechsler; Walter Werner.

John Ritchie, Chicago, Illinois.

Clifford L. Alexander, Jr., Partner, Arnold & Porter, Washington D.C.

David Goldstein, Former President, Connecticut Bar Association, Bridgeport, Connecticut.

Dean and Faculty, Columbus School of Law, Catholic University of America, Washington, D.C.: E. Clinton Bamberger, Jr., Dean; Brian M. Barnard; Kendall M. Barnes; L. Graeme Bell, III; Marilyn Cohen, Assistant Dean; Fernand N. Dutile; Carson G. Frailey; Arthur John Keeffe; Vernon X. Miller; Michael D. O'Keefe; Ralph J. Rohner; John R. Valeri; Matthew Zwerling.

Morris Abram, Member of the Georgia and New York Bars; Former President, Brandeis University, New York, New York.

Addison M. Parker, Partner, Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, Iowa.

Faculty, School of Law, University of California, Los Angeles, California: Reginald H. Alleyne; Michael R. Asimow; Roger L. Cossack, Assistant Dean; Kenneth W. Graham, Jr.; Donald G. Hagman; Harold W. Horowitz; William A. Klein; Leon Letwin; Henry W. McGee, Jr.; Herbert Morris; Addison Mueller; Melville B. Nimmer; Monroe E. Price; Barbara B. Rintala; Arthur I. Rosett; Lawrence Sager; Gary T. Schwartz; Herbert E. Schwartz; Luis Schuchinski; Robert A. Stein; Michael E. Tigar; Richard A. Wasserstrom.

G. D'Andelot Belin, Partner, Choate, Hall & Stewart, Boston, Massachusetts.

Charles F. Houghton, Partner, Reardon, Thoma & Cunningham, Yonkers, New York.

Donald E. Freedman, Partner, Berman & Tomaselli, Freeport, New York.

Nathaniel Colley, Partner, Colley & McGhee, Sacramento, California.

Dean and Faculty, Valparaiso University School of Law, Valparaiso, Indiana: Louis F. Bartelt, Jr., Dean; Charles R. Gromley; Jack A. Hiller; Alfred W. Meyer; Seymour Moscowitz; Richard Stevenson; Michael Swygert; Fredrich Thomforde; Burton Wechsler.

Louis Garcia, San Francisco, California.

Dale A. Whitman, Professor, University of North Carolina School of Law, Chapel Hill, North Carolina.

Graham B. Moody, Jr., Partner, McCutchen, Doyle, Brown & Enersen, San Francisco, California.

Dean and Faculty, Georgetown University Law Center, Washington, D.C.: Adrian S. Fisher, Dean; Addison Bowman, III; Richard F. Broude; Paul R. Dean; Frank J. Dugan; Stanley D. Metzger; John G. Murphy, Jr.; Donald E. Schwartz; Don Wallace, Jr.

Dean David H. Vernon, University of Iowa College of Law, Iowa City, Iowa.

Lloyd K. Garrison, Former Member, Executive Committee of the Association of the Bar of the City of New York and Former President, Board of Education of the City of New York, New York, New York.

Sadie T. M. Alexander, Secretary, Philadelphia Bar Assoication Foundation, Philadelphia, Pennsylvania.

Dean Jefferson B. Fordham, University of Pennsylvania Law School, Philadelphia, Pennsylvania (embracing basic objection to confirmation, but uncommitted as to factual details).

Edwin P. Rome, Partner, Blank, Rome, Klaus & Comisky, Philadelphia, Pennsylvania.

Faculty, Loyola University School of Law, Los Angeles, California: Richard A. Bachon, S. J.; George C. Garbesi; Frederick J. Lower, Jr.; Walter R. Trinkaus; Martin F. Yerkes.

Faculty, University of Maine School of Law, Portland, Maine: Orlando E. Delogu; Harry P. Glassman; David J. Halperin; Pierce B. Hasler; Edwin A. Heisler; William F. Julavits, Assistant Dean; Gerald F. Petruccelli, Jr.

Irving M. Engel, Partner, Engel, Judge & Miller, New York, New York.

Henry W. Sawyer, III, Partner, Drinker, Biddle & Reath, Philadelphia, Pennsylvania.

Morris Gitlitz, Former President, Broome County Bar Association, Binghamton, New York.

J. A. Darwin, Treasurer, San Francisco Council for Civic Unity, San Francisco, California.

Dean and Faculty, Indiana University School of Law, Bloomington, Indiana: William Burnett Harvey, Dean; Joseph Brodley; Edwin Greenebaum; Dan Hopson; Val Nolan; William Popkin; Thomas Schornhorst; Alan Schwartz; Philip Thorpe.

Jacob D. Zeldes, Chairman, Committee on Administration of Criminal Justice, Connecticut Bar Association and Bridgeport Bar Association, Bridgeport, Connecticut.

Bernard Wolfman, Dean Designate, University of Pennsylvania Law School, Philadelphia, Pennsylvania.

Dean and Faculty, Rutgers University School of Law, Newark, New Jersey: Willard Heckel, Dean; Frank Askin; Alfred W. Blumrosen; Victor Brudney; Norman L. Cantor; Richard M. Chused; Julius Cohen; Vincent E. Fiordalisi; Steven Gifis; Eva H. Hanks; John Lowenthal; Saul H. Mendlovitz; Sidney L. Posel; J. Allen Smith.

David M. Heilbron, Partner, McCutchen, Doyle, Brown & Enersen, San Francisco, California.

Faculty, State University of New York at Buffalo, School of Law, Buffalo, New York: James Atleson; Thomas Buergenthal; Kenneth M. Davidson; Louis Del Cotto; Mitchell Franklin; Daniel J Gifford; Paul Goldstein; William R. Greiner; John H. Hollands; Jacob D. Hyman; Kenneth F. Joyce; David R. Kochery; Steven Larson; Joseph Laufer; W. Howard Mann; Albert R. Mugel; Wade J. Newhouse, Jr.; Robert Reis; Herman Schwartz; Louis H. Swartz; Lance Tibbles.

F. W. H. Adams, Former Police Commissioner of New York City, New York, New York.

Dean and Faculty, University of Illinois College of Law, Champaign, Illinois: John E. Cribbet, Dean; Marion Benfield; Robert W. Brown; Michael O. Dooley; Roger W. Findley; Stephen B. Goldberg; Peter Hay; Edward J. Kionka; Wayne R. La Fave; Prentice H. Marshall; Thomas D. Morgan; Jeffrey O'Connell; Sheldon J. Plager; Charles Quick; Ralph Reisner; Warren F. Schwartz; Herbert Semmel; Victor J. Stone; Lawrence Waggoner; J. Nelson Young.

George N. Lindsay, Partner, Debevoise, Plimpton, Lyons & Gates, New York, New York.

Dean David M. Helfeld, University of Puerto Rico, School of Law, San Juan, Puerto Rico.

Ted Foster, Associate Dean, Oklahoma City University Law School, Oklahoma City, Oklahoma.

Ernest Angell, Former Vice-President, Association of the Bar of the City of New York, New York, New York.

Faculty, The University of Chicago Law School, Chicago, Illinois: David P. Currie; Kenneth C. Davis; Allison Dunham; Grant Gilmore; Geoffrey C. Hazard; Harry Kalven, Jr.; Edmund W. Kitch; Franklin Zimbring.

William T. Coleman, Jr., Member, Board of Governors, Philadelphia Bar Association, Philadelphia, Pennsylvania.

D'Army Bailey, Former Director, Law Student Civil Rights Research Council, San Francisco, California.

Dean and Faculty, New York University School of Law, New York, New York: Robert B. McKay, Dean; Edward J. Bander; Thomas G. S. Christensen; Leroy D. Clark; Daniel G. Collins; Norman Dorsen; James S. Eustice; M. Carr Ferguson, Jr.; Albert H. Garretson; Gidon A. G. Gottlieb; Howard L. Greenberger; Roland L. Hjorth; William T. Hutton; J. D. Johnston, Jr.; Delmar Karlen; Lawrence P. King; James C. Kirby, Jr.; Charles L. Knapp; Harold L. Korn; Andreas F. Lowenfeld; Charles S. Lyon; Julius J. Marke; Guy B. Maxfield; Robert Pitofsky; Bert S. Prunty, Associate Dean; C. Delos Putz, Jr.; Norman Redlich; Michael Schwartz; Michael A. Schwind; Charles Seligson; Harry Subin; John Y. Taggart; Peter A. Winograd; Victor Zonana.

Breck P. McAllister, Partner, Donovan Leisure Newton & Irvine, New York, New York.

Noel F. George, Partner, George, Greek, King, McMahon & McConnaughey, Columbus, Ohio.

Justin Doyle, Partner, Nixon, Hargrave, Devans & Doyle, Rochester, New York.

Manly Fleischmann, Partner, Jaeckle, Fleischmann, Kelly, Swart & Augspurger, Buffalo, New York.

Ely M. Aaron, Partner, Aaron, Aaron, Schimberg & Hess, Chicago, Illinois.

Hugh McM. Russ, Former President, Bar Association of Erie County, Buffalo, New York.

Jerome E. Hyman, Partner, Cleary, Gottlieb, Steen & Hamilton, New York, New York.

Norman Harris, Partner, Nogi O'Malley & Harris, Scranton, Pennsylvania.

Jack D. Harvey, Albany, New York.

Dean and Faculty, The University of Connecticut, School of Law, West Hartford, Connecticut: Howard R. Sacks, Dean; Robert Bard, Joseph D. Harbaugh, Lewis S. Kurlantzick, Judith Lahey, Neil O. Littlefield, Elliott Milstein, Leonard Orland, Louis I. Parley, Craig Shea, Philip Shuchman, Lester B. Snyder, Alvin C. Warren, Jr., Donald T. Weckstein, Robert Whitman.

Harold Cramer, Vice-Chancellor, Philadelphia Bar Association, Philadelphia, Pennsylvania.

John O. Stewart, Coordinator, Neighborhood Legal Assistance Foundation, San Francisco, California.

Ralph F. Fuchs, Bloomington, Indiana.

Dean Malchy T. Mahon, Hofstra University School of Law, Hempstead, New York.

Harold Evans, Partner, MacCoy, Evans & Lewis, Philadelphia, Pennsylvania.

H. Greig Fowler, Member, Steering Committee, San Francisco Lawyers Committee for Urban Affairs, San Francisco, California.

George R. Davis, Lowville, New York.

Robert H. Cole, Professor, University of California School of Law, Berkeley, California.

Jonathan P. Harvey, Member, Membership Committee, New York State Bar Association, Albany, New York.

Walter E. Dellinger, Professor, Duke University School of Law, Durham, North Carolina.

Dean and Faculty, University of Toledo, College of Law, Toledo, Ohio: Karl Krastin, Dean; Edward Dauer, J. Kirkland Grant, Judith Jackson, Vincent M. Nathan, Assistant Dean, Martin Rogoff, John W. Stoepler, Janet L. Wallin, Thomas Willging.

John P. Frank, Partner, Lewis Roca Beauchamp & Linton, Phoenix, Arizona.

Benjamin E. Shove, Past President, Onondaga County Bar Association, Syracuse, New York.

Arthur J. Freund, Former Member House of Delegates of American Bar Association, St. Louis, Missouri.

Alfred M. Saperston, Partner, Saperston, Wiltse, Duke, Day & Wilson, Buffalo, New York.

Charles W. Allen, Former Chairman, Portland Maine City Council, Portland, Maine.

Victor H. Kramer, Partner, Arnold & Porter, Washington, D.C.

William Lee Akers, Philadelphia, Pennsylvania.

William L. Lynch, Partner, Cleary, Gottlieb, Steen & Hamilton, New York, New York.

Theodore Sachs, Detroit, Michigan.

Reuben E. Cohen, Partner, Cohen, Shapiro, Berger, Polisher and Cohen, Philadelphia, Pennsylvania.

Faculty, University of Arizona College of Law, Tucson, Arizona: Arthur Andrews, James J. Graham, Junius Hoffman, David Wexler, Winton Woods.

Edward E. Kallgren, Partner, Brobeck, Phlegler & Harrison, San Francisco, California.

Thomas M. Cooley, II, Professor, University of Pittsburgh School of Law, Pittsburgh, Pennsylvania.

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Herbert B. Ehrman, of Counsel, Goulston & Storrs, Boston, Massachusetts.

John J. Barcelo, Professor, Cornell Law School, Ithaca, New York.

Louis B. Schwartz, Professor, University of Pennsylvania Law School, Philadelphia, Pennsylvania.

Faculty, Syracuse University College of Law, Syracuse, New York: George J. Alexander, Robert M. Anderson, Samuel J. M. Donnelly, Samuel M. Fetters, Martin L. Fried, Peter E. Herzog, William J. Hicks, Robert F. Koretz.

Dale Swihart, Professor, Washington University School of Law, St. Louis, Missouri.

Maurice H. Merrill, Professor, University of Oklahoma College of Law, Norman, Oklahoma.

Robert F. Henson, President, Hennepin County Bar Association, Minneapolis, Minnesota.

William L. Marbury, Former President, Maryland State Bar Association, Baltimore, Maryland.

Community Action for Legal Services, Inc., New York, New York: Joshua H. Brooks, Jr.; Oscar G. Chase, Lawrence J. Fox, John C. Gray, Jr.; Manuel Herman; Marcia Lowry; Cornelia McDougald; Gerald Rivera; Robert Roberts; Richard A. Seid; Alfred L. Toombs; Napoleon B. Williams.

Arthur J. Harvey, Former President, Board of Directors, Legal Aid Society, Albany, New York.

Alfred A. Benesch, Partner, Benesch, Friedlander, Mendelson & Coplan, Cleveland, Ohio.

Frank T. Read, Assistant Dean, Duke University School of Law, Durham, North Carolina.

Francis H. Anderson, Professor, Albany Law School, Union University, Albany, New York.

Dean Russell N. Fairbanks, Rutgers University School of Law, Camden, New Jersey.

David L. Cole, Former President, The National Academy of Arbitrators, Paterson, New Jersey.

Asa D. Sokolow, Partner, Rosenman Colin Kaye Petschek Freund & Emil, New York, New York.

Archie Katcher, President, Detroit Bar Association, Detroit, Michigan.

Vincent R. FitzPatrick, Partner, Willkie Farr & Gallagher, New York, New York.

Joseph L. Rauh, Jr., Partner, Rauh and Silard, Washington, D.C.

Michael V. Forrestal, New York, New York.

Boris Kostelanetz, Former Special Assistant to the Attorney General of the United States, New York, New York.

Charles Denby, Partner, Reed, Smith, Shaw & McClay, Pittsburgh, Pennsylvania.

Hugh A. Burns, Partner, Dawson, Nagel, Sherman & Howard, Denver, Colorado.

Faculty, College of Law, Willamette University, Salem, Oregon: Courtney Arthur, Edwin Butler, Edwin Hood, Dallas Isom, John Paulus, John Reuling, Ross Runkel, Robert Stoyles.

Wayne B. Wright, Former President, Bar Association of Metropolitan St. Louis, St. Louis, Missouri.

Ross, Stevens, Pick & Sophn (all eleven partners), Madison, Wisconsin.

Melvin G. Shimm, Professor, Duke University, School of Law, Durham, North Carolina.

Leonard M. Nelson, Chairman, Judiciary Committee, Maine State Bar Association, Portland, Maine.

Lloyd N. Cutler, Washington, D.C.

Lyman M. Tondel, Jr., Former President, New York State Bar Association, New York, New York.

Dean and Faculty, University of Kansas School of Law, Lawrence, Kansas: Lawrence E. Blades, Dean; Jonathan M. Landers; John F. Murphy; Arthur H. Travers.

Dean and Faculty, Harvard University Law School, Cambridge, Massachusetts (Subscribe to the conclusions expressed herein concerning the qualifications of Judge Carswell for appointment to the Supreme Court); Derek C. Bok, Dean; Paul M. Bator; Stephen G. Breyer; Abram Chayes; Jerome A. Cohen; Charles Fried; Livingston Hall; Louis L. Jaffe; Benjamin Kaplan; Robert E. Keeton; Louis Loss; Frank I. Michelman; Albert M. Sacks; Frank E. Sander; David L. Shapiro; Henry J. Steiner; Donald T. Trautman; Adam Yarmolinsky.

Carroll J. Donohue, Former President, Bar Association of St. Louis, Former Member, Board of Governors of Missouri Bar Association, St. Louis, Missouri.

James W. Lamberton, Partner, Cleary, Gottlieb, Steen & Hamilton, New York, New York.

Joseph A. Califano, Jr., Washington, D.C.

Edwin B. Mishkin, Partner, Cleary, Gottlieb, Steen & Hamilton, New York, New York.

R. Walston Chubb, Partner, Lewis, Rice, Tucker, Allen and Chubb, St. Louis, Missouri.

Shedd, Gladstone & Kronenberg (all three partners), Hackensack, New Jersey.

Mr. JAVITS. Mr. President, I shall be speaking at great length tomorrow on this nomination. I notice the Senator has gone over a list of law school deans and distinguished lawyers and their views on this matter. I, too, have heard a little of the very eloquent explanation by the Senator from New York (Mr. CASE) of the impact on that segment of the community which is extremely important, because it emphasizes what we all know; there is a deep suspicion of national regression in this regard. I do not wish to discuss this point in great detail at this moment. It should stand on its own. I think this is critically important and I shall be speaking with regard to it.

It is important in this case to consider the names of the parties involved. I know the Senator agrees with me that we are not just dealing with men making up their minds as we do. We are the ones who must decide by looking over the record and then voting yea or nay.

However, one of the things bothering us about Judge Carswell, without in any way denigrating the man or reflecting on him as a man, is that he is just not up to Supreme Court caliber. I think that on this point the Senator's reference becomes extremely pertinent. After all, who judges the qualifications of a judge if it is not the men who make and devote their lives to teaching and to the practice of law?

I might add to what the Senator said on that score by stating one of the things that impresses me very deeply. I do not practice law every day, as I used to. I used to try cases every day of the week. I do not do that now although I try to keep reasonably in touch. However, these are the views of men who are active at the bar and active all the time.

When three former presidents of the Association of the Bar of the City of New York, including traditionalists such as Judge Bromley, Francis T. P. Plimpton, and Sam Rosenman come out against Judge Carswell, it seems to me it is singularly impressive. Certainly Judge Bromley is not going to be against a nominee of the President unless his qualifications as a lawyer are suspect. Judge Bromley headed the list. It might be interesting to the Senators to keep in mind why it is important to go over the views of these eminent authorities in this case.

Mr. PROXMIRE. I think the Senator makes a very, very helpful point. It is not as if all the lawyers in America were polled and asked to vote yes or no on the nomination of Judge Carswell. They voluntarily take this extraordinary and emphatic public position which they have taken in this case, in which they go into a great deal of detail and insist on being counted. We know how reluctant Senators are—and these men are every bit as eminent and distinguished as Senators—we know how reluctant we are to stand up and be counted. It is our job, but these men felt so deeply they took a most extraordinary action, as the Senator said, in agreeing that they would make this very emphatic and very well reasoned document available to the Senate and they do plead with the Senate to reject the nomination.

Mr. JAVITS. I would like to observe as to myself that I had a fairly good idea what I would do about this nomination very early in the game. I generally say what I am going to do right away on a matter, if it is appropriate. However, I did not do so in this instance. I read the decisions because I was aware that I had turned down the President once with my vote. I did not want to do it again. However, I have arrived at my decision after careful consideration and thought and after reading the record; and I decided I could not vote for the nominee. I hope very much the White House will understand this is not any ideological opinion arrived at because it is Carswell, a southern judge—not at all. I would like to be able to vote for a southern judge as a member of the Supreme Court if I could in conscience; but I cannot in this case. Yet I know there are judges for whom I could vote and I am sorry about the fact that one of those was not nominated. I would rather have been for than against.

Mr. PROXMIRE. I thank the Senator.

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

Mr. PROXMIRE. I yield.

Mr. GURNEY. Mr. President, I have been in the Chamber listening to the colloquy between the distinguished Senator from Wisconsin and the distinguished Senator from New York. I also heard the list of names of certain lawyers who oppose the nomination which the Senator read.

I was admitted to practice law in the State of New York. I practiced there for some years before World War II, before I went to Florida after World War II. As a matter of fact, I used to know many of the young lawyers in the firms of some of the senior members of the bar who are mentioned by the Senator from Wisconsin as opposing the nomination.

I also heard some of the colloquy by the Senator from New Jersey about the fact that some of these men were conservatives and Republicans. I do not know whether they are or not.

My impression of the bar of New York from my own personal experience as a young lawyer is that it is a lot more liberal than most other parts of the country. I think this may have had something to do with the decision and attitude of these lawyers in opposing this Southern judge, who is a conservative and a strict constructionist.

Mr. PROXMIRE. Will the Senator yield on that point?

Mr. GURNEY. I wish the Senator would permit me to finish this thought because I am now coming to the part I think is important.

None of these lawyers, to my knowledge, unless the Senator from Wisconsin can correct me, knows anything about Judge Carswell personally, did not practice before his court or, for that matter, have had any contact or association with him.

On the contrary, the State of Florida is now the eighth State in size in the Union. It does have a distinguished bar and bench. I was a member of the bar there and I still am. I know many of these lawyers personally and I know many of these judges personally.

The bar in the State of Florida cannot be all that bad. Yet, I do not know a single voice in the entire bar and bench of the State of Florida that has opposed this nomination, Democrat, Republican, liberal, or conservative. As a matter of fact, they have unanimously supported it. These are men who know him, men who practice in his court. They are judges who know him as a judge and a colleague.

I must say this kind of evidence impresses me much more than evidence of lawyers in New York or in any other city who never practiced in this man's court and who did not know him.

I wish to make one further comment which I think is rather interesting. The statement was made that the dean of the Yale Law School opposed this nominee. The record also shows Prof. James W. Moore, who is still a professor of law at Yale, one of the distinguished professors in the Yale Law School, had personal knowledge of Judge Carswell. As a matter of fact, he worked with him in the establishment of one of the distinguished law schools in the State of Florida, the law school at the Florida State University. I am impressed by this professor—the Senator from Wisconsin referred to it as the most distinguished law school in the country, but I might argue that since I am a graduate of Harvard, but it is distinguished—and his work with Judge Carswell in the very important project of establishing a very great law school in this country; and his impression of this man and his views on legal education, the type law school he desired to establish, free of all racial discrimination—and he was clear about that—one offering basic and higher legal training, and one to attract students of all races and creeds, from all walks of life and sections of the country.

This kind of personal working relationship with Judge Carswell impresses me far more than Bruce Bromley and Francis Plimpton and a lot of other attorneys in New York who have had no personal association with or knowledge of the nominee.

Mr. PROXMIRE. May I say to the distinguished Senator from Florida that, of course, he makes a telling point, or seems to make a telling point, but does the Senator from Florida really expect that there would be a list of opposing lawyers from Wisconsin if the President had nominated somebody from Wisconsin to the Supreme Court? I think the Senator knows how those things operate and work. I certainly would not want to rely upon the opinion of a person who was a friend of his, or was intimately associated with him, or had worked closely with him as a partner. I would far prefer to rely upon the independent judgment of competent legal scholars; and these are competent legal scholars.

There is no indication that these men have any ax to grind. The only implication—and I am sure the Senator from Florida did not mean it invidiously as far as prejudice is concerned—is that, somehow, he merely feels that the bar association of New York and the faculties of these great law schools oppose a strict constructionist and would favor a liberal constructionist.

They do not oppose Judge Carswell on grounds that he would be a strict constructionist on the Court, not at all. In fact, they indicate Judge Carswell has been reversed frequently because he does not keep up with interpretations of judicial authority, but there is no indication that they feel this man should be rejected because he feels the law should be interpreted strictly. That was the first point made by the distinguished Senator from Florida. It seems to me he has made no case against these very distinguished scholars on those grounds.

Mr. GURNEY. Mr. President, if I may reply to some of the points the Senator from Wisconsin made, first of all, while I think it is true there would be no great outpouring of opposition from people in the State of Florida as far as his nomination is concerned, neither could we expect a tremendous display of enthusiasm if the nominee were of the mediocre va-

riety that the Senator from Wisconsin and other Senators have claimed that he is. The point I make is that, as far as the bar and the bench of the State of Florida are concerned, there has been a vast outpouring of support in favor of this nomination.

Incidentally, on that score, I might also bring to the attention of the Senator from Wisconsin, and also the Senate, at this time the fact that earlier in the year, before the name was presented to the Senate by the President, I was attending an investiture of a Federal district judge in Florida, actually the man who replaced Judge Carswell on the Federal district bench. There was some speculation at that time that Judge Carswell's name might be presented to the Senate by the President, and I was very curious. I did not actually know of it myself. I had been away on a few days' vacation at that time—it was during the recess—and this was the first I had heard of it.

The interesting thing to me was that many of his colleagues, both on the circuit court of appeals and on the district court in Florida—and all the members of the Federal district court in Florida were there at the ceremony, as well as a number of the circuit court judges—urged that I do what I could in favor of this appointment, stating that here would be indeed an outstanding judge on the Supreme Court if the President would see fit to nominate him.

I bring this point out because it occurred before the nomination was made, and it was voluntary on the part of these Federal judges in Florida, showing the worth and esteem in which they held their colleague.

I simply say that the point I was trying to make was that to me it is far more impressive to have the opinion of men who know a man, who work with him, who see him day after day, who are able to judge his merit, his worth, and his ability in terms of personal contact, than to have the opinion of some corporation lawyer in New York who sees on the surface a southern judge who is a known conservative and who probably does not want him for that reason.

Mr. PROXMIRE. May I say to the Senator from Florida that, of course, most of us are not only tolerant, but we like to be enthusiastic about people we know and work with. I do not think we would be human or tolerant people if we did not say the best that could be said of people with whom we work. I think the best way to evaluate a person is not to rely on people who come from the same State or have gone to the same law school or have worked with him in the same office or in the same fields.

I think more reliable is the evidence that Judge Carswell was reversed on 58.8 percent of the appeals from all his printed decisions, which is practically three times the 20.2 percent average for all Federal district judges and 2½ times the 24 percent for district judges in the fifth circuit.

As a percentage of all his printed decisions, Judge Carswell's rate of reversal was still twice as high as both the national and fifth circuit district judge average, 11.9 percent as against 5.3 percent and 6 percent, respectively.

Throughout the period Judge Carswell sat, his decisions were accorded relatively little authoritative weight by other judges. Each of his opinions was cited by all other U.S. judges less than half as often, on the average, as those of all district judges and fifth circuit district judges.

In other words, Judge Carswell was reversed more frequently and more continuously than were other comparable judges. His opinions were cited rarely as authoritative. Judge Carswell's opinions were about two-fifths as thoroughly documented with case authority, and less than one-third with secondary source authority, as the average of all district judges.

Judge Carswell's average opinion was less than half as extensive as the average for all other district judges.

All these are facts—objective facts and relevant facts.

To have somebody say a man is of good character, has a fine character, has a good attitude, means very little when we are trying to evaluate the legal capacity of a nominee for the Supreme Court.

I do not say that a man has to be qualified in all kinds of ways, but it seems to me it would have been helpful if Judge Carswell, for example, had written a number of articles for legal publications. When he was asked how many articles or what articles he had written for bar publications or law journals, his answer was, "None." He had not written any. So there is no demonstration of any record of Judge Carswell as a legal scholar at all. On the other hand, we have this very convincing record, which has not been challenged, that he is a judge who has been continually reversed and his opinions are without distinction.

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

Mr. PROXMIRE. I yield.

Mr. HOLLAND. I think the Senator is dealing largely with decisions in civil rights cases. I think the Senator from Mississippi made it very clear yesterday that many of them were reversed by the circuit court of appeals because of an opinion that they had rendered between the time of the trials of those particular civil rights cases—I think five of them—and the time that they heard the appeal.

However, the record of the attitude of the circuit court of appeals on his criminal cases is a very impressive one, and I hope the Senator has looked at that. It is printed in the RECORD. I do not remember the number of appeals—it seems to me it was over 40—and practically all of them were affirmed.

Then I hope the Senator will permit me to state of my own knowledge something he did which did not get to the circuit court of appeals.

The largest civil case that had been heard in Florida before a jury in my lifetime—or in my professional lifetime, let us put it that way, which began in 1916—was the so-called Crummer against Ball and others case, of which I am sure the Senator has heard. I cannot say how long that trial lasted; certainly for weeks.

The Senator from Florida was summonsed down there, and agreed to go down and testify provided he could base his testimony wholly on the records of the Governor's office and the records of the State board of administration, of which the Governor was chairman, and of which I served as chairman while I was Governor.

On that basis, I went down and testified all day long, from early in the morning, let us say 10 o'clock, until perhaps 6 in the evening, except for a short time off for lunch. In that courtroom were a dozen or more of the leading attorneys of Florida and some of the leading attorneys of the Nation, one of them having been the former Attorney General of the United States, Mr. McGramery; and if there ever was a hard fought case, that was. Judge Carswell was called upon, as presiding judge, to make many rulings during the course of that day, and I am sure that was the case also during the whole course of the trial, though I attended only the one day.

I was exceedingly impressed by the dignity, the demeanor, and the high state of acceptance of Judge Carswell which was evident among those distinguished lawyers on both sides of the table. Notwithstanding the fact that there were many objections to the evidence, his rulings, if I may say so, coincided with my own views as to what they should have been all during the day; and, as the Senator knows, I have practiced law actively since 1916.

The point of my making this remark, though, is this: That was the biggest trial in Florida in my professional lifetime. I think it involved a claim for $39 million in damages. When the jury returned its verdict, which it did, after all the rulings, and all that trial, no appeal was taken from their verdict. To my mind, the fact that a judge could have presided over a case of that long duration, and with the exceeding bitterness that prevailed in the controversy that was tried there, and with the necessity of having to rule on, I suspect, hundreds of objections during the course of the trial, and then have no appeal taken at the end of the trial, in spite of all the controversy and all the bitterness, I think speaks eloquently for the ability of the presiding judge. Certainly I was greatly impressed with his ability. I have made that statement before, and I make it now.

I think no other Senator here today has had any opportunity to see Judge Carswell function. My own feeling is—and I would never support a judge who I thought was inadequate or was immoral or unethical, or was biased—that I thought he did a fine job, and I commend the type of job he did. It is inconceivable to me, with all those lawyers there participating, and all the bitterness in that trial, that there should have been no appeal, unless the case had been handled with the greatest of skill, the greatest of fairness, and the greatest of justice.

I wanted this statement to appear in the RECORD because I do not believe any other lawyer here had a chance to see Judge Carswell in action as a judge in

a bitterly fought matter, as did I on that occasion.

Mr. PROXMIRE. Mr. President, may I say to the Senator from Florida that that is a very useful observation, because it is a personal observation, and I have great faith in the judgment and fairness of the Senator from Florida.

Mr. HOLLAND. I thank the Senator. The Senator will remember that in the Fortas case, I was fair enough to say, at the beginning of my statement, that while I had had cordial personal relations with Judge Fortas, I had had two matters against him in previous years, and had found him highly ethical, exceedingly able, and exceedingly resourceful. My objection at that time was not based at all on any inadequacy of Judge Fortas as a lawyer, but upon other reasons which appear in my argument.

I do not visit personal feelings into a matter of this kind. Judge Carswell was recommended and appointed, every time I have voted to confirm him, by a Republican President: as a U.S. district attorney, as a district judge, and as judge of the circuit court of appeals. He was not my nominee, but I thought that he measured up, and I think that his performance shows that he measured up. I was greatly impressed when I had that one chance to observe his performance. I thought I had done the right thing. I still think so, and I think I am doing the right thing now, particularly when I have in my file—and shall produce later—letters from such men as former Gov. Millard Caldwell, who served later as chief justice of our Florida Supreme Court, and other justices of our State supreme court, who had the chance to observe him, living there in the same city with him, and the many circuit judges and justices of the district court of appeals of Florida whose communications I placed in the RECORD yesterday.

I state again what I stated the other day: I have yet to receive, on all of these nominations and in all of this controversy this year, the first expression from any lawyer or any judge in the State of Florida other than in recommendation of Judge Carswell and approving him as to his judicial competence, his fairness, and his performance; and I think that those people who see him every day, as did I, who sat there and listened to him a whole day in that very difficult case I have mentioned, have some right to speak of his ability. I doubt if many of the people from other parts of the country who object to his philosophy have had anything like the chance to observe and to form their own analysis of his character and his qualities as have I; and, as I have stated, as have the other judges of the State of Florida.

Mr. PROXMIRE. Mr. President, may I simply say to the Senator from Florida that I was not talking only about civil rights decisions. I was talking about all—every one—of his 84 printed decisions.

Judge Carswell was reversed on 58.8 percent of the appeals from all his printed decisions, which is three times the average for all Federal district judges, and twice the average for Federal district judges in the Fifth Circuit.

So I was not talking about just one or two, three, five, eight or 10, or 15 or 20 decisions. I was talking about every decision he had ever made that had been printed.

Mr. HOLLAND. The point of my remark was twofold. I wanted the Senator to know that I felt the nominee to be competent in the criminal field—and criminal trials are very difficult, as the Senator probably knows; the Senator from Florida knows, having at one time presided over criminal trials in lesser offenses—and also I wanted the RECORD to show something about my own observation in this very difficult civil case, the largest one ever tried in Florida during my professional life.

His performance was impressive, and from my point of view, as nearly perfect as it could be, and evidently opposing counsel in the case, who lost the decision when the jury came in, must have thought the same thing, because they made no appeal.

I thank the Senator.

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

Mr. PROXMIRE. Mr. President, I yield to the junior Senator from Florida, and then I shall yield the floor.

Mr. GURNEY. I thank the Senator from Wisconsin.

I merely wanted to comment on the Crummer case, which my distinguished colleague discussed. I was not present, as he was, at the trial held before Judge Carswell. However, as a young lawyer, when I first went to Florida, I worked on the Crummer case as one of the several counsel for Mr. Crummer.

I want to attest to what my senior colleague has said. To my knowledge, this was the largest civil suit in the history of Florida, and also one of the largest antitrust suits in the history of the Sherman Antitrust Act in the United States, involving, as my senior colleague stated, many, many millions of dollars. There were brilliant counsel on both sides, both for the plaintiff and for the defendant. As a matter of fact, the counsel came and went in the preparation of the lawsuit, and it encompassed a period of many years before it came to trial before Judge Carswell.

So when my senior colleague makes the point that this Federal judge—then quite young in terms of service on the Federal bench in Florida—Judge Carswell, the nominee now before the Senate, had this case in his court, what better test can there be of his judicial ability and the fact that he was not a mediocre judge than the very able handling, witnessed by the senior Senator from Florida, of one of the largest Sherman antitrust cases in the history of this country?

Again, my senior colleague has brought out the point I made a short time ago. What we are talking about and referring to are personal experiences, the personal experiences of lawyers in the judge's court. I think they are far better able to judge the merit and worth of this nominee to the Supreme Court of the United States than a few lawyers in New York or some of the other larger cities in the country who have had no personal knowledge or acquaintance with this man at all.

Mr. PROXMIRE. Mr. President, I would not expect the two able Senators from Florida to oppose this nominee. They support him with great sincerity. They support him because they believe in him. They are two of the ablest Members of the Senate.

At the same time, I say that personal observation and personal knowledge and personal friendship usually are not the best sources for a recommendation. We know that from people we hire.

In determining my own position on a Supreme Court nominee, I would greatly prefer to have access to a statistical analysis of a judge's decisions, to have access to the affidavits, and so forth, which are in the hearing record, to determine exactly what this nominee did, to determine what his record was, to determine whether his opinions were distinguished, whether they were cited, whether he has a record of legal scholarship of any kind.

While I have great respect and admiration for the Senators from Florida, I think I would prefer to make up my mind on the basis of the objective record, to the extent I could get it, rather than two warm supporters of his.

I yield the floor.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 3427) to increase the authorization for appropriation for continuing work in the Missouri River Basin by the Secretary of the Interior.

PHILADELPHIA PLAN UPHELD BY COURT

Mr. JAVITS. Mr. President, I wish to call to the attention of the Senate the fact that when we debated very strongly here on the Philadelphia plan, the plan endeavoring to find some opportunity for blacks and other minorities in the building trades, I strongly supported the plan proposed by the Department of Labor on the ground that it was in accordance with the Constitution.

Mr. President, I am pleased to announce that Federal Judge Charles R. Weiner of the U.S. District Court for the Eastern District of Pennsylvania has issued an opinion sustaining the legality of the Philadelphia plan. Judge Weiner ruled that the plan did not violate title VII of the Civil Rights Act of 1964, and was constitutional.

Mr. President, this decision vindicates the opinion of the Attorney General, with respect to the legality of the Philadelphia plan, and the refusal of the Department of Labor to follow the contrary opinion of the Comptroller General concerning the plan.

The decision sustaining the Philadelphia plan is predicated upon the fact that the plan, contrary to some of the allegations which have been made by those opposed to it, does not impose rigid quotas on employers. It requires only that employers make good faith efforts to achieve stated goals, and such good faith

efforts do not include "reverse discrimination." It is, of course, unfortunate that the Government must resort to Philadelphia plans to insure equal employment opportunity, and it is true that plans which are agreed upon by all of the parties concerned are far preferable to any governmentally imposed plan. The Department of Labor has continually stated its preference for "hometown solutions" such as the Pittsburgh plan and the Chicago plan. The fact is, however, that without the Philadelphia plan, there might not have been any Pittsburgh plan or Chicago plan.

As Judge Weiner stated in his opinion:

Present employment practices have fostered and perpetrated a system that has effectively maintained a segregated class. That concept, if I may use the strong language it deserves, is repugnant, unworthy and contrary to present national policy.

Mr. President, I ask unanimous consent that an article concerning Judge Weiner's opinion which appeared in the New York Times, Sunday, March 15, be printed in the RECORD.

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

U.S. JUDGE UPHOLDS CONTROVERSIAL PHILADELPHIA PLAN TO INCREASE HIRING OF MINORITIES IN BUILDING INDUSTRY

(By Donald Janson)

PHILADELPHIA, March 14.—The controversial Philadelphia Plan to increase minority employment in construction trades has cleared its first court hurdle.

Federal District Judge Charles R. Weiner upheld its constitutionality yesterday and ruled that it did not violate the Civil Rights Act of 1964.

"It is fundamental," he said in the 22-page decision, "that civil rights without economic rights are mere shadows."

The plan, promulgated last year by the Department of Labor, requires contractors to make good-faith efforts to hire specified percentages of blacks in federally aided projects costing $500,000 or more.

The Contractors Association of Eastern Pennsylvania, in a suit filed Jan. 6, sought an injunction against the plan and a declaration that it was unconstitutional.

CONTRACTORS' PLEA

The contractors said the plan denied them equal protection of the laws because it was being applied only here. But in February, Secretary of Labor George P. Shultz announced that it would be extended to 18 other cities, including New York, unless those cities devised satisfactory plans of their own.

The main argument in opposition to the plan was that it required racial "quotas" in hiring. The Civil Rights Act of 1964 forbade this in order to protect nonwhite workers against low quotas set by some employers.

The Philadelphia Plan, when first tried under the Johnson Administration in 1967, set quotas that unions and contractors held to be discrimination in reverse. Under the Nixon Administration, the quotas become more flexible "goals" within percentage ranges and the only requirement was a good-faith effort to meet the goals.

Elmer B. Staats, United States Controller General, said the plan violated the Civil Rights Act and declared he would not approve payment to contractors using the plan.

In December, the Senate supported the Staats view, then reversed itself under pressure from the Administration and civil rights forces and joined the House in rejecting an appropriations bill amendment that would have killed the plan.

The contractors' test suit followed. Robert J. Bray Jr., attorney for the 80 contracting companies in the association, said today it had not been determined whether the decision would be appealed.

Judge Weiner said the plan did not violate the civil rights act because it "does not require the contractor to hire a definite percentage of a minority group."

The plan's ground rules for Philadelphia, where more than a third of the population is black, call for contractors to pledge to try to hire blacks at a rate of at least 4 per cent of their new employes for projects undertaken this year, 9 per cent next year, 14 in 1972 and a top range of 19 to 26 per cent after that. Some of the trade unions involved have no more than 1 per cent now and have long excluded Negroes.

Judge Weiner noted that the contractor was required only to "make every good faith effort" to achieve specified percentages. The Government has said that tests of this would include whether a contractor relied solely on unions to assign workers to him or, if necessary, participated in federally funded training programs and went to community organizations that had agreed to supply blacks.

The Philadelphia Plan has not gotten off the ground here, in large part because of the dispute over its legality.

"It is beyond question," Judge Weiner said, "that present employment practices have fostered and perpetrated a system that has effectively maintained a segregated class. That concept, if I may use the strong language it deserves, is repugnant, unworthy and contrary to present national policy."

He said the Philadelphia Plan would provide "an unpolluted breath of fresh air to ventilate this unpalatable situation."

SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. FANNIN. Mr. President, under our Constitution, both the President and the Senate are responsible for insuring the integrity and superiority of nominees to the Supreme Court. Because of this responsibility and because of recent controversies over both nominees to the Supreme Court as well as sitting Justices, the question of confirmation is a matter of vital importance.

I have decided to vote in favor of the confirmation of Judge Carswell. In making this decision, I have relied to a large extent upon the numerous endorsements Judge Carswell's nomination received from a wide variety of people. It is just a matter of commonsense to know that it is easier to fool people at a distance than it is at close range. For this reason, I believe that the statements of those lawyers and judges who have known and worked with Judge Carswell over the years are much more reliable than the opinions of some of the weekend experts that this nomination has produced.

The opponents of Judge Carswell have argued that he is biased against the civil rights movement. However, the testimony of those who know Judge Carswell best demonstrates that this argument is totally unfounded.

If the objection to Judge Carswell is that he is a racist who is biased against the civil rights movement, then it does not take much sense to realize that the people who would know the most about this bias would be Negro attorneys who appeared before Judge Carswell during his 12 years on the bench. It is for this reason that I was particularly impressed by a letter the committee received from a Negro attorney named Charles F. Wilson. Part of the letter he sent to the Judiciary Committee is quoted in the committee report. The entire letter and two newspaper articles describing the nature of Mr. Wilson's activities can be found on pages 328–330 of the hearings. Because they are such an eloquent refutation of the charges against Judge Carswell, I commend them to every Senator's attention.

Mr. Wilson is certainly not a Negro who was satisfied with Negro rights in the South. Nor is he the kind of man who would let others do the fighting. An article appearing in the Baltimore Afro-American, a Negro newspaper, gives an excellent idea of his activities. The headline states: "If it's integrated in Florida, Atty. C. Wilson helped to do it." I would like to read to the Senate the first line of that article. Under a Pensacola, Fla., dateline, it says:

According to national and local observers on the civil rights scenes, one of the most impressive records of civil rights and human relations legal activity in the Southeast is that of Atty. Charles F. Wilson of this city, a member of the Florida bar.

The article then goes on to describe the impressive number of civil rights cases which Mr. Wilson handled. Indeed, he handled many of the most important civil rights cases which appeared before Judge Carswell. He represented the Negroes in the school desegregation case of Augustus against the Board of Public Instruction of Escambia County, in which the public schools were desegregated from the elementary grades through junior college. He also represented the civil rights litigants in the case of Steele against the Board of Public Instruction. He was the Negro attorney who appeared on behalf of the civil rights litigants before Judge Carswell in seeking to desegregate the schools of Leon County, Fla., and, in a separate case, the schools of Bay County, Fla. He represented the Negro litigants in seeking to desegregate the municipal golf course at Pensacola, Fla. As a service to his alma mater, Mr. Wilson represented numerous Negro Florida A&M University students in picketing and civil rights demonstration cases in Tallahassee. He represented the Pensacola NAACP Youth Council and the Council of Ministers in desegregating lunch counters and other places of public accommodation in Florida. As anyone can see, Mr. Wilson has compiled an impressive record in representing the cause of civil rights in Florida. In addition to this impressive list of civil rights cases in which Mr. Wilson appeared before Judge Carswell, Mr. Wilson had known Judge Carswell earlier when he opposed Judge Carswell as defense counsel in criminal prosecutions brought by Judge Carswell when he was U.S. attorney.

It seems self-evident to me that in

evaluating the charge that Judge Carswell is biased in the civil rights movement, the first place the Senate should turn is to the Negro lawyers who argued before Judge Carswell. I would like to read to the Senate part of the letter that Mr. Wilson wrote to the Senate Judiciary Committee.

DEAR MR. CHAIRMAN, I am writing to the Committee at this time because for a period of five years, from 1958 to 1963, I represented plaintiffs in civil rights cases in the Federal Court for the Northern District of Florida, which was then presided over by Judge G. Harrold Carswell. I also represented criminal defendants and other civil clients in his court during this period of time. Previous to his taking the bench in 1958, I had opposed him as defense counsel in criminal prosecutions brought by the United States when he was United States Attorney. I am certain that during the five-year period from 1958 to 1963, I appeared before Judge Carswell on a minimum of not less than thirty separate days in connection with litigation which I had pending in his court.

As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court, there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions. I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted.

It is true that some witnesses appeared before the Senate Judiciary Committee and testified that Judge Carswell was biased and prejudiced against civil rights litigants. However, none of these witnesses had nearly as much experience in dealing with Judge Carswell as Mr. Wilson. For example, a white professor from Rutgers University had only appeared before Judge Carswell in one case. Another witness flew down from New York and was only in Florida for 2 weeks. Consequently, he was only involved in a part of a case. Another witness was a recent law school graduate who sat in Judge Carswell's courtroom on one occasion.

When I balance the testimony of these northern lawyers with very limited experience before Judge Carswell against the impressive testimony of a black lawyer who argued against Judge Carswell when he was a U.S. attorney and who appeared before Judge Carswell in most of his major civil rights litigation—indeed, enough times so that a Negro newspaper could say, "If its integrated in Florida, Attorney C. Wilson helped to do it."—it is not difficult for me to make my decision.

The endorsements Judge Carswell has received from his fellow judges are worthy of the consideration of every Senator. As I said earlier, I think that a man can best be judged by those with whom he regularly and constantly associates in his field of work. The judges who voluntarily informed the committee of their views on Judge Carswell were unanimous in their support of him.

I was most impressed by the opinions of the other Federal district judges and circuit judges who voluntarily wrote the Senate Judiciary Committee to express their support of Judge Carswell. Here is what Circuit Judge Robert Ainsworth of the Fifth Circuit Court of Appeals had to say about Judge Carswell:

He is a person of the highest integrity, a capable and experienced judge, an excellent writer and scholar, of agreeable personality, excellent personal habits, fine family, a devoted wife and children, and relatively young, as judges go, for the position to which he has been nominated.

In my view, Judge Carswell is well deserving of the high position of the Supreme Court Justice and will demean himself always in a manner that will reflect credit upon those who have favorably considered his qualifications. Undoubtedly he will be an outstandng Justice of the Supreme Court and will bring distinction, credit and honor to our highest Court.

Another of his fellow judges, on the fifth circuit court of appeals, Circuit Judge Bryan Simpson, has written as follows:

More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an openminded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices. I have always found him to be completely objective and detached in his approach to his judicial duties.

In every sense, Judge Carswell measures up to the rigorous demands of the high position for which he has been nominated. I hope that the Judiciary Committee will act promptly and favorably upon his nomination. It is a privilege to recommend him to you without reservation.

Another circuit judge, Warren Jones, made these comments about Judge Carswell:

I regard Harrold Carswell as eminently qualified in every way—personality, integrity, legal learning and judicial temperament—for the Supreme Court of the United States.

These ringing endorsements of Judge Carswell from his fellow appellate judges should be entitled to great weight in determining whether he shall be confirmed. The opinion of these distinguished judges fortifies my own conclusion that Judge Carswell will serve his country well as an Associate Justice of the Supreme Court. These endorsements stand as a complete refutation of the argument that Judge Carswell is mediocre and unqualified—an argument advanced by people who only have a fleeting familiarity with Judge Carswell's work.

Judge Carswell has, of course, been highly recommended by the prestigious American Bar Association Committee on Judicial Selection. This committee is made up of 12 distinguished lawyers from various parts of the country. These lawyers are by no means members of one political party, nor do they subscribe to one particular ideology or judicial philosophy. Their duty, as members of this distinguished committee, is to evaluate the qualifications of a nominee to the Supreme Court of the United States—not in terms of whether they agree with his judicial philosophy, but in terms of whether he possesses the necessary "integrity, judicial temperament, and professional competence," to quote from the letter written by the chairman of the committee to the chairman of the Senate Judiciary Committee.

This committee goes about its work by interviewing a substantial number of judges and lawyers who are familiar with the nominee's work, and also surveys his published opinions. They thereby are able to formulate a balanced judgment as to a nominee's professional qualifications. They found Judge Carswell to be qualified in all of these respects to assume a seat on the Supreme Court of the United States.

One of Judge Carswell's principal opponents, the dean of the Yale Law School, also happens to be a member of the board of directors of the NAACP legal defense fund. The NAACP, of course, has come out in opposition to Judge Carswell. Dean Pollak at the time of Judge Carswell's nomination was apparently completely unfamiliar with the judge's opinions, and had never even appeared before the judge as an attorney. Nonetheless, he made the trip to Washington to appear in opposition to the judge, stating that "arrogant as perhaps this seems, I wanted to come before this committee and express my deep concern."

It seems that Dean Pollak spent a part of one weekend reading some opinions that Judge Carswell had written, and that this was the basis on which he criticized the nominee as being undistinguished.

The plain truth of the matter, of course, is that most of us in the Senate—and certainly most of the Senators who are not lawyers—do not have the time or disposition to thumb through the opinions that any particular nominee to high judicial office has written in order to evaluate them for ourselves. Of necessity, we must take someone else's word as to whether these opinions bespeak judicial temperament and professional competence.

I have no hesitation, in a situation such as this, in choosing the advice of the distinguished Committee of the American Bar Association, which has systematically interviewed judges and lawyers acquainted with the nominee and familiar with his work. When the bar association's evaluation is buttressed by the endorsements of the judges on the Fifth Circuit Court of Appeals, and when the black lawyer who represented many civil rights litigants before Judge Carswell states that he is unbiased, I have little difficulty in making my decision. Mr. President, I shall vote to confirm the nomination of Judge Carswell and trust the vote will not be unduly delayed.

Mr. TYDINGS. Mr. President (Mr. FANNIN), Judge Elbert Tuttle is one of the Nation's most respected jurists. As a member of the Fifth Circuit Court of Appeals from 1954 to the present, and as the circuit's chief judge from 1961 to 1967, Judge Tuttle has developed a reputation for competence, fairmindedness, and courage that has served to reinforce the respect in which the American people hold the Federal judicial system and to enhance the strength of that system.

Consequently it was a matter of sig-

nificance when on the first day of hearings on the Carswell nomination a letter from Judge Tuttle requesting the opportunity to testify in Judge Carswell's behalf was introduced in to the record.

That letter now appears on page 6 of the record of the hearings before the Committee on the Judiciary on the nomination of Judge G. Harrold Carswell for the Supreme Court.

Judge Carswell's supporters have relied heavily on that letter, and rightly so, for Judge Tuttle's support cannot be lightly dismissed.

That letter as I have indicated is still in the record.

Gov. Leroy Collins of Florida testified before the Judiciary Committee and indicated the weight given to Judge Tuttle's support for Judge Carswell.

After discussing the doubts that had risen about Judge Carswell, Governor Collins said the following, which can be found in the record on page 76:

> Now, if there are any lingering doubts with any of you, I would urge you to consider carefully the judgment of the judges who have worked on case after case involving civil rights with Judge Carswell. Surely Judge Tuttle would know all about this. Judge Tuttle wanted to be here and to testify personally in this hearing in support of Judge Carswell. He couldn't come for reasons he explained in a handwritten note to the chairman.
>
> * * * * *
>
> Now, I think most of you know who Judge Tuttle is. He has served as chief judge of the Fifth Circuit Court of Appeals, and this man has made more judgments, and he has written more opinions, upholding civil rights matters, I think, than any judge in all the land. And it is inconceivable to me that he would have served alongside Judge Carswell and make a statement of support like he has made here, and like he feels deeply, if he had the slightest feeling that there was any racial bias or prejudice within this man.

Mr. President, what Governor Collins did not know, what the members of the Judiciary Committee did not know, and what the American people did not know was that Judge Tuttle had called Judge Carswell on the telephone the night before Governor Collins testified and told him he would not testify in his support.

Between the day Judge Tuttle sent his letter of Januray 22 to the committee and his call to Judge Carswell, he decided to withdraw his offer to testify.

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

Mr. TYDINGS. I would be happy to yield.

Mr. EASTLAND. Mr. President, I would like to set the Senator straight. We received, as the Senator knows, letters from a number of Judge Carswell's fellow members of the fifth circuit. Those were all put in the record.

At the conclusion of the hearings that day, I told Judge Carswell that I did not think we could call any of the judges unless we called all of them. I did not see any point in calling all of them in. I said that I did not think we would use Judge Tuttle or any other judge as a witness.

Judge Carswell got to his room late at night and found a call from Judge Tuttle. He telephoned Judge Tuttle the next morning to tell him that we would not need Judge Tuttle's testimony or the testimony of any other judge from the fifth circuit.

Judge Tuttle told him this, as I understand the matter, "I cannot come to testify for reasons that I will tell you when I see you."

We have a handwritten letter that was submitted for Judge Carswell from New York City, under date of January 22. He was going from there to Boston to see his daughter. There was no retraction of this support. There was certainly no retraction of this letter, because the place to retract that would have been within the Judiciary Committee.

Mr. TYDINGS. Mr. President, is it the position of the Senator that Judge Carswell called Judge Tuttle the morning of the 28th of January to tell Judge Tuttle that it would not be necessary for him to testify?

Mr. EASTLAND. That is correct. That is absolutely correct. And Judge Tuttle broke into the conversation and told Judge Carswell, "I will not testify, anyway, for reasons that I will tell you when I see you."

Mr. TYDINGS. Mr. President, I think perhaps to complete the record I will first finish my statement, and then we can have a discussion.

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

Mr. TYDINGS. I yield.

Mr. HRUSKA. Mr. President, I thought the Senator read the date of January 27. It should have been the early morning of the 28th.

Mr. TYDINGS. The Senator is correct.

Mr. EASTLAND. At 7 a.m.

Mr. TYDINGS. The Senator is correct.

Between the time Judge Tuttle had written the handwritten letter which Senator EASTLAND has referred to, and which is still in the record, and his call to Judge Carswell on the morning of the 28th withdrawing his offer to testify, Judge Tuttle had learned, as indeed some others had, additional facts far more pertinent than the speech made in 1948, which cast serious doubts on Judge Carswell's present attitude toward according equal justice to all.

On the basis of these facts, Judge Tuttle concluded that he could not in good conscience testify in support of Judge Carswell's elevation to the Supreme Court.

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

Mr. TYDINGS. I yield.

Mr. EASTLAND. Mr. President, I want to correct one statement. The telephone call that Judge Carswell made to Judge Tuttle was in reply to the call that he had received late the night before.

He began the conversation as I have described and in line with the decisions which were made the night before.

Mr. TYDINGS. The first inkling of this situation was the article that appeared in the March 3, 1970, edition of the Atlanta Constitution, written by Bill Shipp, entitled, "Tuttle Cuts Carswell Off."

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

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

WOULD NOT TESTIFY: TUTTLE CUTS CARSWELL OFFER

(By Bill Shipp)

Judge Elbert P. Tuttle Sr., retired chief judge of the U.S. Fifth Circuit Court of Appeals, has withdrawn his support of Judge G. Harrold Carswell's nomination to the U.S. Supreme Court, The Atlanta Constitution learned Monday.

Judge Tuttle, who handed down some of the most far-reaching desegregation decisions in the South in the past decades, was asked by Carswell to endorse him for the position, a reliable source reported.

Tuttle, who was in Washington at the time in early January, agreed and wrote a letter to the Senate Judiciary Committee offering to testify in Carswell's behalf and saying, in effect, that this Harrold Carswell "is not the same Harrold Carswell I used to know," apparently meaning that Carswell's hardline position on segregation had changed over the years.

On Jan. 29, former Gov. Leroy Collins, testifying in Carswell's behalf, read Judge Tuttle's letter of endorsement to the Senate Judiciary Committee.

But Tuttle already had decided he could not support Carswell. Tuttle, who was appointed by President Eisenhower to the appeals court in 1954, phoned Carswell earlier at his lodging place in Washington and told him that "under the circumstances" he was withdrawing his offer to testify.

Tuttle reportedly was upset because of Carswell's involvement in a Florida club and a land development that barred Negroes.

"I'm sorry but, under the circumstances, I can not testify for you," Tuttle reportedly told Carswell. "Come and see me when you can. I would like to talk to you."

Carswell replied: "You don't have to explain."

However, Tuttle did not withdraw the letter from the Judiciary Committee. He told close associates that although he could not testify for Carswell, he still did not want to hurt his colleague on the fifth circuit bench.

Mr. TYDINGS. Mr. President, in that article the reporter from the Atlanta Constitution stated basically the facts that I have now enumerated on the floor of the Senate.

I was concerned about the matter because if that article was accurate, it meant that the letter in the record in support of Judge G. Harrold Carswell to be a Justice of the Supreme Court had no business being in the record and that Judge Carswell knew it.

So last Friday, which was when I first saw a copy of the article, I called Judge Tuttle.

I read the article to him and asked him basically whether the facts it contained were accurate.

He told me that the article was basically accurate.

At that point, I discussed this telephone conversation with one of my colleagues, the Senator from New York (Mr. JAVITS), and told him that I was deeply disturbed that that letter of support was still in the record.

On the suggestion of the Senator from New York (Mr. JAVITS), I wired Judge Tuttle to get the facts on paper.

Prior to doing so I called Judge Tuttle on the telephone and asked him if he would be willing to respond to a telegram from me, using that article as a basis, and whether he would mind if I put his response in the record of the

debate. He said he would not mind, and he would respond.

First, I will read the article published in the Atlanta Constitution and then the telegrams. This is the Atlanta Constitution article which I saw last Friday which triggered the sequence of events. The article has a dateline of Monday, March 3. I did not see it until last Friday.

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Carswell replied: "You don't have to explain."

However, Tuttle did not withdraw the letter from the Judiciary Committee. He told close associates that although he could not testify for Carswell, he still did not want to hurt his colleague on the fifth circuit bench.

I sent this telegram last Friday evening to Judge Tuttle:

MARCH 13, 1970.

Hon. ELBERT W. TUTTLE, SR.

DEAR JUDGE TUTTLE: I have read with interest the Article in the Atlanta Constitution of March 3, by Bill Shipp, Political Editor which states that you declined to testify in support of G. Harrold Carswell after initially writing a letter to the effect that this G. Harrold Carswell is not the same Harrold Carswell I used to know. Apparently meaning that Carswell's hard line position on segregation had changed over the years. As you know your letter was read into the record at the Judicial Hearings as an endorsement of Judge Carswell. I would appreciate it if you would clarify the record for myself, the Judicial Committee and the U.S. Senate.

JOSEPH D. TYDINGS,
U.S. Senator, Chairman.

I sent that telegram last Friday. Last Saturday I received the following telegram in response:

MARCH 14, 1970.

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

Reply your telegram inquiring about Atlanta Constitution article March 3. I telephoned Judge Carswell at seven AM January 28 that I had concluded that I could not testify in support of his nomination. My previous letter to the committee was an offer to testify if called after notifying Judge Carswell that I would not do so. It did not occur to me that it was necessary also to notify the committee. I was surprised to learn later that the letter was used for a purpose inconsistent with my decision not to testify as communicated directly to Judge Carswell.

ELBERT P. TUTTLE.

Sunday passed. Monday I received another telegram from Judge Tuttle which I shall now read into the RECORD:

MARCH 15, 1970.

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

This is a more accurate answer, your telegram about Atlanta Constitution article since I have now talked to Governor Collins, I telephoned Judge Carswell at 7AM January 28 that I had concluded that I could not testify in support of his nomination. My previous letter was an offer to testify if called. After notifying Judge Carswell I would not do so it did not occur to me that it was also necessary to notify the committee. I was surprised to learn later that my letter was introduced into the record and referred to in the hearings on January 28. I now find that my letter along with others had been introduced the first day of hearings before my telephone call and before any evidence was taken and that Governor Collins did not know of my call to Judge Carswell when he referred to my letter. I have also learned that he did not discuss his proposed testimony with Judge Carswell and that the Judge was not present at this hearing on January 28.

ELBERT P. TUTTLE.

Today I received a third telegram from Judge Tuttle which states:

MARCH 17, 1970.

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

Please add to my wire of yesterday under the circumstances state in my telegram I do not believe that Judge Carswell had any intention to or did deceive the committee respect to the matter of my letter to the chairman.

ELBERT P. TUTTLE.

I had never raised the issue of Judge Carswell attempting to deceive the committee. The telegrams speak for themselves. A man is going to be elevated to the Supreme Court, standing on a record and testimony ostensibly in support of his nomination from the former chief judge of his circuit, a distinguished jurist, and the nominee never said one word to my knowledge to any Senator that Judge Tuttle had called him up and said he would not testify in support of his nomination.

In view of the telegrams I have here, the letter which was introduced in the hearing record on page 6 cannot be cited from this point forward as evidence that Judge Tuttle supports the nomination of Judge Carswell for the Supreme Court.

As to why Judge Carswell did not clarify the record and remove the letter, I draw no conclusions. I will let Senators draw their own conclusions as to this man who is nominated to the Nation's highest judicial position.

(At this point, Mr. HART assumed the chair.)

Mr. EASTLAND. If this puts anyone in a bad light, certainly it is not Judge Carswell. It would be Judge Tuttle. Now, these gentlemen have known each other for many years. The Committee on the Judiciary did not solicit anything from Judge Tuttle, but here is a handwritten letter in his own handwriting from New York City where he solicits the right to testify and where he says this:

I have been intimately acquainted with Judge Carswell during the entire time of his service on the Federal bench, and am particularly aware of his valuable services as an appellate judge, during the many weeks he has sat on the Court of Appeals both before and after his appointment to our court last summer.

Now get this:

I would like to express my great confidence—

My great confidence—

in him as a person and as a judge.

He knew all about these charges about racism because he wanted to come down to refute it.

My particular reason for writing you at this time is that I am fully convinced that the recent reporting of a speech he made in 1948 may give an erroneous impression of his personal and judicial philosophy, and I—

What is that word?

Mr. HOLLAND. I would be prepared.

Mr. EASTLAND. Yes.

I would be prepared to express this conviction of mine—

Now get this:

based upon my observation of him during the years—

I emphasize, during the years—

I was privileged to serve as Chief Judge of the Court of Appeals for the Fifth Circuit.

Written on the 22d of January. This telephone call—there is another error there; I do not think it means anything——

Mr. TYDINGS. At 7 a.m., January 28.

Mr. EASTLAND. Yes. It says he called Judge Carswell. The fact is that Judge Carswell telephoned him. There is his statement, written in his own handwriting.

Mr. TYDINGS. While the Senator is on his feet, could I get a couple of facts into the RECORD? Did Judge Carswell, either directly or indirectly tell the Senator, in writing, on the telephone, or in person, that Judge Tuttle told him he would not testify in support of his nomination prior to the time this incident arose this weekend——

Mr. EASTLAND. That is correct.

Mr. TYDINGS. I did not——

Mr. EASTLAND. Wait a minute.

Mr. TYDINGS. This is important.

Mr. EASTLAND I want to clarify it. There were two gentlemen with him who told me that Judge Tuttle said that he would not testify for reasons that he would tell Judge Carswell when he saw him.

Mr. TYDINGS. There were two men who were with Judge Carswell——

Mr. EASTLAND. The two men with him told me that, but the committee heard nothing from them.

Mr. TYDINGS. Did Judge Carswell ever tell you, Mr. Chairman——

Mr. EASTLAND. No, sir.

Mr. TYDINGS. Did he ever raise the point with the Senator from Mississippi whether or not it was proper to leave the letter in after he had been advised by Judge Tuttle that he would not testify?

Mr. EASTLAND. It was very proper to leave the letter in.

Mr. TYDINGS. I am not asking the Senator whether it was very proper to leave the letter in. I am asking the Senator whether Judge Carswell ever raised the question.

Mr. EASTLAND. No, and he should not have.

Mr. TYDINGS. All I asked was the simple question——

Mr. EASTLAND. I know what the Senator asked, but here is a blanket endorsement of him. It goes far beyond any civil rights question. It is a blanket endorsement of him as a judge.

Mr. TYDINGS. The Senator made two points. The date of the letter is January 22. As the Senator well knows, and I think those in this Chamber know, most persons are not going to hold a speech made 20 or 30 years ago against a person, if it is obvious that over the years his positions have changed and he has developed and he has matured. I think in all the minority comments the speech is given little emphasis. At least, I knew it was not emphasized in my views.

Mr. EASTLAND. Let me say——

Mr. TYDINGS. Let me point out that the letter relates to Judge Carswell's service as an appellate judge. As the Senator knows, his nomination as an appellate judge was confirmed last year. The issues which arose in the committee hearings were not based on his conduct as an appellate judge, but were on whether it was possible to receive a fair trial from him if a person were poor——

Mr. EASTLAND. Now, wait a minute——

Mr. TYDINGS. Or black——

Mr. EASTLAND. Wait a minute——

Mr. TYDINGS. In a civil rights matter——

Mr. EASTLAND. Wait a minute. I have the floor. The Senator asked a question.

Mr. TYDINGS. I have the floor. I yielded to the Senator from Mississippi, and I will be happy to let him continue.

The PRESIDING OFFICER. Let the Chair state that although the Senator from Maryland did not take his seat, it was the Chair's understanding that he had concluded his remarks, and the Chair recognized the Senator from Mississippi.

Mr. EASTLAND. It is all right with me for the Senator to go on.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. EASTLAND. I want the record to show that this letter, which was unsolicited, speaks for itself. The Senator asked me if Judge Carswell had ever asked to withdraw this letter. Was that the question?

Mr. TYDINGS. That was the question.

Mr. EASTLAND. I will tell the Senator now, if he had requested it, I would not have permitted it.

Mr. TYDINGS. I did not ask the Senator that.

Mr. EASTLAND. I know. But I have answered.

Mr. TYDINGS. I asked the Senator whether Judge Carswell ever asked to withdraw it.

Mr. EASTLAND. I have the floor. If he had, I would not have permitted it.

Mr. TYDINGS. That is all I wanted to know.

Mr. EASTLAND. This was a letter that was unsolicited, that came to me as chairman of the Judiciary Committee.

Mr. TYDINGS. Did Judge Carswell tell the Senator from Mississippi that this letter was unsolicited from Judge Tuttle?

Mr. EASTLAND. I said I did not solicit it.

Mr. TYDINGS. No, but did Judge Carswell tell the Senator that? The Senator from Mississippi has used the term "unsolicited" three times during the debate. Did Judge Carswell tell the Senator from Mississippi this letter was unsolicited?

Mr. EASTLAND. Referring to myself; I have received no letter from anybody and did not know the witness was not going to testify——

Mr. TYDINGS. It is not the Senator's function to solicit letters.

Mr. EASTLAND. That is correct, but I would not have permitted the withdrawal of the letter from the record. This letter goes much further than these telegrams, because it is a blanket endorsement of Judge Carswell as a judge and a man.

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

Mr. EASTLAND. I yield.

Mr. HRUSKA. Did the chairman of the Judiciary Committee ever get a request from Judge Tuttle to withdraw that letter?

Mr. EASTLAND. No; we never got a request. That would have been the proper way. If he had requested it, yes, we would have withdrawn the letter.

Mr. HRUSKA. It would have been in the transcript, and the later transcript would have shown the request was made to withdraw it?

Mr. EASTLAND. That is correct.

Mr. HRUSKA. It would have to, because the hearing was not 30 minutes old when the letter was placed in the record, in good faith.

Mr. EASTLAND. That is correct, and to this day we have heard nothing from Judge Tuttle.

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

Mr. EASTLAND. I yield.

Mr. GURNEY. As I understand it—and this is extremely important in this colloquy—at 7 in the morning of the 28th of January, in a telephone conversation between Judge Carswell and Judge Tuttle, the gist of it was he advised Judge Carswell he could not come down to testify and would tell Judge Carswell later why. Judge Carswell interpreted the statement to mean his inability to come down for some reason he was not telling Judge Carswell over the phone and had nothing to do with the substance of the letter and his endorsement of Judge Carswell for this position.

Am I correct in that understanding?

Mr. EASTLAND. That is the impression I got, and that is the information I received. I did not know anything about it.

Mr. GURNEY. The reason why it is important to clarify this version on one side as contrasted to the version of the Senator from Maryland is that the latter indicates the telephone conversation had something to do with, "I can't testify because I am withdrawing it."

Mr. EASTLAND. I was informed by the two gentlemen who were with Judge Carswell that Judge Tuttle could not testify or would not testify for reasons that he would tell Judge Carswell when he saw him. I say this in justice to them—that they had no earthly idea why he had withdrawn his support.

Of course, Judge Tuttle is a very intelligent man, and he would be intelligent enough to know that the only way he could withdraw this endorsement would be through the committee itself. If it throws anybody in a bad light, it certainly is not Judge Carswell.

Mr. GURNEY. If the Senator will yield further, I must say my own impression of this, after listening very carefully, reading the articles and then the telegrams, is that this is much ado about nothing and a very confused judge—Judge Tuttle.

Mr. EASTLAND. Correct. It is confused and it is much ado about nothing. The last telegram that my good friend, the distinguished Senator from Maryland, read from Judge Tuttle was that Judge Carswell had not attempted to deceive him or the Judiciary Committee.

Mr. GURNEY. If I may further complete the thought, it is quite obvious that Judge Tuttle was very confused about what Governor Collins testified to and when he testified to it and whether there was knowledge on Governor Collins' part of the telephone conversation between Judge Tuttle and Judge Carswell. There obviously was a great state of confusion in Judge Tuttle's mind. So we have here a letter of complete endorsement, we have three telegrams, we have a sketchy newsstory, and no one has said anything, including the Senator from Mississippi, about what changed Judge Tuttle's mind.

Mr. EASTLAND. My good friend from Maryland has since said—and he has a perfect right—and I am going to say this now:

The thrust of his speech was that there was some questionable conduct on Judge Carswell's part in not letting us know about the conversation.

But right in the face of it, the Senator has a telegram from Judge Tuttle saying that Judge Carswell has not attempted to deceive the committee or anyone else—just a blanket denial.

Several Senators addressed the Chair.

Mr. EASTLAND. I yield to the Senator from Maryland.

Mr. TYDINGS. Mr. President, just to get the record clear for the Senator from Florida and others as far as I am concerned, the Senate has to decide from the facts as shown by the telegrams, which are in the record.

The facts are that we have a letter ostensibly endorsing a man for the Supreme Court of the United States, written 6 or 7 days before the letter was put into the record.

Mr. EASTLAND. Four days.

Mr. TYDINGS. Well, it was dated January 22.

Mr. EASTLAND. And, of course, the 28th was when the Senator said the call came, which is correct.

Mr. TYDINGS. Which letter is still in the record, and when Senators get up on their feet and speak in favor of the nomination, they refer to the support of distinguished jurists in the fifth circuit.

Mr. EASTLAND. Do we not have that support?

Mr. TYDINGS. No, you do not have the support.

Mr. EASTLAND. I do not know about that.

Mr. TYDINGS. The former chief judge of the fifth circuit——

Mr. EASTLAND. He says:

I have been intimately acquainted with Judge Carswell during the entire time of his service on the Federal bench, and am particularly aware of his valuable service as an appellate judge, during the many weeks he has sat on the Court of Appeals both before and after his appointment to our court last summer. I would like to express my great confidence in him as a person and as a judge.

Then he goes on and says that the racial attitude is wrong, that that is one reason he wants to testify, and he winds up:

I would be prepared to express this conviction of mine based upon my observation of him during the years I was . . .

I cannot read his writing, he is getting so old.

Mr. TYDINGS. It says:

I was privileged to serve as Chief Judge of the Court of Appeals for the Fifth Circuit.

Mr. EASTLAND. Let me read it in print:

. . . and I would be prepared to express this conviction of mine based upon my observation of him during the years I was privileged to serve as Chief Judge of the Court of Appeals for the Fifth Circuit.

Which was about 10 years.

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

Mr. EASTLAND. I yield.

Mr. HRUSKA. An attempt is made to put the burden on Judge Carswell at that point; that he was supposed to advise the committee; and that he was supposed to withdraw that letter.

Mr. EASTLAND. I would not permit him to withdraw it.

Mr. HRUSKA. The chairman correctly observed that it was not for Judge Carswell to withdraw the letter; and, in view of the tenor of the telephone call, the conversation from Judge Tuttle was that he simply would not appear to testify, and that he would give an explanation to Judge Carswell when he saw him personally.

Mr. EASTLAND. That is correct.

Mr. HRUSKA. Under those facts, any disclosure of that telephone talk by Judge Carswell to the committee would simply be something the committee already knew—to wit, that Judge Tuttle was not going to testify, and that is the sum and substance of it.

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

Mr. HRUSKA. Yes.

Mr. GRIFFIN. And the last telegram from Judge Tuttle confirms that interpretation by Judge Carswell.

Mr. EASTLAND. Of course it confirms it.

Mr. TYDINGS. Mr. President, let us get the record clear. The Senator from Mississippi has a handwritten letter of endorsement—solicited by Judge Carswell from Judge Tuttle.

Mr. EASTLAND. Now the Senator is making a statement I know nothing about. He said it was solicited. I know nothing about that.

Mr. TYDINGS. All right. My position is that it was solicited.

Mr. EASTLAND. All right.

Mr. TYDINGS. The letter was placed in the record at a time when Judge Carswell was present in the committee room. The letter was dated the 22d of January, 5 days before the hearings began—before, indeed, a great deal of information involving Judge Carswell was known to the Nation, to the Senate, to the Committee on the Judiciary, and I am sure to Judge Tuttle; and we have here the telegram from Judge Tuttle stating what happened.

Let me read again the telegram by which he responded to me. This is Judge Tuttle, not Senator TYDINGS, not Senator GURNEY, or Senator EASTLAND.

Mr. EASTLAND. Read all of the telegram.

Mr. TYDINGS. It is already in the RECORD, but if the Senator wishes I will do so:

Reply your telegram inquiring about Atlanta constitution article March 3. I telephoned Judge Carswell at seven am January 28 that I had concluded that I could not testify in support of his nomination. My previous letter to the committee was an offer to testify if called after notifying Judge Carswell that I would not do so. It did not occur to me that it was necessary also to notify the committee. I was surprised to learn later that the letter was used for a purpose inconsistent with my decision not to testify as communicated directly to Judge Carswell.

Mr. GURNEY. Mr. President, will the Senator yield at that point?

Mr. TYDINGS. The Senator from Mississippi has the floor.

Mr. EASTLAND. I have the floor.

Mr. GURNEY. Will the Senator from Mississippi yield?

Mr. EASTLAND. If I do not lose my right to the floor.

Mr. TYDINGS. I will respond to the question, then.

Mr. EASTLAND. I am not engaging in this filibuster, now. We are ready to vote.

Mr. GURNEY. So am I, but let me ask the Senator from Maryland this question: Is there anywhere in that telegram that Judge Tuttle says why he is not going to come and testify? That is the whole point of this matter.

Mr. TYDINGS. The fact of the matter is that any way you look at it, Judge Tuttle will not testify in support of G. Harrold Carswell's nomination to the Supreme Court. He will not testify in support of a judge from his own circuit.

Mr. GURNEY. That may be true——

Mr. TYDINGS. And until today, until we put these telegrams—in the RECORD—it was held forth to the Members of the Senate, the member of the Committee on the Judiciary, and the American people that Judge Tuttle, a judge of his own circuit, was in support of Judge Carswell.

Mr. GURNEY. Will the Senator yield?

Mr. EASTLAND. And he has never withdrawn it. I could not conceive that that is his purpose.

Mr. TYDINGS. Mr. President, I have put these telegrams in the RECORD, but to clear up once and for all——

Mr. EASTLAND. I cannot conceive of a stronger endorsement than this, written in his own handwriting. He did not have a copy of the letter. As I understand——

Mr. GURNEY. That may be why he called up Judge Carswell.

Mr. EASTLAND. As I understand, he said he had not read the RECORD, and, not having the copy of the letter, he did not know how strongly he went at that time.

Mr. GURNEY. But the whole point of these telegrams, as I understand it, brought forth here by the Senator from Maryland, is to impugn the integrity of Judge Carswell into an attempt to deceive the committee. That is why I ask if there is anything in that telegram where Judge Tuttle said why he was not going to come down to testify, because that is the nub of the whole thing.

Mr. TYDINGS. I specifically stated——

The PRESIDING OFFICER (Mr. HART). The Senate will be in order. The RECORD will be much clearer if Senators will speak one at a time, and permit the official reporter to report what is being said.

Mr. TYDINGS. I specifically stated, Mr. President, that the telegrams I introduced would speak for themselves, that the Members of the Senate would have to draw their own conclusions on why Judge Carswell, after receiving a call from the former chief judge of his own circuit that he would not testify in support of him, made no statement to the chairman or to anyone else, and why the letter is still in the record. If the Senator wants to draw a conclusion, he can. I think it is up to each of the Members of the Senate of the United States to draw his own conclusion. I am not making any charges; I am merely putting the telegrams in the RECORD to get the facts clear.

The facts are that Judge Tuttle communicated to G. Harrold Carswell on the morning of January 28 that he would not testify in support of his nomination.

Mr. EASTLAND. For a reason.

Mr. TYDINGS. The facts are that that letter is still in the record, and the facts are that Judge Carswell never communicated to Senator EASTLAND his conversation with Judge Tuttle. Those are facts. Just facts. Senators may draw their own inferences from the facts.

Mr. EASTLAND. Yes, but in simple justice to Judge Carswell, now, the thrust of my friend's statement is that Judge Carswell has done something wrong.

Mr. TYDINGS. No, the facts speak for themselves.

Mr. EASTLAND. Well, that is my interpretation.

Mr. GURNEY. Mr. President, I think the facts very eloquently speak for

themselves, and best of all, in the language of Judge Tuttle, who said Judge Carswell——

Mr. EASTLAND. I know, but the last telegram from Judge Tuttle completely exonerates Judge Carswell of any wrongdoing.

Mr. GURNEY. That is the eloquent part about the whole matter.

Mr. TYDINGS. Mr. President, that is one of the reasons I do not state any conclusions myself. I let my colleagues draw their own conclusions.

Mr. GRIFFIN. The Senator from Maryland is not accepting the statement of Judge Tuttle, as I understand it. Is that correct?

Mr. TYDINGS. I am accepting all the statements of Judge Tuttle.

Mr. GRIFFIN. He is accepting some, but not all.

Mr. TYDINGS. I accept each and every one, including his last telegram, of which Senator Eastland has a copy. All of them go into the RECORD together. It is up to the Members of the Senate to draw the conclusions. It is not for me to tell the Senator from Michigan or anyone else what conclusion to draw from the telegrams and the facts. The Senator will draw his own conclusions. But the facts are there.

Mr. GRIFFIN. The Senator leaves the impression that he still tries to suggest there is some question about the integrity of Judge Carswell.

Mr. TYDINGS. I did not mention the word "integrity." The only suggestions of it come from the other side of the aisle. I merely put the records in about the facts and say that the Members of the Senate should draw their own conclusions.

Mr. GRIFFIN. We will see how the newspapers write it.

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

Mr. EASTLAND. I yield.

Mr. HOLLAND. I have only two comments to make.

The first is that, apparently, the distinguished Senator from Maryland has overlooked the fact that Judge Carswell has served on the appellate bench in the fifth circuit not just since his appointment but many times before. This is indicated, I think, rather clearly by the letter from Judge Tuttle, because he speaks of his service on the appellate bench both before and since his appointment. My information is that he served many times. My information is that he was selected by the district judges of the whole circuit to represent them on the judicial conference here in Washington. He was repeatedly here, and I understood he was here for that purpose. So he was called by the circuit court of appeals frequently to serve on the appellate court, and did so. That is my first point.

My second point is based on a conversation I had with Judge Carswell. On Sunday, for the first time, I learned about this Atlanta Constitution article. I called Judge Carswell. I talked with him on the telephone in the presence of the Senator from Mississippi and the Senator from Nebraska (Mr. HRUSKA). Judge Carswell said to me:

> When he told me—
>
> Meaning Judge Tuttle—
>
> over the phone that he could not appear for me, I had not the slightest idea that he was meaning that he was withdrawing his support and his friendship and his confidence, because he did not so indicate. I was shocked when someone from Atlanta called about this article in the Constitution. And I called him later, and he admitted that he just told me that he felt that under the circumstances he could not appear and testify.

I have read these three telegrams and understand that they were all answers to the telegraphic inquiry of the distinguished Senator from Maryland. The first one simply says:

> I telephoned Judge Carswell at 7 a.m. January 28 that I had concluded that I could not testify in support of his nomination. My previous letter to the committee was an offer to testify if called.

He does not say there that he notified Judge Carswell that he was withdrawing his support, and that he decided that he could not support him. He just says——

Mr. TYDINGS. I ask the Senator to read the next sentence.

Mr. HOLLAND. I will read it:

> I could not testify in support of his nomination. My previous letter to the committee was an offer to testify if called. After notifying Judge Carswell that I would not do so, it did not occur to me that it was necessary also to notify the committee.

The thing that seems to have gotten Judge Tuttle upset was that he understood somehow that this letter was put into the record after the time that he had had this telephone conversation with Judge Carswell indicating that he could not come down and testify.

Judge Carswell, in talking with me, said:

> I had no intimation that he was instead turning against me, and I was never more shocked than when I heard the article in The Constitution read to me. And I called Judge Tuttle, and he told me, "No, I didn't tell you that I wouldn't support you. I just said that I could not come down and testify."

He states exactly the same thing in the first wire to Senator TYDINGS, and I read again:

> I had concluded that I could not testify in support of his nomination. My previous letter was an offer to testify if called. After notifying Judge Carswell I would not do so, it did not occur to me it was also necessary to notify the committee.

The later wires carry out exactly the same idea. Nowhere does he say, in any of the three wires, that he had turned against Judge Carswell and would oppose him. The second wire says:

> I telephoned Judge Carswell at 7 a.m., January 28, that I had concluded that I could not testify in support of his nomination.

That certainly is a very different thing from saying, "I telephoned him to say that from what I had heard, I had decided that he was wrong instead of right, and that I would not support him further."

The last wire goes even further and says:

> Under the circumstances stated in my telegram, I do not believe that Judge Carswell had any intention or did deceive the committee with respect to the matter of my letter to the chairman.

Mr. President, I think we are asked to conclude some things that at least Judge Tuttle has not yet seen fit to state—at least, in his telegrams and in his telephone conversation to Judge Carswell as reported to me.

I know human nature pretty well, and when I talked with Judge Carswell, I could tell he was very much upset at the article in the Constitution, and that he had called Judge Tuttle to see what was wrong, and again simply received the information that Judge Tuttle decided he could not come down and testify. That is repeated a couple of times in the wires to the Senator from Maryland.

My own feeling is that we are asked to infer a great many things involving implications of bad faith which, for one, I cannot agree to; and, furthermore, that the letter written in Judge Tuttle's longhand expresses what I think is his verdict on Judge Carswell, based on his years of association—and they had been many years of association—and based on the service that Judge Carswell had rendered not just since his appointment to the appellate court, on that court, but in many instances previously, when he had been called to serve on the appellate court.

I think the distinguished Senator from Maryland has tried to make a mountain out of a molehill.

So far as the Senator from Florida is concerned, he completely approves the fact that the Senator from Mississippi, as chairman of the committee, placed in the record the first morning, as soon as the two Senators from Florida and the Congressman from Judge Carswell's district had testified, not just the Tuttle letter, but also all the letters from distinguished judges, including Judge Tuttle's letter, which he had received as chairman of the committee. I think he should have done that; I am glad he did it.

Without drawing any conclusions that are disparaging to anybody, I think that letter comes nearer to stating Judge Tuttle's attitude based on his years of association with Judge Carswell.

I think this matter has been maximized, so far as the Senator from Florida is concerned. He attaches little importance to it. He is more concerned about the reaction of Judge Carswell to the article in the Atlanta Constitution. Incidentally, in reading that article, it will be noticed that even it does not say that Judge Tuttle said he had changed his ideas entirely, but instead says much the same thing:

> Tuttle phoned Carswell earlier at his lodging place in Washington and told him that "under the circumstances," he was withdrawing his offer to testify.

That is a very different thing, even as quoted in the Constitution, from saying he had decided he was going to oppose Judge Carswell's nomination.

Mr. HRUSKA. Mr. President, will the Senator from Mississippi yield briefly, so that I may ask a question of the Senator from Florida?

Mr. EASTLAND. I yield.

Mr. HRUSKA. The telegram also stated that it did not occur to Judge Tuttle that it was also necessary to notify the committee. No blame is attached to Judge Tuttle for not notifying the committee. But somehow or other it is considered necessary that Judge Carswell should have notified the committee. The two ideas do not match. What could Judge Carswell have said to the committee about the conversation, except to affirm the fact that Judge Tuttle was not going to testify. The committee already knew that.

Mr. EASTLAND. We already knew it, and we decided not to use any of those gentlemen.

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

Mr. EASTLAND. I yield.

Mr. HOLLAND. I call attention to the fact that letters appear, I think, in the record—I have seen them all—from the two active circuit judges from Florida, Judge David Dyer, of Miami, and Judge Bryan Simpson, of Jacksonville; from the retired circuit judge from Florida, Judge Warren Jones; as well as from the two active circuit judges from Georgia, Judge Morgan and Judge Bell; and from Judge Ainsworth who, I believe, is from Alabama——

Mr. EASTLAND. No; Judge Ainsworth is from Louisiana.

Mr. HOLLAND. Yes.

Mr. EASTLAND. And from Judge Thornberry, of Texas.

Mr. HOLLAND. And Judge Thornberry, who was nominated to the Supreme Court by President Johnson.

My feeling is that if there ever was substantial unanimity in the analysis of Judge Carswell and his service on the circuit court of appeals, it appears in the record.

Mr. EASTLAND. That is the reason we decided—Judge Carswell asked—I mean asked to come to testify, but we had the others, and it was my decision not to call any of them. I told Judge Carswell that, late in the afternoon of the first day of the hearings.

Mr. HOLLAND. I think that was a very proper decision, and I approve it.

Mr. President, I yield the floor at this time.

Mr. TYDINGS. Mr. President, has the Senator from Florida yielded the floor? I have one statement to make. Does the Chair recognize me?

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. TYDINGS. Mr. President, finally, let me state the chronology of events on which this debate has rested this afternoon.

On January 22, Judge Carswell received a handwritten letter from Judge Albert B. Tuttle. The letter was dated——

Mr. EASTLAND. The Senator is mistaken. He said Judge Carswell received a letter. The committee received that letter. It was mailed on the 22d and evidently got down here a day or two later.

Mr. TYDINGS. Did the Senator receive that letter from Judge Carswell?

Mr. EASTLAND. Did Judge Tuttle hand the Senator the letter? It came through the mail from New York City.

Mr. TYDINGS. A letter came through the mail?

Mr. EASTLAND. There is the man that handed me the letter, Mr. Holloman, who is now in the Chamber.

Mr. TYDINGS. I am merely stating chronological order of events.

On January 22—a letter dated January 22 from Judge Elbert P. Tuttle was sent to Senator EASTLAND, endorsing or, at least on the surface of it, for the purpose of endorsing the nomination of Judge Carswell. The letter appears in the record on page 6.

On January 27, Judge Carswell sat in the hearing room, in front of the chairman, when the chairman placed Judge Tuttle's letter in the record.

The following morning, January 28, Judge Carswell had a telephone conversation with Judge Tuttle, at which time he told Judge Carswell that he could not testify in support of his nomination.

That morning, Governor Collins read the letter which had been put into the record the prior day. Governor Collins' testimony appears in the record of the hearings on page 76. Since that time, Senators——

Mr. GURNEY. At that point, Judge Carswell was not present at the hearing, was he?

Mr. EASTLAND. No, sir; he was not present.

Mr. TYDINGS. There is no evidence that Judge Carswell was present that day of the hearings.

Mr. EASTLAND. He was not present when former Governor Collins testified.

Mr. TYDINGS. That is correct.

Mr. EASTLAND. In fact, he stayed in my office during the rest of the hearing.

Mr. TYDINGS. That is my understanding of the facts.

Mr. EASTLAND. He was to be available. He stayed there, solely to be available in case they wanted him.

Mr. TYDINGS. After the hearings were completed, the Judiciary Committee, by the chairman, invited Judge Carswell, or asked him if there were any statements he wished to make to correct the record or add to the record, and he responded with the statement which appears in the record on page 320. That statement mentioned in no way the letter from Judge Tuttle.

I believe that Senators have risen on the floor of the Senate and referred to the Tuttle letter as the reason to support the nomination of Judge Carswell. The majority report of the committee uses that letter in support of Judge Carswell. Senators have written letters to constituents using the Tuttle letter as a reason for their support. Judge Carswell has not seen necessary to tell anyone, the chairman, Governor Collins, or any other Senator, that the letter from Judge Tuttle, at least in Judge Tuttle's mind, had been countermanded when Judge Tuttle called him up and told him he could not testify.

Those are just the points——

Mr. EASTLAND. I know, but the Senator wants a complete record, does he not? The Senator wants a complete record, in all fairness to Judge Carswell, does he not? Why does the Senator not put it in there, that Judge Tuttle at no time has withdrawn his endorsement of Judge Carswell or contacted the committee in any way?

Mr. TYDINGS. I cannot say. The telegrams are in the record——

Mr. EASTLAND. I know.

Mr. TYDINGS. Which specifically state that Judge Tuttle had withdrawn his support and was not willing to testify in favor of Judge Carswell.

Mr. EASTLAND. No, no——

Mr. TYDINGS. If the Senator does not wish to draw that from the telegram——

Mr. HRUSKA. Are there words to show withdrawal?

Mr. TYDINGS. I quote the telegram:

> Reply your telegram inquiring about Atlanta Constitution article March 3. I telephoned Judge Carswell at 7 a.m. January 28 that I had concluded that I could not testify in support of his nomination. My previous letter to the committee was an offer to testify if called, after notifying Judge Carswell that I would not do so it did not occur to me that it was necessary also to notify the committee. I was surprised to learn later that the letter was used for a purpose inconsistent with my decision not to testify as communicated directly to Judge Carswell.
>
> ELBERT P. TUTTLE.

I do not know how much clearer one can be than that.

Mr. HRUSKA. I would ask the Senator, where are the words saying that he withdrew his support? There is a simple statement that he would not testify:

> I had concluded that I could not testify in support of his nomination. My previous letter to the committee was an offer to testify . . .

He does not say he is withdrawing his support.

He can say that he wants to review the letter and revise it. If he does, God bless him. It is a wise man that changes his mind. Fools never do. But at any rate, they were predicating a base for saying that Judge Carswell faulted the committee and was to blame because he did not notify the committee that the testimony and the endorsement was withdrawn, when, in fact, it has never been withdrawn.

It seems to me that this is an unwarranted conclusion. In my judgment there is a very nebulous foundation here for that very conclusion.

Mr. TYDINGS. The telegrams speak for themselves.

Mr. HRUSKA. Indeed, they do, and they do not contain any withdrawal of the endorsement by Judge Tuttle.

Mr. TYDINGS. Mr. President, the Senator can fence with words from now until doomsday. But if these telegrams are not explicit, I have never seen any that were.

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

Mr. TYDINGS. I yield.

Mr. GRIFFIN. Mr. President, if the only purpose of the Senator from Maryland was to convince the Senate that Judge Tuttle no longer supports the nomination of Judge Carswell, I can speak for no other Senator, but I am convinced on the basis of the telegrams that that is the case.

Mr. TYDINGS. Mr. President, I thank the Senator. That is the gist of the telegram.

Mr. GRIFFIN. What bothers me about the presentation of the Senator from Maryland is pointed up by the fact that he referred to the letter which Judge Carswell wrote to the committee after the hearings were completed; a letter which he was given an opportunity by the committee to provide after reviewing the record.

The very fact that the Senator from Maryland refers to that letter implies that Judge Carswell somehow deceived the committee by not saying in his letter something which he did not know; namely, the reason that Judge Tuttle was not going to testify. Leaving that implication is very unfair, I submit, and is directly contrary to, and in conflict with, the last telegram which Judge Tuttle sent.

Mr. HRUSKA. Mr. President, if the Senator will yield, the telegram reads, in part, as follows:

Under the circumstances stated in my telegram, I do not believe that Judge Carswell had any intent to, or did, deceive the committee with respect to the matter of my letter to the Chairman.

Mr. GRIFFIN. Mr. President, may I ask the Senator from Maryland what other purpose he had in mind when he referred to the letter from Judge Carswell at the end of the record?

Mr. TYDINGS. Mr. President, I think it is very important that the Members of the Senate have all of the facts possibly relating to the conduct of Judge Carswell during his service on the bench.

I think that his handling of the call from Judge Tuttle indicates the type judge he is.

I make no charges. I do, however, feel that the Members of the Senate should consider them. Let each Senator draw what conclusions he wishes. The facts speak for themselves.

I yield the floor.

Mr. HRUSKA. Mr. President, I want to corroborate the account of the telephone call referred to by the Senator from Florida on Sunday. In that conversation, Judge Carswell stated that Judge Tuttle, on the telephone January 28, did not reveal any reason withdrawing his support, nor, did he even say he would. He simply said that he could not come to testify and that at a later date when they could visit personally, he would tell him about it.

Now, that is the fact. And I think that is borne out by the language of the telegram.

The Senator from Nebraska repeats that there was nothing that Judge Carswell could have told the committee that would be a disclosure different from what the committee already knew; namely that Judge Tuttle would not testify before the committee.

Somehow, something sinister is tried to be imputed to Judge Carswell for not having told the committee about the Tuttle telephone call. But nothing is said here about the real cause of this discussion today. That is the failure on the part of Judge Tuttle, for not having called the committee and said, "I withdraw my support. I withdraw my letter and repudiate it." He has never done it. No fault is imputed to him. But an unwarranted effort is being made to place the blame on Judge Carswell. This is not right.

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

Mr. HRUSKA. I yield.

Mr. EASTLAND. Mr. President, was it not Judge Tuttle's duty to contact the committee?

Mr. HRUSKA. It was, indeed. There was no one else who could have withdrawn that letter except Judge Tuttle.

He has never done it. Not to this minute has he ever communicated with the Judiciary Committee.

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

Mr. HRUSKA. I yield.

Mr. TYDINGS. Mr. President, I have the greatest respect and affection for the Senator from Nebraska, as he knows.

Mr. HRUSKA. And it is fully reciprocated, I want the Senator to know.

Mr. TYDINGS. We are frequently on the other side. But we have frequently worked together in constructive efforts.

I have the greatest respect for the deputy minority leader, the Senator from Michigan (Mr. GRIFFIN), and also for my colleague, the senior Senator from Florida (Mr. HOLLAND), and also for the junior Senator from Florida (Mr. GURNEY), who has made a fine record since he has been here.

Having listened to the debate during the last 20 or 30 minutes, I am reminded of the famous play "Hamlet," and the line which says:

The lady doth protest too much methinks.

Mr. HRUSKA. And my observation would be that it is a wise saying and the statement is highly apropos. And I am glad that the Senator characterizes his position in this fashion.

THE OPERATION OF THE GENERAL SERVICES ADMINISTRATION

Mr. GRIFFIN. Mr. President, I ask unanimous consent, as in legislative session, that a statement by the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), on the operation of the General Service Administration under its able Administrator Robert Kunzig be printed at this point in the RECORD.

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

STATEMENT OF SENATOR SCOTT

Mr. President, today marks the first anniversary of the unanimous confirmation by the Senate of Robert L. Kunzig of Pennsylvania as the Administrator of the General Services.

On this anniversary of his appointment, I want to pay a special tribute to Bob Kunzig. I am proud of my long association and friendship with Bob. He has served as my Administrative Assistant, close personal advisor, campaign manager, and is my trusted friend. Over the years, Bob has devoted his unusually dynamic talents to serving the people of the United States. He has served as a member of Governor Raymond P. Shafer's cabinet, as an Eisenhower appointee to the Foreign Claims Settlement Commission, and as executive head of the Civil Aeronautics Board.

The Nixon Administration, and in fact, the Nation is fortunate to have Bob Kunzig at the helm of the agency which is the multi-billion dollar business manager of the Federal Government—the largest agency of its kind in the world.

Some have felt that in past years the General Services Administration has been a slow-moving, stodgy, unglamorous organization. Mr. President, I can assure you that this is no longer the case. Under Bob Kunzig's leadership, GSA is now a people-oriented agency committed to creative and innovative change. It is also a "can do" agency which has achieved a reputation of working hard and of solving problems.

The record of accomplishments since Bob Kunzig was named Administrator of General Services is a record which emphasizes the needs of the general public. Highlighting this record are actions ranging from the appointment of a National Public Advisory Council comprised of 16 distinguished American citizens—the first time such a council has been appointed in the history of the General Services Administration—to the establishment of Federal Information Centers where private citizens can present ideas or ask questions and be guaranteed attention from responsible Federal authorities, to making GSA a leader in equal employment opportunity so that every employee may advance without regard to race, creed, sex, age or national origin.

Mr. President, Bob Kunzig has made the General Services Administration a new forward-looking agency which serves to improve the lives of the American people.

I extend my sincere congratulations to Bob Kunzig after his first year of successful service and wish him many future years of equal success.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on the completion of the remarks on tomorrow of the able Senator from South Dakota (Mr. MCGOVERN), there be a brief period for the transaction of routine morning business, as in legislative session.

The PRESIDING OFFICER. Does the Chair understand that the statements made in the morning hour are to be limited to 3 minutes?

Mr. BYRD of West Virginia. Mr. President, I did not so state. However, I will add that to my request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, for the benefit of the Senate, I would like to give a short resume of the orders for Wednesday, March 18.

We shall adjourn, as in legislative session, until 10:30 a.m. tomorrow.

Following the disposition of the reading of the Journal, the Senator from South Dakota (Mr. MCGOVERN) is to be recognized for a period not to exceed 30 minutes, following which there will be a brief period for the transaction of routine morning business, as in legislative session.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to

come before the Senate, I move, pursuant to the previous order, as in legislative session, that the Senate stand in adjournment until 10:30 a.m. tomorrow.

The motion was agreed to; and (at 6 o'clock and 17 minutes p.m.) the Senate adjourned, as in legislative session, until tomorrow, Wednesday, March 18, 1970, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 17, 1970:

U.S. Tax Court

The following to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office; reappointments:

Howard A. Dawson, Jr., of Arkansas.
Bruce M. Forrester, of Missouri.
Leo H. Irwin, of North Carolina.
Samuel B. Sterrett, of Maryland.

In the Air Force

The following Air Force officers for reappointment to the active list of the Regular Air Force, in the grade of captain, from the temporary disability retired list, under the provisions of sections 1210 and 1211, title 10, United States Code:

Johnson, Lawrence M. xxx-xx-xxxx
Trupp, Eric F. xxx-xx-xxxx

The following Air Force officers for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duty indicated, and with dates of rank to be determined by the Secretary of the Air Force:

To be first lieutenants (medical)

Breihan, James H. xxx-xx-xxxx
Burgess, James G. xxx-xx-xxxx
Burgfechtel, Robert F. xxx-xx-xxxx
Campbell, Lewis V., Jr. xxx-xx-xxxx
Claflin, Dale G. xxx-xx-xxxx
Cowley, Larry A. xxx-xx-xxxx
Cunningham, Lynn A. xxx-xx-xxxx
Dean, Gilbert O., Jr. xxx-xx-xxxx
Desmond, Patrick P., Jr. xxx-xx-xxxx
Dotson, James A. xxx-xx-xxxx
Filippone, Marion V. xxx-xx-xxxx
Foerster, Robert J. xxx-xx-xxxx
Galbert, Michael W. xxx-xx-xxxx
Gebhart, Robert N. xxx-xx-xxxx
Giller, Walter J., Jr. xxx-xx-xxxx
Guyer, Gerald L. xxx-xx-xxxx
Harris, Gary D. xxx-xx-xxxx
Haushalter, Robert A. xxx-xx-xxxx
Hunkeler, John D. xxx-xx-xxxx
Koehn, Gerald G. xxx-xx-xxxx
Lacy, Robert T. xxx-xx-xxxx
McCoy, Ralph C. xxx-xx-xxxx
Mitchell, Don Q. xxx-xx-xxxx
Richards, Phillip xxx-xx-xxxx
Schmidt, Jimmy D. xxx-xx-xxxx
Schwab, James M. xxx-xx-xxxx
Schwartz, Edward S. xxx-xx-xxxx
Warren, Maurice C., Jr. xxx-xx-xxxx
Weinberg, Richard J. xxx-xx-xxxx

The following Air Force officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be majors

Fischer, George F. xxx-xx-xxxx
Jackson, Donald P. xxx-xx-xxxx
King, George D., Jr. xxx-xx-xxxx
Liner, Thomas W. xxx-xx-xxxx
Schmarr, Daniel W. xxx-xx-xxxx

To be captains

Ague, Walter N. xxx-xx-xxxx
Alexander, Hugh H. xxx-xx-xxxx
Althoff, Arthur R. xxx-xx-xxxx
Amor, Jean P. xxx-xx-xxxx
Anderson, Eric E., Jr. xxx-xx-xxxx
Anderson, James C. xxx-xx-xxxx
Andrews, Wendell F. xxx-xx-xxxx
Baker, Joe B. xxx-xx-xxxx
Banks, Donald E. xxx-xx-xxxx
Bannon, James L. xxx-xx-xxxx
Barnocky, John A. xxx-xx-xxxx
Baschnagel, William R. xxx-xx-xxxx
Baxley, Douglas D. xxx-xx-xxxx
Belden, John M. xxx-xx-xxxx
Berry, William E. xxx-xx-xxxx
Bestgen, Robert F. xxx-xx-xxxx
Bluett, James J. xxx-xx-xxxx
Bostur, Phillip L. xxx-xx-xxxx
Brockman, Charles D. xxx-xx-xxxx
Brown, Phillip W. xxx-xx-xxxx
Burns, Hugh J., Jr. xxx-xx-xxxx
Buzard, Nancy H. xxx-xx-xxxx
Campbell, James T., III xxx-xx-xxxx
Carrigan, Larry E. xxx-xx-xxxx
Ciminero, John xxx-xx-xxxx
Clements, Philip W. xxx-xx-xxxx
Collier, Eugene T. xxx-xx-xxxx
Corley, Thomas L. xxx-xx-xxxx
Craw, Kenneth W., Jr. xxx-xx-xxxx
Crooks, Thomas L., Jr. xxx-xx-xxxx
Crozier, Joseph A., Jr. xxx-xx-xxxx
Cruz, Carlos R. xxx-xx-xxxx
Davis, Darol D. xxx-xx-xxxx
Donnelly, Richard, Jr. xxx-xx-xxxx
Drew, Ronald L. xxx-xx-xxxx
Dueker, James A. xxx-xx-xxxx
Ellis, Jeffrey T. xxx-xx-xxxx
Ennes, Richard C. xxx-xx-xxxx
Evans, Leslie T. xxx-xx-xxxx
Ezzell, Jack L., Jr. xxx-xx-xxxx
Feldman, Perry R. xxx-xx-xxxx
Ferrell, James T. xxx-xx-xxxx
Field, Cortland D. xxx-xx-xxxx
Flasch, James O. xxx-xx-xxxx
Flegal, Robert R. xxx-xx-xxxx
Floyd, Victor M. xxx-xx-xxxx
Frazier, Herbert G. xxx-xx-xxxx
Frensley, William F. xxx-xx-xxxx
Galluzzi, James R. xxx-xx-xxxx
Gaudette, Norman F. xxx-xx-xxxx
Gauthier, Francis P. xxx-xx-xxxx
Granlund, Barry J. xxx-xx-xxxx
Greer, Jack H. xxx-xx-xxxx
Halberstadt, Fred M. xxx-xx-xxxx
Halloran, Paul D. xxx-xx-xxxx
Hannagan, Frederick A., Jr. xxx-xx-xxxx
Harris, Martin S. xxx-xx-xxxx
Harris, William K. xxx-xx-xxxx
Hassall, Don C. xxx-xx-xxxx
Helber, Kent L. xxx-xx-xxxx
Hendrickx, Charles L. xxx-xx-xxxx
Hopper, Gerald D. xxx-xx-xxxx
Horan, Gerald xxx-xx-xxxx
Johnson, Bruce W. xxx-xx-xxxx
Jones, Stanley F. G. xxx-xx-xxxx
Jones, William E. xxx-xx-xxxx
Kane, Bernard S. xxx-xx-xxxx
Kaufman, Martin L. xxx-xx-xxxx
Kessell, Jerome W. xxx-xx-xxxx
Kimzey, Reed T. xxx-xx-xxxx
Knudsen, Benny L. xxx-xx-xxxx
Krimmel, William E. xxx-xx-xxxx
Lane, Benjamin H., Jr. xxx-xx-xxxx
Lazaroff, Eugene N. xxx-xx-xxxx
Lerro, Pasquale A. xxx-xx-xxxx
Luciani, Frank J. xxx-xx-xxxx
Lukovics, Ronald xxx-xx-xxxx
Lynch, James J. xxx-xx-xxxx
Madre, Edward L. xxx-xx-xxxx
Martin, Joseph I., Jr. xxx-xx-xxxx
Marvin Edward L. xxx-xx-xxxx
McIntosh, Raymond P. xxx-xx-xxxx
Molter, Donald W. xxx-xx-xxxx
Monroe, Joseph xxx-xx-xxxx
Moses, Roderic W. xxx-xx-xxxx
Nishihara, Melvin T. xxx-xx-xxxx
Oliver, Carl R. xxx-xx-xxxx
Padgett, Thomas C. xxx-xx-xxxx
Pare, Robert W. xxx-xx-xxxx
Pekkola, Conrad E. xxx-xx-xxxx
Petersen, Robert A. xxx-xx-xxxx
Peterson, Franklin R. xxx-xx-xxxx
Phillips, James B. xxx-xx-xxxx
Pierce, Robert T. xxx-xx-xxxx
Raffaele, Nicholas W. xxx-xx-xxxx
Rand, William C. xxx-xx-xxxx
Rodman, Don xxx-xx-xxxx
Russell, Perry W., Jr. xxx-xx-xxxx
Sans, Richard J. xxx-xx-xxxx
Schilling, Larry E. xxx-xx-xxxx
Simons, Paul M. xxx-xx-xxxx
Simpson, Joseph M., Jr. xxx-xx-xxxx
Smith, George C. xxx-xx-xxxx
Smoot, Edgar W. xxx-xx-xxxx
South, David J. xxx-xx-xxxx
Spencer, Isaac xxx-xx-xxxx
Spin, Paul J. xxx-xx-xxxx
Stephen, William xxx-xx-xxxx
Stewart, Herbert W. xxx-xx-xxxx
Tameris, Gavin E. xxx-xx-xxxx
Thomas, James S. xxx-xx-xxxx
Vandeven, Leroy A. xxx-xx-xxxx
Vanhorn, Stanley E. xxx-xx-xxxx
Votaw, David R. xxx-xx-xxxx
Whisenant, Charles L. xxx-xx-xxxx
Williamson, Gary T. xxx-xx-xxxx
Willson, Herbert D. xxx-xx-xxxx
Wojciechowski, William A. xxx-xx-xxxx
Wolf, Patrick H. xxx-xx-xxxx
Yokum, Allen xxx-xx-xxxx

The following distinguished graduates of the Air Force Officer Training School for appointment in the Regular Air Force, in the grade of second lieutenant, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

Accetta, Joseph S., Jr. xxx-xx-xxxx
Anderson, Richard C. xxx-xx-xxxx
Andrews, Larry A. xxx-xx-xxxx
Asher, Robert B. xxx-xx-xxxx
Autrey, Charles T. xxx-xx-xxxx
Bacon, Larry S. xxx-xx-xxxx
Beehler, Ronald A. xxx-xx-xxxx
Bell, William E. xxx-xx-xxxx
Bernard, James L. xxx-xx-xxxx
Bos, Gary D. xxx-xx-xxxx
Boyack, Kenneth G. xxx-xx-xxxx
Brandt, Thomas R. xxx-xx-xxxx
Bridgman, Howard A. xxx-xx-xxxx
Brockmeier, James D. xxx-xx-xxxx
Brunkow, Roger V. xxx-xx-xxxx
Bryant, Fred L. xxx-xx-xxxx
Caister, Daniel C. xxx-xx-xxxx
Carter, Chris A. xxx-xx-xxxx
Casamayou, Louis J. xxx-xx-xxxx
Chapman, Jack W., Jr. xxx-xx-xxxx
Clark, Albert L. xxx-xx-xxxx
Cornell, Gregg L. xxx-xx-xxxx
Curley, Michael E. xxx-xx-xxxx
Doty, Robert A. xxx-xx-xxxx
Eberly, Raymond C. xxx-xx-xxxx
Eplett, Richard J. xxx-xx-xxxx
Ezzell, Joseph L., Jr. xxx-xx-xxxx
Fischer, Richard F. xxx-xx-xxxx
Fitzgerald, Paul G. xxx-xx-xxxx
Flanagan, Thomas P. xxx-xx-xxxx
Fry, Stanley D. xxx-xx-xxxx
Garrett, Bowman S., Jr. xxx-xx-xxxx
Gilchrist, John E. xxx-xx-xxxx
Hall, Charles M. xxx-xx-xxxx
Hamilton, Thomas M. xxx-xx-xxxx
Hollan, William E., Jr. xxx-xx-xxxx
Holland, Robert W. xxx-xx-xxxx
Johnson, Richard A. xxx-xx-xxxx
Johnson, Richard F. xxx-xx-xxxx
Kalish, Marc xxx-xx-xxxx
Kelly, Edward H. xxx-xx-xxxx
Kelly, Marsden G., Jr. xxx-xx-xxxx
Klosterman, Robert J. xxx-xx-xxxx
Landon, Steven F. xxx-xx-xxxx
Larsen, Keith I. xxx-xx-xxxx
Lashley, Baird A. xxx-xx-xxxx
Ledwell, David T. xxx-xx-xxxx
Leopard, Stanley L. xxx-xx-xxxx
Macey, James R. xxx-xx-xxxx
Malone, Thomas A. xxx-xx-xxxx
Maruska, Gary W. xxx-xx-xxxx
Mason, Aubrey G. xxx-xx-xxxx
Maturi, Jon A. xxx-xx-xxxx
McCallin, Donald R. xxx-xx-xxxx
McIntire, Carl A. III xxx-xx-xxxx
McNeil, John C. xxx-xx-xxxx
Medler, Andrew P. xxx-xx-xxxx
Mehan, Ronald G. xxx-xx-xxxx

Merchant, George S., xxx-xx-xxxx.
Milam, Jerry W., xxx-xx-xxxx.
Miller, Bowman H., xxx-xx-xxxx.
Modell, Edward G., xxx-xx-xxxx.
Montgomery, Jimmie R., xxx-xx-xxxx.
Morris, Richard P., xxx-xx-xxxx.
Nelson, Freddie W., Jr., xxx-xx-xxxx.
Nichols, Jerry L., xxx-xx-xxxx.
Pellegrini, Joseph, xxx-xx-xxxx.
Pendergrass, Nixon A., xxx-xx-xxxx.
Piddington, Terry J., xxx-xx-xxxx.
Pittman, Robert G., xxx-xx-xxxx.
Pope, Eugene J., Jr., xxx-xx-xxxx.
Potekhen, Richard P., xxx-xx-xxxx.
Reed, Gary I., xxx-xx-xxxx.
Reinfurt, Frederick L., xxx-xx-xxxx.
Reuss, James E., xxx-xx-xxxx.
Rhoades, Robert W., xxx-xx-xxxx.
Rizzotti, Joseph A., Jr., xxx-xx-xxxx.
Rosenhammer, Franz G., xxx-xx-xxxx.
Rubenstein, Stanley, xxx-xx-xxxx.
Russell, Raymond B., Jr., xxx-xx-xxxx.
Rylander, Roger B., xxx-xx-xxxx.
Sampsell, Robert E., xxx-xx-xxxx.
Sarabun, Charles C., Jr., xxx-xx-xxxx.
Schlick, James M., xxx-xx-xxxx.
Schnorr, Dennis R., xxx-xx-xxxx.
Shaffer, William A., xxx-xx-xxxx.
Sheets, Robert W., xxx-xx-xxxx.
Sigler, Stephen A., xxx-xx-xxxx.
Silvis, Daniel J., III, xxx-xx-xxxx.
Simmons, Barry C., xxx-xx-xxxx.
Spencer, Melvin L., xxx-xx-xxxx.
Stegman, Gary C., xxx-xx-xxxx.
Stevens, David R., xxx-xx-xxxx.
Swift, Jonathan G., xxx-xx-xxxx.
Tittle, John G., Jr., xxx-xx-xxxx.
Torgeson, Michael G., xxx-xx-xxxx.
Trefethen, Michael W., xxx-xx-xxxx.
Turman, Bobby N., xxx-xx-xxxx.
Tysdal, Craig S., xxx-xx-xxxx.
Verholek, Michael G., xxx-xx-xxxx.
Voshell, Keith A., xxx-xx-xxxx.
Wagnitz, John C., xxx-xx-xxxx.
Walker, Wendall L., xxx-xx-xxxx.
Wall, Deonn M., xxx-xx-xxxx.
Watson, George R., xxx-xx-xxxx.
Watson, Richard B., xxx-xx-xxxx.
Wesloh, Thomas J., xxx-xx-xxxx.
Winn, Joseph E., xxx-xx-xxxx.
Zukatis, Albert W., xxx-xx-xxxx.

HOUSE OF REPRESENTATIVES—*Tuesday, March 17, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Blessed is the man who endures trial, for when he has stood the test he will receive the crown of life which God has promised to those who love Him.—James 1: 12.

O God our Father, who opens the gates of the morning and calls us to a new day, we commit our lives and our work unto Thee in the glad assurance that Thou art with us within the shadows and behind them working out Thy purpose for mankind.

In these trying times when our souls are troubled as we seek the good of man, when so much is demanded of us who would serve this present age, grant unto us insight and inspiration together with courage and confidence that we may prove ourselves worthy of the tasks our country has placed in our hands.

Confronted by problems too great for us to solve by ourselves we are driven to Thee for wisdom to see what must be done, for courage to set out to do it, and for strength to complete it.

O God, make us great enough and good enough for these challenging days. In the spirit of Christ we pray. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

SCHEDULE FOR REPORTING AND FLOOR CONSIDERATION OF APPROPRIATION BILLS

(Mr. MAHON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAHON. Mr. Speaker, I was in the Speaker's office this morning when the Speaker made some remarks about the general legislative program schedule of the House of Representatives for the coming weeks and months. It was my privilege to present the schedule of the Committee on Appropriations for reporting the various appropriation bills which must be considered at this session.

The schedule, if adhered to, will see all the regular bills for fiscal 1971—which begins next July 1—clear the House and be sent to the other body no later than the 15th of June. This would mean that many of the bills would pass much earlier. For example, a bill for the Office of Education, which is being split off from the Labor-HEW appropriation bill, would be considered by the House during the week of April 13.

So, Mr. Speaker, we are undertaking to move the bills along. There is a spirit of cooperation between the two Houses, and I believe the prospects are good that we will be able to make progress of which we can be proud. If the House sticks to the schedule—and we have every hope of doing so—it will, I believe, thereby lay the basis for a substantial contribution to better management and efficiency in the Government generally.

Mr. Speaker, I ask unanimous consent to revise and extend my remarks in the Extensions of Remarks of the RECORD and place therein the proposed schedule with a supporting explanatory statement.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION FOR COMMITTEE ON BANKING AND CURRENCY TO SIT DURING GENERAL DEBATE TODAY

Mr. PATMAN. Mr. Speaker, I ask unanimous consent that the Committee on Banking and Currency may meet this afternoon at 2 o'clock and remain in session while the House is engaged in general debate.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON MINES AND MINING, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, TO SIT DURING GENERAL DEBATE TODAY

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent that the Subcommittee on Mines and Mining of the Committee on Interior and Insular Affairs be permitted to sit during general debate this afternoon.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

REPUBLICAN MEMBERS OF THE PRIVATE CALENDAR OBJECTORS COMMITTEE

The SPEAKER. The Chair recognizes the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. GERALD R. FORD. Mr. Speaker, I announce that the Republican members of the Private Calendar objectors committee for the remainder of the second session of the 91st Congress will be: The gentleman from Tennessee (Mr. DUNCAN), the gentleman from Ohio (Mr. BROWN), and the gentleman from Michigan (Mr. BROWN).

PROPOSAL FOR AN IRISH-AMERICAN INTERPARLIAMENTARY GROUP

(Mr. STRATTON asked and was given permission to address the House for 1 minute.)

Mr. STRATTON. Mr. Speaker, I want to join the gentleman from Missouri in paying tribute today to our colleagues of Irish ancestry, and to all Americans of Irish ancestry.

St. Patrick's Day is always a joyous occasion. But I would like to make one serious proposal today—and I have just introduced legislation to achieve it—which I think is needed to promote greater understanding between ourselves and the people of Ireland, and that is the creation of a United States-Ireland Interparliamentary Group, similar to the one we have with Canada and Mexico. For while we Americans are always friendly on St. Patrick's Day, as well as the rest of the year, toward Ireland, the ancestral home of so many great Americans—and I have just come back myself from a trip to Ireland—the fact is that the official attitude of the Irish Government is not nearly as warm toward us as ours is toward them.

American warships cannot call at her ports. American planes cannot land in her capital city. American servicemen are fined if they wear American uniforms inside her borders.

The cool reception that Senator KENNEDY, for example, received the other day in Dublin, points up the difference between feelings over there and the warm glow that most of us feel back here toward Ireland.

The fact is that for far too long we have