committed to and understanding justice could object to this.

Mr. Speaker, if this is the case, my conscience compels me to pose questions of a more searching nature. I must now ask the $64.000 question: If Mr. Brown has committed a crime which merits prosecution, why is the Congressman from South Carolina not being prosecuted? Are we to believe that his inflamatory speech, inciting a mob at Lamar, S.C. to riot not a violation of the law? Or should we believe what everyone in this country knows to be the truth—that a double standard of justice exists—one for whites and one for blacks?

Mr. Speaker, I commend to my colleagues the following article which was written by Clarence Hodges and appeared in the St. Louis Argus, March 13, 1970:

JUST A WEEK

(By Clarence E. Hodges)

On Monday of this week, H. Rap Brown, the militant former head of SNCC was brought before a "court of justice" for allegedly committing arson and inciting to riot. History will underscore the events of this trial as a near-sighted system seeks to discourage vocalization among thinking blacks. Brown, who wears the kind of natural that Frederick Douglas wore, has been discredited by those who wish to keep blacks in the "disadvantaged" ranks the same as those who wanted to keep blacks in slavery discredited Douglas.

It is almost ironic that this week marks the birth of other black leaders like Dr. Ralph D. Abernathy, the head of SCLC, Floyd McKissick, the former head of CORE, J. B. DeSable, the founder of Chicago and Harriet Tubman, the black female abolitionist. When asked the secret to her success after leading over 300 blacks from slavery in the South to freedom in the North, she pulled a loaded revolver. When a freedom seeker grew scared and wanted to turn back, she placed the barrel between his eyes and ordered "forward march'. It was clear to Miss Tubman and all the slaves that violence was as American as "apple pie". She and the blacks were not, however, responsible for this violence but the "white racism was responsible."

The Warren Commission stated Brown was not responsible for the violence in Cambridge, Maryland, but the police chief was at fault. Why then is Rap in Court instead of the chief. Who was responsible for the white mob attacking the bus load of black students in opposition to bussing in Lamar, South Carolina. Vice President Spiro Agnew, who has made many speeches about busing said, "It's a shame." Perhaps H. Rap Brown should have said, "it's a shame", regarding the burning in Cambridge, Maryland.

SENATE—*Wednesday, March 18, 1970*

The Senate, as in legislative session, met at 10:30 o'clock a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Almighty God, Lord of men and nations, giver of every good and perfect gift, with thankful hearts for Thy providential care over us and this Nation, we lift our morning prayer to Thee. May we hear Thy voice above all other voices, see Thy word above all other words, perceive Thy truth above all falsehood, and walk with Thee in our daily duties.

As stewards of the Nation's welfare, may we have light to find the means of plenty for all, light to find the way to liberty and justice for all, light for the pathway to peace for all.

In simple trust and reverence may we be found steadfast, always abounding in the work of the Lord, knowing that in Him and with Him our labor is not in vain. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. RUSSELL).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 18, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, March 17, 1970, be dispensed with.

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

RECOGNITION OF SENATOR YOUNG OF OHIO TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Ohio (Mr. YOUNG) be recognized at the conclusion of the remarks of the distinguished Senator from South Dakota (Mr. MCGOVERN) for not to exceed 10 minutes.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the Senator from Ohio (Mr. YOUNG), there be a time limitation on statements of 3 minutes in relation to the transaction of routine morning business.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the Chair recognizes the Senator from South Dakota (Mr. MCGOVERN) for 30 minutes.

A NEW OPENING FOR PEACE IN SOUTHEAST ASIA

Mr. MCGOVERN. Mr. President, the recent Pathet Lao peace proposal offers a new opportunity for working toward a negotiated settlement of the conflict in Southeast Asia.

The American people's clear unwillingness to become enmeshed in another major military campaign in Laos makes all the more evident the folly of downgrading negotiations at Paris. The Pathet Lao proposal could be the first item on a new and serious agenda for moving toward a peaceful settlement in both Laos and Vietnam.

There should be no mistaking the urgency of the situation. In this country the policy of Vietnamization may have succeeded in achieving a temporary respite from sharp discord and division, but we are headed for even greater disillusionment as the futility of the policy becomes clear.

We have new signs of such futility in Vietnam now. The people of that embattled country are accumulating the agonies of heavy bombardment and intensive conflict. Ironically, to the extent that Vietnamization is practiced, the damage is done more by their own countrymen armed, of course, on one side by Russia and China and on the other side by the United States. If Vietnamization "works," it means a long and bloody war by proxy with outside powers arming and financing the Vietnamese people to kill each other. Simultaneously, as the American presence is reduced, the Thieu-Ky government becomes more repressive, even arresting and sentencing elected members of the South Vietnamese Assembly who dare to express independent views. The myth of the Thieu-Ky regime as the embodiment of self-determination becomes less and less viable even as a myth.

Events in Laos compound my concern. It is only slightly less appropriate today than before President Nixon's recent statement on Laos to question the clandestine nature of U.S. operations in that country. But if we have less reason for objections to secrecy, we have all the more cause for dismay over the policy and its meaning.

The President informed us that the explicit instructions of Congress on the use of combat forces in Laos have not been violated. Yet he confirmed the presence

of American personnel involved in military training, advisory and logistic assignments, and he confirmed bombing by U.S. aircraft in areas which have no direct connection to the interdiction of infiltration routes into South Vietnam. He described an American role which imperils the independence of another Asian country, and he listed actions and reactions in such a manner as to recall the seemingly restrained steps that drew us into a major war in Vietnam.

The return to the Plain of Jars region by Communist forces has been read as part of a plan to take over or at least threaten Vientiane, the Laotian capital. Some sources have presumed that the next step would be a demand from Laos that we end our bombardment of Laotian territory. And they assert that if we must comply with such a demand the process of Vietnamization must end because Vietnamese forces cannot do effective battle with an enemy which has free use of the Ho Chi Minh Trail network.

So the President specifically did not rule out the possibility that American ground forces may ultimately be needed in Laos if our objectives there are to be accomplished.

His statement raises two deeply disturbing prospects.

The first is that our own actions have served to reveal that Souvanna Phouma's government survives not because we are standing firm next door in Vietnam or because we are involved in Laos but because North Vietnam is willing to restrain a land force that could take Laos anytime it wishes unless we are willing to send in a large force of ground troops.

The process got its start last September when General Vang Pao, with guerrillas supported and assisted by the Central Intelligence Agency and with regular forces backed by the U.S. Army and Air Force, pushed across the Plain of Jars region and retook territory held by the Pathet Lao for some 5 years. It will, of course, be asserted that by their presence the North Vietnamese had never respected the 1962 Geneva declaration on the neutrality of Laos, yet there was relative stability and safety for the Laotian Government for all of those years—until General Pao's offensive.

He was encouraged in this venture by U.S. advisers, and he was given massive amounts of logistical support. Presumably we saw it as a method of harassing Hanoi's use of the trails into South Vietnam. We had found our adventurous, indigenous general. But by most accounts he was unrepresentative of the overall Laotian attitude toward Hanoi, as indicated by the fact that last year Souvanna Phouma offered the North Vietnamese free use of the trails if they would withdraw their forces from elsewhere in the country. So, under political strictures against expanding our own side of the Vietnam war into other countries, we expanded it by proxy.

It was a foolish step for many reasons; certainly because of the inadequacy of Laotian forces to defend against any serious response from the other side. Thus far that response has gone no further than recapture of the Plain of Jars, but we are painfully aware that if Hanoi regards the likelihood of more harassment as serious enough they can quite easily overrun the whole of Laos—unless the United States sends in ground forces on a significant scale.

We have no commitment to defend the Laotian Government, nor are we the unilateral guarantors of its neutrality. Yet we have placed its safety on the line for the sake of our own position in Vietnam. Again we have, through the secret activities of a secret American agents, advanced to a war environment without the knowledge or approval of Congress or of the American people. We have traveled this route before, with tragic results, yet we are apparently still unable to keep close control over our advisers and military personnel in Laos.

The second revelation prompted by events in Laos concerns the Vietnam war itself. It is the supposition that the process of Vietnamization is not only affected by but actually depends upon our ability to check the flow of men and supplies along the Ho Chi Minh Trail. I think it is fair to say that that was the thrust of the President's message—that we are in Laos because of our desire to protect our forces in South Vietnam.

Let us recognize that this is a new precondition for ending U.S. involvement in Vietnam. It lends decisive support to those of us who have contended that Vietnamization is, not a formula for removing our forces, but a posture to improve the appearance and alleviate some of the pain of an open-ended commitment to defend the Thieu-Ky government with American blood and treasure. It assures that Americans will be required to fight and to pay so long as our client in Saigon needs help. It will need massive help for many years into the future.

Surely we cannot, at this late date, have illusions about the actual military worth of aerial bombardment as a means of checking the movement of troops and supplies in a jungle war.

It is true that bombing brings relatively few casualties, and therefore appeals to those who count the cost of war only by looking at the comparative body count. Yet the incredibly intensive bombing of North Vietnam before it was stopped had little military effect—in fact, the flow of troops to the south mushroomed while the bombing was at its heaviest. There is strong evidence that our heavy bombardments, while costing the United States hundreds of pilots and billions of dollars, served only to unite the people of North Vietnam while turning world opinion against our policy. The entire North Vietnam bombing campaign was a military flop.

Now, according to the President's own statement, we know that our heavy bombing of the trails in Laos has failed to prevent the flow of some 500,000 men over those routes into South Vietnam—100,000 came in the last 15 months alone. I suspect that one reason why the level of bombing was not disclosed in the President's statement was a fear that to do so would have exposed the futility of this tactic, despite its fantastic cost.

There is but one means of seriously interfering with Hanoi's use of the trails, and that is to attack them with ground forces on a very heavy and bloody scale. This is a policy which I would earnestly hope we are not even considering.

If Vietnamization depends upon having a meaningful effect on infiltration, therefore, the true import of President Nixon's statement is that we must get into Laos in order to stay in Vietnam or enable President Thieu to stay in power.

Thus the domino theory is working, but in reverse. We said we went into South Vietnam to prevent the threat there from upsetting the dominos next door. Now we say we must bomb Laos to hold the line in South Vietnam, because we are in South Vietnam, and the next step—if we pursue our present course logically—will be to send ground forces, and that I cannot believe American public opinion would sustain.

Thus is exposed the folly of the administration's Vietnamization policy. It is shown up in the capacity of the North Vietnamese to marshal so large a force in Laos; for if Hanoi can so rapidly augment its military power there, it clearly has the capacity for equivalent augmentation in South Vietnam whenever the time seems propitious to meet their timetable. It is shown up in the need for extensive operations in Laos to protect our position in South Vietnam, even when South Vietnamese forces have the help of some 460,000 Americans and Vietnamization is not even really underway.

The domino theory and other obsolete strategies have done enough damage in Southeast Asia. The danger from our increased military involvement in Laos makes it even more imperative that, in accordance with the expectations of the American public that elected President Nixon to office, the administration give priority to negotiations ahead of military strategies in trying to reach a settlement in Vietnam.

Clearly any Laotian settlement requires agreement between Hanoi and Washington. The 1962 Geneva settlement negotiated by Ambassador Harriman was, to be sure, not a perfect document, but it was far wiser than sending an American army into Laos, but neither that agreement nor any other can guarantee the stability and independence of Laos so long as the war in Vietnam rages next door. For so long as American or Saigon military forces are being supplied by sea and air lanes controlled by the United States, just so long will Hanoi feel obligated to maintain a sufficient military presence in eastern Laos to keep open a major supply route there in order to arm its forces in South Vietnam. Adherence to the policy of Vietnamization and downgrading of the Paris talks is, therefore, clearly incompatible with extricating ourselves from the Vietnamese war and preventing a deeper involvement in Laos.

President Nixon has taken what could be a first hopeful step in moving back toward negotiations by stating that it in his policy to restore the 1962 Geneva agreements on Laos. I applaud him

for his statement on that score. It may not be possible to get Britain and Russia to resume their roles as cochairmen in reconvening that conference or in reaffirming it, but the Pathet Lao has made it clear that it wishes a settlement in accordance with those same Geneva Accords, and Hanoi has endorsed its proposal.

This provides the United States with a major diplomatic opening for resuming high level negotiations in Paris. I think we should grasp it quickly.

The Pathet Lao's five-point peace plan proposed on March 6, is, in general, consistent with the provisions of the 1962 Geneva accords on Laos which the United States has fully endorsed. In its formula for a political settlement, it is also strikingly close to that advanced in May 1969, by the NLF for South Vietnam. It calls for the formation of a coalition government and the eventual election of a neutralist government. It asks that the United States end its military operations in Laos which, in any event, have been largely ineffectual and highly embarrassing to us.

Mr. President, I suspect that, without regard to the Pathet Lao proposal, many Americans, perhaps the majority of Americans, wish that we would end our military operations in Laos. It further calls upon all nations to respect the independence, neutrality and territorial integrity of Laos as provided by the 1962 Geneva settlement.

But it introduces a promising new feature found in neither the 1962 agreement nor the NLF's proposal. The new provision helps overcome one of the weaknesses of the coalition government provided for in the Geneva accords—the lack of protection for all participants in the coalition. It calls for the establishment of a so-called security zone that is free from all attempts at sabotage and pressure by forces inside or outside Laos designed to insure the normal functioning of both a new provisional coalition government and the transitional consultative political conference which is to organize it. Application of this provision in Laos might well increase the possibility that a reconstituted Geneva formulation for a political settlement could work more satisfactorily than before.

Acceptance of this principle could also provide new openings for negotiation of a Vietnam settlement. It might help remove some of the doubts and worries of those in Saigon and in the United States who oppose the idea of a coalition government, by increasing security for all participating elements and reducing the likelihood of physical reprisal. At the same time, it might help overcome the NLF's unwillingness to consider the present formula advanced by the United States and Saigon, in which it is invited to serve on an electoral commission based in a city controlled by the police and army of its opponents.

I suggest, therefore, that we inform the Pathet Lao, Hanoi, and the National Liberation Front that we find enough of value in their peace proposals to make them a worthwhile basis for negotiations designed to end the war in Southeast Asia.

Let me say, Mr. President, that I do not imply by that that we need to accept out of hand all of these proposals in advance, but simply that we are willing to accept them as an agenda to get negotiations started in which each of those points and other matters could be the subject of discussion. The President should, of course, elevate those negotiations to appropriate stature by sending a chief negotiator with full ambassadorial rank.

It is time we stopped approaching the negotiations from the standpoint of a nation still convlnced that it can achieve military victory or even part of which thinks we can achieve a military victory. I think we cannot and will not achieve that goal.

Nor should we look at them through the eyes of a narrowly based South Vietnamese Government seeking to perpetuate its power at our expense. The interests of the Thieu-Ky government are, I believe, increasingly at variance with our own. If it is our national honor we seek to preserve, and that being the case, then let us recognize that our honor is battered and sullied by our embrace of that regime, at a time when they are engaged in such outright repression against their own people.

If there is a new Nixon Doctrine for Southeast Asia—a doctrine which foresees balances struck by local forces without the guarantee of American involvement at the first faltering of an anti-Communist government—then let us reflect it in practice.

Let us move seriously toward a settlement now, before the simple lives of still more Asians are disrupted and destroyed, and before still more American lives are lost in a futile cause.

Mr. President, in the past several hours a new element has been raised with the deposition of Prince Sihanouk of Cambodia, another nation bordering South Vietnam. The United States has maintained uneasy relations with Sihanouk's government since last year.

The fragmentary reports I have heard indicate that he has been overthrown from the right. No doubt more information will be forthcoming.

I hope that as the situation develops we will learn more about the U.S. role in what has occurred. It has been reported to me that we have, through the Central Intelligence Agency or other covert operations, been involved in training the rightist Khmer Serai, which is probably among the groups participating in Sihanouk's overthrow. If our aim has been to obtain in Cambodia a more hostile attitude toward North Vietnam's alleged use of that country as a staging area for its efforts in South Vietnam, then quite possibly there is a parallel with our encouragement of General Vang Pao's offensive in Laos last year. Is this another proxy expansion of the Vietnam war?

Mr. President, I yield the floor.

APPOINTMENTS BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The Chair, on behalf of the Vice President, in accordance with Public Law 91–213, appoints the Senator from Maryland (Mr. TYDINGS) and the Senator from Oregon (Mr. PACKWOOD) to the Commission on Population Growth and the American Future.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, notwithstanding the order under which the Senator from Ohio (Mr. YOUNG) would be recognized immediately following the remarks of the Senator from South Dakota, I ask unanimous consent that there be a brief quorum call.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. YOUNG of Ohio. 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.

Under the previous order, the Chair recognizes the Senator from Ohio for not to exceed 10 minutes.

USE OF DEFOLIANTS IN VIETNAM—A STAIN ON OUR NATIONAL CONSCIENCE

Mr. YOUNG of Ohio. Mr. President, President Nixon has on several occasions indicated his concern over a possible massacre in South Vietnam following withdrawal of our forces. The President and those who share his concern and fear would also do well to consider the fact that hundreds of Vietnamese civilians are being killed or deformed daily by our continued involvement in that ugly civil war.

Millions of acres of arable land in South Vietnam have been ruined by poison gas sprayed since 1961 by American warplanes and helicopters. As of December 31, 1969, enough chemical defoliants have been sprayed to ruin almost 5 million acres of land in South Vietnam, an area about the size of Massachusetts—12 percent of the entire area of South Vietnam. By the end of this year, an additional 10 million gallons will have been sprayed, enough to cause a total of 7½ million acres to be polluted with deadly chemicals.

Now, we learn that large areas of Laos are also being systematically destroyed by defoliants sprayed by our warplanes. Where will this madness end?

Often lost amid the statistics of our war dead and wounded and those of the Vietcong and North Vietnamese is the fact that more than half a million Vietnamese civilians—women, children, and old men—have been killed or maimed for life by our artillery, our napalm bombing, and our use of chemical defoliants.

In South Vietnam during the past 7 years we have sprayed or dumped defoliants on the countryside, on villages and on the homes of peasant families in staggering amounts. Pregnant Vietnamese women have been ingesting in drinking water as much as 600 times the rate of concentration of pesticide poisons officially considered safe for Americans. Furthermore, where these chemicals have been used in the United States, the

population has been relatively healthy and well fed. However, where they have been sprayed in lethal doses in Vietnam, great numbers of civilians are half-starved, ravaged by disease, and racked by the innumerable horrors of war. It may seem unimportant that one-twelfth of the land of South Vietnam has been poisoned for perhaps the coming 50 years. What is terrifying is that horribly deformed infants are being born due to this unhumanity.

Since defoliation began, no American or civilian official has ever publicly characterized it as chemical or biological warfare. However, there is no doubt that it is biological warfare aimed at a deliberate disruption of the biological conditions prevailing in a given area of Vietnam and Laos.

Defoliation operations in Vietnam are carried out by special squadrons of specially equipped C–123 cargo planes, each with tanks capable of holding a thousand gallons of herbicides. The official code name for the program is Operation Hades, but a more friendly code name, Operation Ranch Hand, is commonly used.

Similarly, Pentagon propagandists refer to herbicidal spraying of crops as a "food-denial program" for VC troops. This is deliberately misleading as VC soldiers in sprayed areas will receive the largest share of whatever food there is. Those who suffer and starve are the women, children, and the elderly. Dr. Jean Mayer, President Nixon's special adviser on nutrition, asserted in an article in Science and Citizen in 1967 that the ultimate target of herbicidal operations against rice and other crops in Vietnam was the weakest element of the civilian population. Dr. Mayer pointed out that in wartime South Vietnam where diseases associated with malnutrition are extremely widespread, there can be no doubt that continuing the crop destruction program will very seriously aggravate an already tragic situation.

We are spraying enormous quantities of an anticrop chemical throughout South Vietnam which for 3 years has been known to cause deformed births in test animals at a rate of almost 100 percent. It has recently been reported that at least four newspapers in South Vietnam printed stories and pictures last summer of deformed babies born in villages sprayed with the chemical called 2,4,5-T. These newspapers were promptly shut down by the Saigon militarist regime for "interfering with the war effort."

The use of this chemical has been banned in populated areas and on or near food products in the United States. Nevertheless, Pentagon officials recently announced that they would continue to use it in Vietnam, regardless of the fact that in doing so they are perpetrating a monstrous act that can result in a generation of deformed children.

This chemical is used widely in areas where the local population obtains its drinking water from rain collected in roof gutters and barrels, and where wells are sunk into soil saturated with the deadly chemical. Troops are instructed to spray it on mangrove and other trees, broadleafed crops, such as beans, corn, bananas and tomatoes, and rice to deny the VC food by rendering the soil sterile. In the process we are not only denying food to the enemy but starving innocent civilians and deforming yet unborn babies.

When a dose of this chemical given rats in laboratory tests was increased to the level a Vietnamese woman might consume in a few days in her drinking water the rate of fetal malformation rose to 90 percent and beyond. Whether the rate of human malformation from contact with this chemical is greater or less than with rats is unknown at this time. We do know that in the case of thalidomide it turned out to be greater.

Mr. President, the continued use of such deadly poisons that affect civilians as well as enemy soldiers is in my view a crime of fantastic proportions. It constitutes a stain on our national conscience that may well haunt our Nation for years to come.

More than 23 million gallons of defoliant have been sprayed in Vietnam from our warplanes and helicopters, enough to cover more than 7½ million acres or nearly one-fifth of the land area of South Vietnam. The fact that these herbicides cost taxpayers more than $160 million is inconsequential when compared with the evil wrought by them.

Mr. President, when I was in South Vietnam in early 1968 as a representative of the Senate Committee on Armed Services, I personally witnessed the horrible effects of our defoliation program and of our napalm bombing of villages and hamlets in South Vietnam. I saw in hospitals and elsewhere little children without arms or legs or horribly burned or in any one of many other ways tragically maimed for life.

Near An Khe in South Vietnam extending for a long distance in front of the barracks, headquarters, and artillery positions of our armed forces I beheld what is meant by defoliation. Miles, length and width, of what had been beautiful green forestland with humble homes of peasants were defoliated as our forces burned, destroyed, and poisoned the trees and foliage in the entire area. The land itself has been poisoned. Men, women, and children have been forcibly removed from their homes and most of them taken against their will, to miserable refugee camps, so-called. Some of our refugee camps with thousands of old men, women, and children herded together may not be as terrible as this gutted, seared, destroyed, land bereft of bushes and trees, but all except one refugee camp I saw were in exceedingly deplorable condition.

Defoliation results in destroying crops and even foliage supplying food for water buffalo so greatly needed by Vietnamese farmers. Of course, many water buffalo and other livestock have been destroyed. We are not only destroying the meager food supply of Vietnamese civilians, but also leaving the earth sterile for future generations. Vietnam, once a beautiful green paradise, is being stripped of vegetation and crops.

Unfortunately, men, women, and children trying to stay alive are being pushed closer to starvation or herded like animals into American refugee camps. It is difficult to visualize this burned-out, devastated land.

The Saigon militarist regime shows little or no concern for the hundreds of thousands of civilians who have been wounded and maimed. They are more concerned with maintaining themselves in power than in helping their own people who have become victims of the war. They treat the mass of the Vietnamese in the countryside in the same manner as the French and Japanese colonial masters who preceded them.

Mr. President, on April 22, 1915, the German Army launched a chlorine gas attack against the French Army at Ypres, Belgium, killing 5,000 and causing permanent lung damage to 10,000 others. More than a half a century later civilization seems to be so advanced that no one knows how many Vietnamese women, children, and men have died from the lethal cloud our planes and our helicopters have sprayed over the South Vietnamese countryside.

Mr. President, all Americans are hopeful that we will end our involvement in that immoral, undeclared war in Vietnam at the earliest possible date. My view that our forces should be withdrawn immediately in the same manner in which they were sent there—by ships and planes—is well known. However, it appears that the administration is determined to continue to send young Americans to fight and die in Vietnam. The President has made much of the fact that in recent months our casualties have dropped to the lowest level in 2 years. I urge him to take similar action to reduce the number of casualties suffered by the innocent civilian population of South Vietnam. I urge him to order a complete halt to the use of chemical defoliants that are poisoning the land of South Vietnam and endangering the lives of generations yet unborn.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of routine morning business with a time limitation of 3 minutes.

ORDER FOR ADJOURNMENT TO 11 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 11 o'clock tomorrow morning.

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

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. ALLEN) announced that on today, March 18, 1970, he signed 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, which had previously been signed by the Speaker of the House of Representatives.

BILLS INTRODUCED

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

By Mr. MATHIAS:

S. 3603. A bill to amend the Federal Meat Inspection Act to provide that State inspected facilities after meeting the inspection requirements shall be eligible for distribution in establishments on the same basis as plants inspected under title I; to the Committee on Agriculture and Forestry.

By Mr. KENNEDY (for himself, Mr. WILLIAMS of New Jersey, Mr. RANDOLPH, Mr. BIBLE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. FONG, Mr. HARTKE, Mr. HUGHES, Mr. MILLER, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. YARBOROUGH, and Mr. YOUNG of Ohio):

S. 3604. A bill to authorize the establishment of an older worker community service program; to the Committee on Labor and Public Welfare.

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

By Mr. YARBOROUGH:

S. 3605. A bill to confer certain benefits under subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement; to the Committee on Post Office and Civil Service.

S. 3604—INTRODUCTION OF THE OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT ACT

Mr. KENNEDY. Mr. President, on behalf of myself, the Senator from New Jersey (Mr. WILLIAMS) and a bipartisan group of 15 other cosponsors, I introduce for appropriate reference the "Older American Community Service Employment Act."

Although our society is work oriented, the talents and skills of older persons are still frequently overlooked or ignored. There are now more than 1.4 million men aged 55 to 64 who are not in the labor force. In addition, a substantial number of persons 65 and older who would prefer part-time employment are unable to find it.

In the United States as a whole, 20 million persons are 65 or over. In my own State of Massachusetts, there are 620,000 such individuals—more than 11 percent of the population. For many of these senior citizens, retirement leads to a sense of alienation, a deterioration of their hopes, and a loss of their former feeling of importance. In terms of working contribution, retirement is not only a loss of valuable manpower, it is a loss as well of experience and talent that could help the economy in general, and older persons and their families in particular.

Several pilot programs providing part-time work for low-income elderly persons have demonstrated that they can make major contributions in their communities. Workers in the green thumb program, for example, have improved or built more than 350 roadside parks; planted more than 1 million trees, flowers, and shrubbery; and helped to restore and develop several historical sites.

The senior aides program, conducted by the National Council of Senior Citizens, has also demonstrated the appeal of part-time community service employment for low-income older persons. It has attracted over seven applicants for each of the 1,150 jobs available. In New Bedford, Mass., there were 400 applicants for 40 jobs within 48 hours after announcement of the program.

A similar enthusiastic response is also evident in Fall River, Mass., where the ratio of applicants to positions available as senior aides is 10 to 1. In Fall River, participants work at the Earle E. Hussey Hospital, St. Anne's Hospital, a Head-start program, the Marine Museum, public schools, and a local community action agency, Citizens for Citizens. Their services include work as non-instructional school aides, child-care assistants, exhibit attendants, hospital and clinical aides, and assistants in food preparation and service.

Edward J. Sullivan, executive director of Citizens for Citizens, Inc., has stated:

> For those who have been involved with this program from the very beginning and for those of us who are convinced that the term "meaningful employment" can be more than a mere concept, it is a simple matter to conclude that the program has been a success.

The enthusiastic acceptance of these programs—as well as those sponsored by the National Council on the Aging—strongly suggests that there are many low-income older persons and retirees in virtually every community willing and able to perform services. Greater utilization of their talents, experience, and knowledge would benefit not only the elderly job seeker, but the general public as well.

Present programs, however, are still very limited. A more comprehensive approach is needed to provide increased opportunities for community service by older persons.

Under the bill which I introduce today, the Secretary of Labor would be authorized to establish and administer a community senior service program for persons 55 and older who lack opportunities for other suitably paid employment. The Secretary would provide assistance to national voluntary agencies and State and local agencies in developing such programs. He could pay up to 90 percent of the cost of a State or local program, and up to 100 percent for emergency or disaster projects.

Last year, as chairman of the Senate Subcommittee on Aging, I cosponsored and worked on the Older Americans Act Amendments of 1969—which included authorization for an important new retired senior volunteer program—RSVP. RSVP is designed to encourage communities to use the talents and skills of persons 60 and over who would like to work for community betterment, and have the resources to do so for free. These individuals would serve in a variety of useful activities. They would receive no compensation except reimbursement for transportation, meals, and other out-of-pocket expenses incident to their service.

At the hearings which I conducted on the 1969 amendments, witnesses estimated that as many as 1 million older Americans might be interested in participating in RSVP. However, there are many other older persons who would like to work in needed community-service activities but are not financially able to do so gratuitously.

For many needy individuals, a program offering part-time work in the community would provide temporary employment until full-time work can be obtained. For others who do not wish to work full time, such a program would give an opportunity to remain active during their later years. For retired individuals, it can help supplement retirement benefits, which are frequently inadequate.

During hearings before the Senate Special Committee on Aging in 1968, Miss Eleanor Fait of the California State Employment Service emphasized that greater utilization of older workers can help to meet the demand for increased community services.

> The amount of work and the number of jobs are not a fixed quantity. Consider the needs of the American people, their sophisticated demands, the services they will use and don't get, their comfort and recreational standards and the amount of machinery needed to maintain these standards. There is literally no end in sight to the services the American people want and will pay for.

Later she added:

> Perhaps, if the time, money and effort now spent in trying to sideline these workers were spent in developing employment opportunities for them, the enormous problems of this group might be removed considerably.

Mr. President, my proposed program is also in harmony with the goals advanced by the distinguished Senator from New Jersey (Mr. WILLIAMS) to provide increased employment opportunities for older persons in a broad range of purposeful activities.

As chairman of the Senate Special Committee on Aging, he has demonstrated outstanding leadership in providing concrete information about the numerous employment problems confronting older workers, and has offered far-sighted proposals to meet their urgent needs.

One of the tests of a great nation is the compassion and opportunities which it provides for its older persons. Today, far too many senior citizens believe that advancing years limit their usefulness. Far too often, old age brings loneliness and frustration—causing emotional, health, and other related problems that purposeful activity might eliminate. In fact, the later years can indeed be a time for continued self-development and contribution to the community. We have an obligation, both to ourselves and to our senior citizens, to offer the opportunity.

Enactment of the bill which I introduce today would mean significant progress in taking advantage of the experience and skills of older Americans. I urge prompt and favorable consideration.

Mr. President, I ask unanimous consent that the text of the bill, which is cosponsored by HARRISON A. WILLIAMS, JR., of New Jersey, RALPH YARBOROUGH of Texas, JENNINGS RANDOLPH of West Virginia, CLAIBORNE PELL of Rhode Island, WALTER F. MONDALE of Minnesota, THOMAS F. EAGLETON of Missouri, ALAN CRANSTON of California, HAROLD E. HUGHES of Iowa, ALAN BIBLE of Nevada,

FRANK CHURCH of Idaho, EDMUND S. MUSKIE of Maine, FRANK E. Moss of Utah, STEPHEN M. YOUNG of Ohio, VANCE HARTKE of Indiana, HIRAM L. FONG of Hawaii, and JACK MILLER of Iowa, be printed at this point in the RECORD.

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

The bill (S. 3604) to authorize the establishment of an older worker community service program, introduced by Mr. KENNEDY (for himself and other Senators), was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3604

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Older American Community Service Employment Act".

OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROGRAM

SEC. 2. (a) In order to foster and promote useful part-time work opportunities in community service activities for unemployed low income persons who are 55 years old or older and who have poor employment prospects, the Secretary of Labor (hereinafter referred to as the "Secretary") is authorized to establish an Older American Community Service Employment Program (hereinafter referred to as the "Program").

(b) In order to carry out the provisions of this Act, the Secretary is authorized—

(1) to enter into agreements with public or private nonprofit agencies or organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, in order to further the purposes and goals of the Program. Such agreements may include provisions for the payment of costs, as provided in subsection (c), of projects developed by such organizations and agencies in cooperation with the Secretary in order to make the Program effective or to supplement it. No payments shall be made by the Secretary toward the cost of any project established or administered by any such organization or agency unless he determines that such project—

(A) will provide employment only for eligible individuals, except for necessary technical, administrative, and supervisory personnel, but such personnel shall, to the fullest extent possible, be recruited from among eligible individuals;

(B) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities;

(C) will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 (other than political parties), except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(D) will contribute to the general welfare of the community;

(E) will provide employment for eligible individuals who do not have opportunities for other suitable public or private paid employment, other than projects supported under the Economic Opportunity Act of 1964, or under this Act;

(F) will result in an increase in employment opportunities for eligible individuals, and will not result in the displacement of employed workers or impair existing contracts;

(G) will utilize methods of recruitment and selection (including, but not limited to, listing of job vacancies with the employment agency operated by any State or political subdivision thereof) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project;

(H) will include such short term training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating, and will provide for the payment of the reasonable expenses of individuals being trained, including a reasonable subsistence allowance;

(I) will assure that safe and healthy conditions of work will be provided, and will assure that persons employed under such programs will be paid at rates comparable to the rates of pay prevailing in the same labor market area for persons employed in similar occupations, but in no event shall any person employed under such programs be paid at a rate less than that prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(J) will be established or administered with the advice of persons competent in the field of service in which employment is being provided, and of persons who are knowledgeable with regard to the needs of older persons; and

(K) will authorize pay for transportation costs of eligible individuals which may be incurred in employment in any project funded under this Act in accordance with regulations promulgated by the Secretary; and

(2) to make, issue, and amend such regulations as may be necessary to effectively carry out the provisions of this Act.

(c)(1) The Secretary is authorized to pay not to exceed 90 percent of the cost of any project which is the subject of an agreement entered into under subsection (b), except that the Secretary is authorized to pay all of the costs of any such project which is (A) an emergency or disaster project or (B) a project located in an economically depressed area as determined in consultation with the Secretary of Commerce and the Director of the Office of Economic Opportunity.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Secretary is authorized to attribute fair market value to services and facilities contributed from non-Federal sources.

ADMINISTRATION

SEC. 3. (a) In order to effectively carry out the purposes of this Act, the Secretary is authorized to consult with agencies of States and their political subdivisions with regard to—

(1) the localities in which community service projects of the type authorized by this Act are most needed;

(2) consideration of the employment situation and the types of skills possessed by available local individuals who are eligible to participate; and

(3) potential projects and the number and percentage of eligible individuals in the local population.

(b) The Secretary shall encourage those agencies and organizations administering community service projects which are eligible for payment under section 2(b) to coordinate their activities with agencies and organizations which are conducting existing programs of a related nature which are being carried out under a grant or contract made under the Economic Opportunity Act of 1964. The Secretary may make arrangements to include such projects and programs within a common agreement.

(c) In carrying out the provisions of this Act, the Secretary is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, and facilities.

(d) The Secretary shall establish criteria designed to assure equitable participation in the administration of community service projects by agencies and organizations eligible for payment under section 2(b).

(e) The Secretary shall not delegate his functions and duties under this Act to any other department or agency of government.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 4. (a) Eligible individuals who are employed in any project funded under this Act shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

(b) No contract shall be entered into under this Act with a contractor who is, or whose employees are, under State law, exempted from operation of the State workmen's compensation law, generally applicable to employees, unless the contractor shall undertake to provide either through insurance by a recognized carrier, or by self insurance, as allowed by State law, that the persons employed under the contract, shall enjoy workmen's compensation coverage equal to that provided by law for covered employment. The Secretary may establish standards for severance benefits, in lieu of unemployment insurance coverage, for eligible individuals who have participated in qualifying programs and who have become unemployed.

INTERAGENCY COOPERATION

SEC. 5. The Secretary shall consult and cooperate with the Office of Economic Opportunity, the Administration on Aging, and any other related Federal agency administering related programs, with a view to achieving optimal coordination with such other programs and shall promote the coordination of projects under this Act with other public and private programs or projects of a similar nature. Such Federal agencies shall cooperate with the Secretary in disseminating information about the availability of assistance under this Act and in promoting the identification and interests of individuals eligible for employment in projects funded under this Act.

EQUITABLE DISTRIBUTION OF ASSISTANCE

SEC. 6. The Secretary shall establish criteria designed to achieve an equitable distribution of assistance under this Act among the States and between urban and rural areas, but no State shall receive more than 12 percent of any money appropriated in any fiscal year to carry out the provisions of this Act.

DEFINITIONS

SEC. 7. As used in this Act—

(a) "State" means any of the several States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(b) "eligible individual" means an individual who is 55 years old or older, who has a low income, and who has or would have difficulty in securing employment;

(c) "community service" means social, health, welfare, educational, library, recreational, and other similar services; conservation, maintenance or restoration of natural resources; community betterment or beautification; anti-pollution and environmental quality efforts; economic development; and such other services which are essential and necessary to the community as the Secretary, by regulation, may prescribe.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are hereby authorized to be appropriated $35,000,000 for the fiscal year ending June 30, 1971, and $60,000,000 for fiscal year ending June 30, 1972.

Mr. FONG. Mr. President, I ask unanimous consent that the remarks of the Senator from New Jersey (Mr. WILLIAMS), on the Older American Community Service Employment Act, be printed in the RECORD following the statement made this morning by the Senator from Massachusetts (Mr. KENNEDY).

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

STATEMENT OF SENATOR WILLIAMS OF NEW JERSEY

Mr. WILLIAMS of New Jersey. I wish to associate myself with the comments made by the Senator from Massachusetts (Mr. KENNEDY) concerning the introduction of the "Older American Community Service Employment Act."

Hearings conducted by the Senate Special Committee on Aging, of which I am Chairman, have forcefully pointed out that many older individuals feel the impact of their age regarding employment opportunities several years before they reach normal retirement age. For example, during the 1968 hearings concerning the "Adequacy of Services for Older Americans," Professor Louis Levine of Pennsylvania State University stated:

". . . the older worker is caught in a 'no man's land.' He is caught in a psychological attitude that 'older' means no longer a part of society or that 'older' means some form of income not related to work, a form of retirement benefits or social security income. That is one extreme.

"At the other extreme, the older worker is caught in the crossfire of the great priority and the great premium which is placed on youth in our present-day society. It is a rather interesting commentary that we are living in a period when experience is not an asset; indeed, in many instances, is regarded as a liability."

Many of these older workers have been forced into involuntary retirement, usually at substantially reduced retirement benefits. For example, in 1968 approximately one half of all men who began to receive Social Security benefits were less than 65 years old, although 1968 was regarded as a high employment year. Generally, these early retirees are more apt to have low lifetime earnings, sporadic work, or greater unemployment in the years preceding their entitlement to Social Security than men who retire at age 65.

Most older individuals, however, would like to have more reasonable options, such as to work part-time or full time or to work for pay or as a volunteer. This bill that I am cosponsoring will help to give these senior citizens a wider range of alternatives, depending upon their desires and needs.

Employment not only provides income for older workers and their families; it means much more. A job is also something to do; a place to engage in productive activity; and a place for association.

Moreover, several studies have established that employment and productive activity can be a principal source of good health for many older persons. In addition, in a period of growing needs for expanded commmunity services, the experience and skills of older workers can be effectively utilized to meet this demand.

However, in our busy and productive Nation, there are still too many older persons who are isolated and frustrated. For many of these individuals, later years can offer a second career, such as constructive service work in their own commmunity. This would undoubtedly have great appeal for many older Americans who still feel young, although they are approaching retirement age. For retired individuals, opportunities for commmunity service can be a time to develop new interests, acquire new knowledge, and find more productive means to use their leisure hours.

In economic terms such employment can help many of these disadvantaged workers and their families to escape from poverty. In noneconomic terms there is no way to estimate the value of a job, which can replace frustration and despair with hope and opportunity.

Therefore, I also strongly urge prompt and favorable consideration of this proposal.

Mr. FONG. Mr. President, I rise to support the Older American Community Service Employment Act of 1970.

This legislation is designed to make two meaningful contributions toward bettering the lives of Americans 55 years and older.

First, it would make it possible for those in this age group to supplement their income by providing services needed in their communities, and thus improve themselves economically.

Second, it would satisfy the desire of many senior citizens to continue as active members of society and to engage in useful and satisfying endeavors.

Mr. President, for too many of our fellow Americans, reaching the golden years of their lives has resulted in a slump into dire poverty. For some of them, grinding poverty is all they have ever known. Others may have lived under moderate circumstances while working, but find it impossible to make ends meet when forced into retirement by advancing years. By any standard it would be difficult to determine which is worse: to be poor in the later years, after having been poor all one's life; or to be poor in old age after having experienced better days. They are both bad.

The most widely accepted standard used for measuring adequacy of income is that set up by the Bureau of Labor Statistics in 1960. Under that standard, it is estimated that the minimum annual income needed by an elderly couple to achieve a "modest but adequate living" is $3,000 in a large city and $2,500 in a smaller community. In 1962, half of the 5,400,000 couples headed by a person aged 65 or more had incomes of less than $2,875, and 30 percent had less than $2,000.

Passage of this bill to establish the older American community service employment program would make it possible for many of these older Americans to bring their incomes up to the level of adequacy.

In addition to helping many of our elderly citizens meet their financial obligations, this program would also help meet their psychological needs and benefit their physical and mental health. Psychologically, it would help meet the need for interesting and satisfying activities, the need to earn the respect of others, and the need to be worthy of one's own self-respect. Unfortunately, it is difficult for the younger generation, which is very preoccupied with earning a living and raising families, to fully appreciate what many of our elders go through during the long, empty days of retirement.

The bill that is being introduced today is designed to help meet that problem. It would give the elderly of our country something to do—something considerably more than a make-work or handout program. It would give them an opportunity to earn and maintain the respect of the younger people in their communities, and, at the same time, keep their own self-respect.

Mr. President, some observers have referred to the United States as a work-centered society. In addition, the traditional American point of view is that only he who works and makes a contribution is entitled to the respect of others. In the early days of our country's history, when all able-bodied men were needed to clear and till the land, there was no such thing as enforced idleness or early retirement of our elders. Thus, this outlook and way of life did not work to the disadvantage of our forefathers. However, in recent years, as compulsory retirement has become general the old lack of respect for nonworkers has carried over. Too many younger persons look upon the retired as a burden upon society. And as they in turn become old, their attitude eventually works to their own disadvantage.

Because the elderly themselves have spent a lifetime developing lack of respect for nonworkers, enforced idleness in old age can be psychologically devastating to their self-respect and self-image. In fact, since their attitude toward nonworkers were formulated many years ago, when scorn for nonworkers was stronger than it is today, their judgment of themselves may be much harsher than that of their younger compatriots.

The older American community service employment program would give older people the opportunity they need and desire to engage in service to others, and thereby to maintain their own self-respect. In addition to improving the psychological well-being of the elderly, this program could benefit their physical and mental health as well.

Studies have shown that working, at least part-time, benefits the senior citizen not only financially but in many other ways as well. It prevents a feeling of uselessness and futility. It takes him out of his loneliness and isolation and puts him into the mainstream of life. It benefits both his psychological outlook and his physical health.

An authority in the field of geriatrics, Dr. Edward F. Bortz, has said:

Older citizens who are actively employed will be more healthy and better adjusted and consequently a less likely drain on the Public Treasury. Instead of being consumers, they will be producers and taxpayers. They will take pride in being self-supporting and in being able to provide for their own needs. It can be predicted that healthy and alert senior citizens, well utilized by the community, will make far fewer demands for medical services.

In this connection, Dr. Robert F. Powers expressed the consensus among physicians when he testified as follows:

We feel that the key to positive health lies in struggle rather than retreat, in enjoyment rather than avoidance of stress of living. It might be said that the "wounds of combat" are definitely preferable to the decay of idleness, both from a biological and moral standpoint.

The older American community service employment program could contribute not only to the physical health of

elderly participants but also to their mental health. Dr. R. H. Felix, a leader in the field of mental health and former Director of the National Institute of Mental Health, has stated:

From the point of view of mental health, the central problem is to give the older people a sense of participation and continued purpose in life.

Mr. President, in view of the great good that this program can do not only for our senior citizens but for the Nation as a whole, I think the authorization proposed for this new program is a comparatively modest one. The act would authorize $35,000,000 for fiscal year 1971 and $60,000,000 for fiscal year 1972. With this small investment we can help our country's senior citizens improve their economic position; we can benefit this age group psychologically; we can improve their physical and mental health; and we can meet needs in every community of the Nation which would otherwise go unmet. As a matter of fact, it is not too much to hope that this small expenditure will pay for itself, at least partially, by improving the health of the elderly and reducing their need for health care under medicare, and by turning many of them into productive taxpayers.

Mr. President, if we give our country's elderly the opportunities represented by the Older American Community Service Employment Act, we will be able to say with the Poet Longfellow:

Age is opportunity no less than youth itself, though in another dress.

ADDITIONAL COSPONSORS OF BILLS

S. 3541

Mr. HRUSKA. Mr. President, I ask unanimous consent that, at the next printing, the names of the junior Senator from Florida (Mr. GURNEY), and the junior Senator from Oregon (Mr. PACKWOOD) be added as cosponsors of S. 3541, the amendments to the Omnibus Crime and Safe Streets Act of 1968.

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

S. 3552

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from New Hampshire (Mr. MCINTYRE), I ask unanimous consent that, at the next printing, the names of the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Nevada (Mr. BIBLE), the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PELL), the Senator from Minnesota (Mr. MONDALE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Maryland (Mr. TYDINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Missouri (Mr. EAGLETON), and the Senator from Illinois (Mr. PERCY), be added as cosponsors of S. 3552, to provide certain privileges against disclosure of confidential information obtained by newsmen.

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

S. 3565

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from New Hampshire (Mr. MCINTYRE), I ask unanimous consent that, at the next printing, the names of the Senator from Nevada (Mr. BIBLE), the Senator from Montana (Mr. METCALF), the Senator from Ohio (Mr. YOUNG), the Senator from Maine (Mr. MUSKIE), the Senator from Wisconsin (Mr. NELSON), and the Senator from Oregon (Mr. HATFIELD) be added as cosponsors of S. 3565, to provide for the establishment of national standards for warranties made with respect to consumer goods distributed in or affecting interstate commerce, and for other purposes.

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

S. 3595

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Nevada (Mr. BIBLE) I ask unanimous consent that, at the next printing, the name of the Senator from New York (Mr. JAVITS) be added as a cosponsor of S. 3595, to establish a Commission on Security and Safety of Cargo.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). Without objection, it is so ordered.

SENATE RESOLUTION 369—RESOLUTION SUBMITTED RELATING TO PRINTING AS A SENATE DOCUMENT THE REPORT OF THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE ENTITLED "THE COST OF CLEAN AIR"

Mr. RANDOLPH submitted the following resolution (S. Res. 369); which was referred to the Committee on Rules and Administration:

S. RES. 369

Resolved, That there be printed as a Senate Document, with illustrations, the second report of the Secretary of Health, Education, and Welfare, entitled "The Cost of Clean Air", submitted to the Congress in accordance with section 305(a), Public Law 90-148, the Air Quality Act of 1967, and that there be printed two thousand five hundred additional copies of such document for the use of the Committee on Public Works.

SENATE RESOLUTION 370—RESOLUTION SUBMITTED RELATING TO PRINTING AS A SENATE DOCUMENT A REPORT FROM THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE ENTITLED "PROGRESS IN THE PREVENTION AND CONTROL OF AIR POLLUTION"

Mr. RANDOLPH submitted the following resolution (S. Res. 370); which was referred to the Committee on Rules and Administration:

S. RES. 370

Resolved, That there be printed with illustrations as a Senate document the third report of the Secretary of Health, Education, and Welfare, entitled "Progress in the Prevention and Control of Air Pollution", submitted to the Congress in accordance with section 306, Public Law 90-148, the Air Quality Act of 1967, and that there be printed two thousand five hundred additional copies of such document for the use of the Committee on Public Works.

SENATE RESOLUTION 371—RESOLUTION SUBMITTED TO PRINT AS A SENATE DOCUMENT A REPORT FROM THE SECRETARY OF TRANSPORTATION ENTITLED "TERRITORIAL HIGHWAY STUDY—GUAM, AMERICAN SAMOA, VIRGIN ISLANDS"

Mr. RANDOLPH submitted the following resolution (S. Res. 371); which was referred to the Committee on Rules and Administration:

S. RES. 371

Resolved, That there be printed with illustrations as a Senate document a report, "Territorial Highway Study—Guam, American Samoa, Virgin Islands", submitted to the Congress by the Secretary of Transportation, in accordance with the requirements of Section 29(b), of the Federal-Aid Highway Act of 1968, Public Law 90-495, and that there be printed two thousand five hundred additional copies of such document for the use of the Committee on Public Works.

SENATE RESOLUTION 372—RESOLUTION SUBMITTED TO PRINT AS A SENATE DOCUMENT THE REPORT OF HEALTH, EDUCATION, AND WELFARE ENTITLED "NATIONAL EMISSION STANDARDS STUDY"

Mr. RANDOLPH submitted the following resolution (S. Res. 372); which was referred to the Committee on Rules and Administration:

S. RES 372

Resolved, That there be printed as a Senate document, with illustrations, a report of the Secretary of Health, Education, and Welfare, entitled "National Emission Standards Study", submitted to the Congress in accordance with section 211(a), Public Law 90-148, the Air Quality Act of 1967, and that there be printed two thousand five hundred additional copies of such document for the use of the Committee on Public Works.

DISCHARGE OF THE COMMITTEE ON RULES AND ADMINISTRATION FROM FURTHER CONSIDERATION OF S. 3594, AND REFERRAL OF THE BILL TO THE COMMITTEE ON PUBLIC WORKS

Mr. RANDOLPH. Mr. President, I ask unanimous consent, on behalf of the Senator from North Carolina (Mr. JORDAN), chairman of the Committee on Rules and Administration and chairman of the Subcommittee on Public Buildings and Grounds of the Committee on Public Works, that the Committee on Rules and Administration be discharged from the further consideration of the bill (S. 3594), to authorize acquisition of certain property known as Square 724, in the District of Columbia, for the purpose of extension of the site of the additional office building for the U.S. Senate, and for the purpose of addition to the U.S. Capitol Grounds, and that the bill be referred to the Committee on Public Works, which considered similar legislation in previous Congresses.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, March 18, 1970, he presented to the President of the United States 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.

NOTICE OF HEARINGS ON FINANCIAL SUPPORT TO PUBLIC TRANSPORTATION SYSTEMS

Mr. SPARKMAN. Mr. President, I should like to announce that the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency will hold hearings on S. 676 and S. 3499, bills to provide financial assistance to public transportation systems to assure adequate commuter service in urban areas.

These hearings will be held on April 8 and 9, 1970, in room 5302, New Senate Office Building.

ADDITIONAL STATEMENTS OF SENATORS AS IN LEGISLATIVE SESSION

THE BALTIMORE SUN

Mr. HANSEN. Mr. President, it was with a great deal of pleasure this morning that I walked into a newsstand and found an old and very dear friend waiting for me. The Baltimore Sun is publishing again.

After 74 days of being strikebound, the Sun is once more available. Again we are able to read the truly objective and fine reporting that appears in the Sun daily. Once more we are able to peruse what must be one of the finest newspapers of the 20th century.

It is a delight and a joy to be able to say to this good friend: "Welcome back."

SCHEDULE OF APPROPRIATION BILLS

Mr. MANSFIELD. Mr. President, I have received a letter from Chairman MAHON of the House Appropriations Committee together with his statement and a table concerning the expeditious disposition scheduled by the House for appropriations measures during this session of Congress. I think it is clear from these materials that the able chairman is committed to a swift and efficient appropriations process with a projected timetable on all such bills, and the Senate will endeavor to do the same. If adhered to it will enable the Congress to adjourn at a reasonably early date.

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

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

HOUSE OF REPRESENTATIVES,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., March 17, 1970.

Hon. MIKE MANSFIELD,
Majority Leader,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I enclose copies of our schedule for House floor consideration of the appropriation bills of the session, with an accompanying explanatory statement.

If we can stick to it and get a lot of the bills on the books by July 1—and we have every hope of doing so—the Congress will, I believe, thereby make a substantial contribution to better management and efficiency in the Government generally.

With every good wish.

Cordially,

GEORGE MAHON,
Chairman.

COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES—SCHEDULE FOR REPORTING AND FLOOR CONSIDERATION OF APPROPRIATION BILLS

Bill	Report in full committee	Floor consideration[1]
Education	Thursday Apr. 9	Week of Apr. 13.
Legislative	Friday, Apr. 10	Do.
Treasury-Post Office	do	Do.
2d supplemental, 1970	[2]	[2].
Ind. Offices-HUD	Thursday, May 7	Week of May 11.
Interior	Thursday, May 14	Week of May 18.
State-Justice-Commerce-Judiciary.	Friday, May 15	Do.
District of Columbia	Thursday, May 21	Week of May 25.
Transportation	do	Do.
Agriculture	Late May	Late May.
Foreign operations	Monday, June 1	Week of June 1.
Defense	Wednesday, June 3.	Week of June 8.
Public works	Thursday, June 4	Do.
Military construction	Monday, June 8	Do.
Labor-HEW-OEO	Thursday, June 11	Week of June 15.

[1] Exact floor dates to be worked out in cooperation with House leadership.
[2] Probably sometime during period mid-April/mid-May.

STATEMENT BY GEORGE MAHON OF TEXAS ON THE REPORTING SCHEDULE FOR THE APPROPRIATE BILLS

Working in cooperation with the House leadership, we have developed a schedule for processing the appropriation bills of the session which if adhered to will see all the regular bills for fiscal 1971 sent to the other body by June 15.

It lays the basis for a very considerable improvement in timely dispatch of the important appropriations business of the Congress.

It is realistic insofar as the status of the work of the Committee on Appropriations is concerned. We began our hearings on a number of the bills in mid-February; we have recently had as many as 11 subcommittees holding appropriation hearings on a single day. A heavy hearings schedule is continuing.

We expect to report three bills very shortly after the forth-coming Easter recess.

As we announced last year when the interminable delay in the Labor-HEW bill caused such uncertainty and disruption to planning in school districts and educational programs generally around the country, there will be a separate education appropriation bill this year. It will be the first bill reported, with the hope that this will assist in expediting final congressional enactment so that the educational community generally will have a much more definite idea of the approved Federal funding levels well in advance of the coming school year.

Of course, expeditious disposition of the appropriation bills will require the active cooperation of both bodies. The Senate Committee on Appropriations has already begun hearings on, I believe, 5 or 6 of the bills. I would hope that a very substantial number of the appropriation bills will be signed into law by the beginning of the new fiscal year on July 1 next.

In the session last year, we processed a total of 21 bills and resolutions, and finally wound up last year's appropriations business this session with adoption of an additional continuing resolution and the new Labor-HEW bill which the President signed on March 5.

Neither the new administration nor the House or Senate did an adequate job in processing the authorization and appropriation bills last year. But neither was last year's record as bad as it would seem on the surface. There were delays inherent in setting up the new administration. The bulk of the budget revisions of the new administration did not come to us until April 15. Some were received May 5. The foreign assistance budget amendments were received on June 19 and July 22. The request for the supersonic transport plane—the SST—was received on October 8.

Delays in enactment of several of the annual authorization bills were major stumbling blocks for the appropriation bills last year. Orderly achievement of the schedule for the appropriation bills this session requires timely consideration of the related authorization bills. The House has already processed some of the annual authorizations for fiscal 1971 and a number of the legislative committees are busy with consideration of additional ones. Insofar as reasonably possible, we have scheduled several major bills—for example, Defense, Military Construction, Public Works-AEC, Labor-HEW—late in the priority reporting order so as to allow maximum time for timely processing of the several authorizations on which those appropriation bills to one degree or another significantly depend.

In conclusion, I believe the fiscal and economic situation is such that, in my judgment, we must make an all-out effort to proceed with restraint and caution and hold the authorizations and appropriations as low as reasonably possible. There will be many opportunities to practice fiscal prudence. Processing the budget is the work of many hands.

The new budget for fiscal 1971 contains about $10.9 billion of new legislative proposals which will be before the legislative committees and the House.

Some $35 billion of the new appropriations for going programs are first subject to annual authorizations through a number of legislative committees.

The Committee on Appropriations will carefully screen all of the items in the budget over which it has jurisdiction, recommending reductions wherever reasonably possible. No doubt there may be some increases in certain programs.

THE MIGRATION TO THE CITIES

Mr. TALMADGE. Mr. President, the tremendous population shift in recent decades from rural to urban America has created problems in our cities that today cost billions of dollars and untold human suffering.

Over the years, millions of people have migrated to the city. Most of them went to metropolitan areas undereducated and ill-equipped to cope with city life, and unable to meet employment demands. Now the problem has become so frustrating, so complex, and so costly that cities lack the resources to effectively deal with it.

There is increasing recognition of the fact that urban problems and rural problems are directly interrelated. I am convinced that we will not find meaningful and permanent solutions to the crises in our cities until we secure the ways and means for alleviating conditions in rural areas that drive people to the big city in the first place.

The Atlanta Journal of March 12 contains an excellent discussion of the urban-rural situation, written by Editor Jack Spalding. He points out that one important solution can be found in the

inducement of more industry and jobs to rural areas.

The revitalization of rural America requires an all-out effort on the part of government at all levels, Federal, State, and local. Urban interests have as much a stake in it as their rural counterparts. Unless these problems are solved, in rural areas where most of them get their start, the urban crisis will be compounded in the years ahead at even greater cost to cities and their inhabitants.

I bring Mr. Spalding's interesting column to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

[From the Atlanta Journal, Mar. 12, 1970]

REVERSE THE MIGRATION: BACK TO THE FARM

(By Jack Spalding)

The major domestic problem facing the country is the urban problem. The cities are overcrowded. They are uncomfortable. They give rise to frustrations which lead to violence.

The cities are crowded because of a flight from the country. People leave the country for many reasons. A major reason is economic. The pattern of agriculture has changed and there are fewer jobs for farmers. There also are fewer farms.

We have changed from a rural to an urban society, even in Georgia.

The rural people have moved to the urban areas. They have sacrificed space and air and sun for a slim chance at a job. A lot of them cannot hold these jobs because they do not have the skills.

The cities have been wrestling with this problem of unemployables, the slums and resultant crime for a long time. The trend really set in nearly half a century ago. It reached major proportions during World War II. When it stabilizes, it will be because there aren't many people left on the land.

The cities have not found effective ways to help these migrants. Neither have the states. The federal government has spent billions here, without much success.

Now we hear more and more of plans to keep people out of the cities by making the country more attractive. This is possible. It also may be possible to make country living so enticing that it will drain the cities of some of their surplus citizens.

This is an end to be desired.

Georgia has the beginnings of such a program. It is centered in Tifton and is under the auspices of the University System. Part of the program is to induce payrolls to rural localities. There are plenty of farm related manufacturing processes, and perhaps special concessions can lure them into lonely underdeveloped areas.

This would be a great stabilizing influence for the nation.

Rural people have roots. They are for God, home and country. The urban masses have no particular use for this trinity, having little satisfaction from any or all.

A redistribution of population would restore some balance to the nation. Currently we have little as so much of the electorate feels it has no stake in this nation's future or much say in the way its affairs are conducted.

Get people out of the slums. Restore individual dignity and perhaps this attitude will change.

Georgia is working at this problem.

Now comes word of a White House report on the same subject.

A presidential study group has recommended that the nation provide job opportunities and a better life in rural areas as a way to relieve pressure on the cities.

There seems to be more enthusiasm for this in Georgia than in Washington.

Press reports indicate that implementing this report is low on the White House priority list.

Too bad.

It is a good idea. We'd like to see it succeed in Georgia and the other urban states.

It means providing economic opportunity.

It also means providing equal justice, for many of the migrants to the cities are refugees from a system which allows brutalization of both the poor and black and particularly the combination of the two.

People come to the cities for jobs and hoping for better schooling and opportunities for their children. They're also escaping a system which reserves justice for those who run this system.

Back to the farm? Back to the country? Sure. But it is going to take a little bit more than a payroll to lure people back and even to prevent the leaving of those who are yet to make their escape.

OFFICERS' BONANZA

Mr. YOUNG of Ohio. Mr. President, in 1966 officials from the Pentagon brought before the Senate Armed Services Committee a proposal to establish a uniform services savings deposit program to replace the little used Soldiers', Sailors', and Airmen's Deposit System which had been established in 1872. That former deposit system was for the purpose of encouraging soldiers, sailors, and airmen who were not commissioned officers to deposit a portion of their monthly pay and receive interest on the sums deposited. That was not a golden haven for officers. They were not included in that program.

Then the uniform services savings deposit program which was enacted included officers from generals right down the line to enlisted men and draftees alike. The reason stated at that time was to encourage officers and men to save money instead of spending it and helping the economies of the countries in which they were located.

The program sounded good, but it was not a good, sound program. With the inclusion of officers in this new law, it was provided that interest at the rate of 10 percent compounded quarterly would be paid on deposits of up to $10,000.

The brass wasted no time in taking full advantage of the overseas savings program. My inquiry showed that a large number of officers took advantage of the $10,000 maximum, but few, it any, GI's.

I report on the basis of my information that many officers in Vietnam and elsewhere have deposited month after month the total unallotted pay received by them just as if they spent nothing whatever of their pay. It is stated that members of some officer's families and other relatives back in the United States have forwarded money which the overseas officer then deposits. If this is true and is practiced on quite a large scale, that is most unfortunate.

I have in mind drafting an amendment to this law reducing the interest paid to officers and men from 10 percent compounded quarterly on the average balance in the account. I consider this excessive. It would appear that 7 percent, at the most, compounded quarterly should be an attractive interest to be paid on such deposits.

Mr. President, I report that officers have deposited since the inception of this 10-percent-interest program a sum total of more than $387,500,000 whereas all of the enlisted men and draftees overseas have deposited a sum of money approximately $25 million less. On the average, each participating officer has deposited three times as much money as each draftee or enlisted man. In theory, this program is for officers and enlisted men. In practice, the rich harvest of benefits has been reaped by officers only.

THE PHILIPPINES FACES A MAJOR CRISIS

Mr. MANSFIELD. Mr. President, the Los Angeles Times of March 18 contains an article entitled "Philippines Faces a Major Crisis," written by Edward W. Mill. It is a timely piece by a well-informed educator and specialist in Southeast Asian affairs who has a firsthand knowledge of the situation in the Philippines.

The article helps to put the present unfortunate events in that country into more accurate perspective. What Dr. Mill is saying is that the difficulties which are occurring are not to be taken lightly even though they do not presage any immediate collapse of the Philippine Republic. However misguided the twists and turns which the demonstrations may take, however deplorable the violence, there is, nevertheless, a real problem of the social and economic ills of Philippines society which have been accumulating for many decades.

In that respect, what is happening in the Philippines is not unlike what has been occurring in this country for the past several years. Neglect or indifference or even the foreclosing of the demonstrations will not end the basic problems in the Philippines anymore than at home.

In my judgment, the present Philippine Government has no intention of neglecting or ignoring the social and economic difficulties which confront that nation. With an unprecedented popular mandate, it would be my expectation that President Marcos will do all within the power of his office to try to alleviate ills such as those to which Dr. Mill refers in his article. It would be my further expectation that policies and actions which we may pursue with respect to the Philippines will be designed and coordinated to assist and to sustain any such efforts by the Philippine Government. The Filipino people have a historic association with this Nation. It is worth trying to bring that relationship up to date and to preserve it on the basis of restraint and understanding and complete equality and mutuality.

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

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

PHILIPPINES FACES A MAJOR CRISIS

(By Edward W. Mill)

Despite difficulties the Republic of the Philippines has held on to its framework of democratic institutions for the past 35 years, something of a record among the developing nations. Yet, today, this oldest constitutional

democracy in Asia appears to be in its most serious crisis since the advent of the republic.

The present tensions were sparked in the last week of January when President and Mrs. Marcos were almost assaulted on leaving the National Congress where Marcos had just delivered his state of the union message. On Jan. 30, an estimated 2,000 persons attempted to storm the presidential palace.

Elements of various student, labor, and farmers' groups took part in the violence. In February and March, the American embassy became a particular target of the demonstrators, and Ambassador Henry A. Byroade presented sharp protests to the Philippine government over the lack of protection given the embassy.

In the aftermath of the attack on Jan. 31, the president bitterly denounced the disorders as Communist-inspired and said that the aim of the rioters was "the destruction and seizure of the seat of government." While the president's statement deserves careful heed, it would be superficial to write off all the difficulties in Manila as being due simply to this one cause.

PROBLEMS ARE SURFACING

There are more fundamental, long-standing ills and grievances in the Philippine society and body politic, which are being brought to the fore more strikingly than ever before. Moreover, the recent elections, with the huge landslide victory for Marcos and the massive spending involved, stirred resentments which have been slow to subside. At least nine particular problems may be cited to indicate why there is restlessness and disorder today.

Poverty

As in so many of the new nations of Asia and Africa, most of the people are extremely poor. Perhaps 70% of the population subsists on less than $200 a year. There is a wide gulf between the elite business, landlord, and government group at the top and the great mass of people below.

In the provinces and in the barrios, the people, cut off from influence with the decision-making groups in Manila, have in the past been slow to react to their status. But in an age of vastly better communications, hey are now stirring and responding to various leaders who promise them a better day. In the cities, particularly Manila, the poor have become much more militant, and many of them have taken to demonstrations and forceful actions to achieve their goals.

Population pressures

The problem of poverty goes hand in hand with the problem of the population boom; the Philippines continues to have one of the highest birth rates in the world. In 1950, the population was 20 million; in 1960, it was 27 million; now it is about 37 million, and by the end of the 1970s, it will probably be about 50 million. The current, annual 3.5% increase in population imperils the economic growth rate, now down to about 2.7% a year per capita.

Unemployment

The Philippines for years has had a serious unemployment problem. Among the most seriously affected are the graduates of the numerous Philippine colleges and universities. In the past decade, the number of college students has doubled to about 550,000.

Many of these students will, upon graduation, find themselves jobless or unable to find jobs suited to their years of training. They will often run into all sorts of favoritism or petty graft in getting an appropriate job. Obviously, some of them become receptive targets of elements seeking to bring about sweeping change in the society.

Corruption

No one facet of Philippine life has probably been more publicized and agonized over than the actual and alleged forms of corruption that exist. Most Philippine leaders in the past have been highly sensitive to discussions of this subject in the Western press. Yet, any careful observer of the Philippines can hardly fail to concede that this is a social evil of the worst sort.

Politics

The national game of the Philippines has, over the years, been politics. Hardly does one election end when maneuvering and preparation for the next one starts.

Party loyalties are loose and flexible, with shifts from one party to the other commonplace. The danger with the present brand of Philippine politics is that it often degenerates into personal wars which utterly fail to come to grips with the outstanding problems of the day. This is not to say that all politicians have this approach; many of them are dedicated to the issues, but too often personalities carry the day to the neglect of all else.

Dishonest election practices

Since 1946, when the Philippines formally achieved its independence from the United States, six presidential elections have been held, and the Philippines has been looked to by many as a leader in the struggle for democracy in Asia.

Yet, as time has gone on, much of this worthy record has been steadily compromised and undermined by the growth of dishonest election practices. These include buying of votes, the intimidation of voters and candidates, and fraud in the counting of the ballots. Violence has marred almost all major Philippine elections. Massive spending has become an ominous feature of recent Philippine elections, notably the last one.

GROWTH OF NATIONALISM

The ills of any society provide rich fodder for those who would seek to bring about change, either peaceful or violent. In the Philippines, there has been a marked growth in so-called nationalistic activities during the past decade. Much of this activity has come from the campuses of the country. Also active in the cause are some labor and farmer groups.

Significant in the largely Catholic Philippines is a growing reform movement within the church. The head of the well regarded Ateneo University, Pacifico Ortiz, has spoken out strongly for change. Former Sen. Raul Manglapus, who for years has sought meaningful land reform, heads the Christian Social Movement, a more moderate "enlightened middle class" group, which seeks to build a reform-minded Christian democracy comparable to those in Western Europe at the end of World War II.

The forms of action these different groups have taken and advocate vary. The one thing they all seem united on is the desire for change and improvement in social and political. But there is hardly any unity of opinion on the specific actions to be taken. Many of them seek change through peaceful action in the halls of Congress and through executive action. Others are far more impatient and demand militant action now. Some of them seem bent on saddling the United States, and its symbol, the American embassy in Manila, with responsibility for most of the evils of Philippine society.

Special ties with the United States

Since independence, the Philippines and the United States have been linked together in a number of special agreements, chiefly in the economic and military fields. A 1946 agreement between the two counties provided for continued free trade but under a system of declining preferences over a 28-year period; it also provided for special parity rights for Americans in the Philippines. It was modified to some extent by the Laurel-Langley agreement of 1956. The Bases Agreement of 1947 provided for the retention of certain U.S. military bases in the Islands, the purpose being to enhance the security of both the Philippines and the United States.

From the beginning, there was uneasiness about these agreements in the Philippines. To many, they seemed an infringement on the country's independent, sovereign status.

In particular, there were sharp differences over how to treat American servicemen accused of crimes against Filipinos. Today, the agreements are prime targets of the demonstrators in the streets. How much the demonstrators actually represent mass Filipino opinion, particularly on the bases question, may be debatable, but the Marcos administration, which has already called for major changes in the agreements, may be forced ultimately to ask for their complete abrogation.

A new constitution

The oldest constitution in Asia was proclaimed in 1935 when the Filipinos were moving toward independence but were still under the American Flag. It was continued by the Filipinos in 1946 when independence came, and it has functioned with varying degrees of success since that time. But with the growth of a more nationalistic feeling, many Filipinos came to feel that it would be more consonant with their independent standing to have a constitution drafted strictly on their own.

Accordingly, in 1969, the Philippine Congress provided for the election of delegates to frame a new Philippine constitution; the election of these delegates is slated for Nov. 10, 1970, with the Constitution Convention due to begin its deliberations on June 1, 1971.

With the election of delegates only a matter of months away, various pressures have developed for the election of delegates deemed friendly to this or that constitutional approach. In the recent demonstrations, one of the main demands made was that the delegates to the convention be selected on a non-partisan basis rather than as representatives of the two dominant political parties.

It must be stressed that the ills outlined here have been in existence a long time. Every presidential administration from Quezon on down has sworn to do battle against them. Political and economic forces beyond their control apparently stymied them in their efforts to achieve major reforms.

COURSE IS UNCLEAR

How can President Marcos and his government meet what may be the greatest challenge facing any president since independence?

The president has made clear his intention to bring about meaningful social and economic reforms during his second term. From all indications, he was deeply committed to such reforms before any of the recent violence broke out, but the tempo for action has been measurably stepped up. Very likely, if he is to make any headway, he will have to pursue a policy of firmness towards the left while strongly seeking support for his reforms from the middle and the right.

Failure on the part of the Marcos administration to meet the challenge successfully almost inevitably means that the armed forces of the Philippines will be called upon to enter the picture. Though the armed forces have a singular record of respecting the constitutional authority of the civil power, it is doubtful that they would permit a takeover of the country by forces they consider disloyal and under the influence, if not the direction, of a foreign power.

America and the Philippines have in the past been close friends. Despite present tensions, they are still good friends and are bound together in a host of ways, both formal and informal. The nature of events in the Philippines is bound to be of major significance to the United States.

Clearly, the sun has hardly set in the Philippine skies, but there are dark and ominous shadows in them, and only clear and forthright action by the government and the

people can dissipate those shadows and help to bring a better day for the Republic.

AIR POLLUTION

Mr. ALLOTT. Mr. President, for a few days in October, 1948, the small steel town of Donora, Pa., was smothered by a choking fog of air pollution. Nineteen persons died and 6,000 of the town's 14,000 residents suffered one or more of the many illnesses that are associated with severe air pollution.

Twenty years ago the Donora incident was looked upon as a freak occurrence. Today there are some serious men who suggest that unless we act promptly, 20 years from now such incidents may be commonplace.

Whether or not that grim prediction comes true, one thing is already clear. The American people have decided that air pollution is at an intolerable level, and are backing the administration fight against it.

Mr. President, air pollution is the most democratic problem imaginable. All Americans contribute to it. And it afflicts all Americans, regardless of race, color, creed, or national origin.

Aside from being nondiscriminatory, the only other virtue of air pollution is that it is the most visible and constantly aggravating form of environmental decay. As such, it gets considerable credit for the current interest in environmental improvement.

Some Americans have been living with air pollution for so long they now consider it a natural part of their region's life. One easterner, recently returned from the mountainous West, exclaimed:

> It's like getting your glasses cleaned, going out West.

But increasingly Americans realize that no region, no city is immune from the bane of air pollution. It is a problem in Denver, in Phoenix and in other cities famous for their natural beauty and enviable climates.

Further, as a result of the boom in construction of suburban apartments, with the resulting concentration of small incinerators, air pollution is moving to the suburbs.

Air pollution is the all-American problem. What can we do about it?

The first thing to do is to be clear about what it is, where it comes from and what it is doing to us.

The average American has strontium-90 in his bones and DDT in his fat tissues. But it is his lungs that are in most serious danger.

Consider the following:

It is well known that one way of commiting suicide is to sit in a closed garage with your car motor running. What kills is breathing a large dose of carbon monoxide. This substance is odorless and colorless. But it kills. In the middle of the last decade 94.4 million tons of carbon monoxide were released into the American atmosphere in 1 year. Of these 94.4 million tons, 91.3 million came from transportation processes, and most of that from the private automobile.

Of course even if we give up the horseless carriage and went back to the horse, other air pollution problems would remain. Five years ago 31.2 million tons of sulfur oxides were released into America's air in 1 year. This came primarily from the combustion of coal and oil fuels for generating electric power and for space heating—the heating of homes, offices, and factories. It also came from waste disposal practices such as incinerators. Sulfur oxides contribute heavily to various pulmonary diseases.

The National Air Pollution Control Administration officially keeps track of nine pollutants. It is now preparing to study 30 more.

A checklist of major pollutants, and their potential for harm, would look something like this:

Carbon monoxide: It impairs response time, cognition, and vision.

Sulfur dioxide, sulfur trioxide: These irritate the nose, throat, and upper lungs, aggravate existing respiratory ailments, and cause cardiovascular suffering in the elderly.

Ozone: This causes coughing, choking, severe fatigue, recurrent headaches, and chest pains, interferes with lung function and impairs visual acuity.

Nitrogen dioxide: This causes eyes and nose irritation, and may increase susceptibility to infection.

Hydrocarbons: This may be major contributing factor to increased death rate from lung cancer among urban population.

Arsenic: This is associated with cancer.

Asbestos fibers: This induces lung disease.

Berylium: This has produced malignant tumors in laboratory experiments involving animals.

Cadmium: This contributes to high blood pressure and increased susceptibility to heart disease.

Lead: This is a cumulative poison which may cause brain damage and death among small children. It also impairs the functioning of the nervous system in adults.

Particulates: These are tiny particles of solids which irritate the nose, throat, and lungs. They also become coated with toxics from gases and, since they penetrate deep into the lungs, they take other poisons with them. Without the presence of particulates the vaporous toxics in most instances lodge in the upper respiratory tract, not penetrating deep into lungs, and are therefore less damaging.

What is all this air pollution doing to us?

Dr. Jesse L. Steinfeld, Deputy Assistant Secretary in the Department of Health, Education, and Welfare, says this:

> It's full impact on our health is not known, but there is abundant scientific evidence that exposure to polluted air is associated with the occurrence and worsening of chronic respiratory diseases, such as emphysema, bronchitis, asthma, and even lung cancer.

According to Dr. John R. Goldsmith of the California Department of Public Health:

> In Los Angeles at times there is enough carbon monoxide in the air to reduce the blood's oxygen-carrying capacity by 20 percent.

Things may be worse than we now know. According to Rene Dubos, professor of environmental biomedicine at Rockefeller University, some 70 percent of the particulate contaminants in urban air are still unidentified, and thus their biological effects are unknown.

Further, American industry produces an astonishing number of new chemical compounds every year, and it is impossible to anticipate all the possible consequences they can have for air, water, and soil.

Every year various sources release 173 million tons of pollutants into the American air. That is approximately 1,700 pounds of airborne pollution for every man, woman, and child.

Dust and soot rain down on Manhattan's east side at a rate of 80 tons per month per square mile.

Thirteen thousand tons of air pollutants descend on Los Angeles every day. That amounts to approximately 4,750,000 tons in a year.

At times Chicago's sunlight is reduced 40 percent by air pollution.

It is said that breathing the air in our most polluted cities is like smoking two packs of cigarettes a day. Perhaps the day will come when we will be reading an ominous Surgeon General's report on breathing in America. And we will label the Nation the way we now label packs of cigarettes: we will post signs that say, "Caution: Breathing the American Air May Be Hazardous to Health."

Since 1900 Tulsa, Okla., has become a city. As it grew, the dust particles in the air increased. And so did the annual rainfall. In Louisville, Pittsburgh, and Buffalo, precipitation is higher when the factories are functioning. Thus industrialism can result in inadvertent cloud seeding.

Sunlight reacts on carbon monoxide, hydrocarbons and nitrogen oxides and the result is photochemical smog, a major component of which is ozone. The Forest Service blames ozone for the damage of ponderosa pines growing in the hills above the Los Angeles Basin.

The air in New York City is the dirtiest in America, and is second only to London in the world.

It has recently been reported that the fastest-growing cause of death in New York City is pulmonary emphysema, a disease closely linked to breathing filthy air. The mortality rate from this dreadful disease has risen 500 percent in the last 10 years. In that same period, deaths from chronic bronchitis—also associated with air pollution—have increased 200 percent.

As one New York medical examiner explained:

> On the autopsy table it is unmistakable. The person who spent his life in the Adirondacks has nice pink lungs. The city dweller's are black as coal.

This is generally true nationwide. The Public Health Service reports that deaths from lung cancer occur in large metropolitan areas at twice the rate of rural areas.

Even when allowance is made for differences in smoking habits among rural and urban populations it is clear that air pollution is a major factor in the high urban cancer rate.

These are the grim facts about what air pollution is and what it is doing.

What causes it?

Transportation—primarily the automobile—produces 60 percent of the air pollutant emissions. The rest come from

four main sources which are—in descending order of importance—industry, powerplants, space heating, refuse disposal.

Hence there are really two kinds of air pollution problems requiring two sets of antipollution policies—one for transportation-related pollution, and one for stationary source pollution.

Both kinds of environment problems are inextricably entwined with America's energy problems. This is so because the use of energy producing materials often produces air pollution, and because we cannot plan to fight pollution by adopting cleaner alternative energy sources unless those alternative sources really exist. If they do not exist, we may face a nasty choice between continuing pollution and diminishing our use of energy.

In the remainder of my remarks today I will consider only the problem of air pollution from transportation sources. In a subsequent statement I will consider stationary source pollution.

Mr. President, it is shocking to think that this country, which owes so much to the automobile, might someday want to be liberated from this machine. But, increasingly, we hear the internal combustion engine described as the "infernal combustion engine" and it is indisputable that in many parts of America automobiles are making travel difficult and breathing hazardous.

Five years ago it was known that north-south traffic in Manhattan moved at an average speed of 11 miles per hour, while east-west traffic moved at eight miles per hour. A man's normal walking pace is four miles per hour.

Of course what makes this automobile congestion especially serious is the pollution that arises from it.

While it varies from region to region, on average the automobile accounts for approximately 60 percent of the Nation's air pollution. Automobiles put upwards of 90 million tons of pollutants into the air each year.

More than 200 chemicals have been found in automobile exhaust.

When one drives a car from New York to Los Angeles one puts into the air 576 pounds of carbon monoxide; 73 pounds of hydrocarbons; 13.5 pounds of nitrogen oxides; and a host of other elements, ranging from ammonia through zinc.

If we are going to improve the air we breathe, we must plan for three kinds of improvements in the cars we drive.

First, we need to lower the pollution potential of the fuel that enters the internal combustion engine.

Second, we need to lower the pollution potential of the fuel that enters the internal combustion engine.

Second, we need to lower the pollution content of the exhaust that leaves this engine.

Third, we need to prepare for the worst. We must be ready for the day when these first two steps become inadequate for protection of our air, and we need to find a replacement for the internal combustion engine.

IMPROVING FUEL

With regard to lowering the pollution potential of fuels, we can do two things. we can improve regular gasoline, and we can find ways of using natural gas in internal combustion engines.

We need to consider new standards governing the composition and volatility of gasoline.

By 1972 the automobile industry will be marketing cars which will require lead-free gasoline. The petroleum industry is responding to see that such fuel is widely available in time.

Oil companies should be encouraged to continue experimenting with new chemical compositions of their gasolines, especially with regard to olefins.

Further, natural gas may be a feasible fuel for automobiles. It produces 90 percent less pollution than regular gasoline.

The U.S. General Services Administration has tested such gas on 12 cars at a veterans hospital in Santa Monica, Calif. A GSA official reports that such gas may cost 40 percent less than the equivalent amount of regular gasoline, and that it is especially economical in stop-and-go driving. In this kind of driving the 12 test cars got an equivalent of 10.4 miles per gallon while cars burning regular fuel got only 7.1 miles per gallon. The tests also indicate that the usable life of spark plugs and motor oil may be double in cars which convert to natural gas.

Yesterday GSA Administrator Robert L. Kunzig announced that 43 vehicles in the Washington interagency motor pool are being converted to a dual fuel system that will permit them to run on either regular gas or natural gas. The conversion will cost approximately $350 per vehicle. GSA hopes to convert 1,200 vehicles across the country by the end of this year. Similar vehicle conversions are planned at the NASA test facility in Mississippi.

State and local governments can also experiment with natural gas fuel on their large fleets of vehicles. New York City, for example, operates 13,000 vehicles. California has begun converting some State-owned vehicles to a dual fuel system which will enable them to operate on either regular gas or compressed natural gas.

Further, Governor Reagan has proposed an incentive to get private fleet operators to follow suit. He has proposed lowering the fuel tax on natural gas from 7 to 3 cents per 100 cubic feet, that being the amount comparable to a gallon of regular gas.

But even if we can master the technological problems involved in converting automobiles to natural gas, we would still have to solve a supply problem.

If we were able to convert our more than 100 million cars to natural gas overnight, we would put unbearable pressures on the natural gas industry.

Proven U.S. reserves of natural gas in 1969 were approximately 287 trillion cubic feet.

This year we will use 20 trillion cubic feet of natural gas in 37 million homes, and in more than 3 million stores and factories.

Natural gas now supplies about 30 percent of U.S. energy use. And even without the conversion of automobiles, the demand for natural gas is growing at a rate of 5 percent a year.

Thus for a variety of reasons it is unlikely that we can solve the automobile pollution problem simply by improving fuels. We must also continue to improve emission control devices.

PURIFYING EXHAUST

Steps are being taken at the Federal and State levels to reduce the pollution content of automobile exhaust.

This year, for the first time, Federal emission control standards have been extended to cover buses and heavy-duty trucks. All such standards will be progressively raised, so that 1973 models will limit emissions of nitrogen oxides, and 1975 models will limit particulate emissions.

The President has introduced new legislation which will require sample testing of emission control devices as new cars come off the assembly line throughout the model year.

This will be an improvement over current procedures whereby manufacturers voluntarily submit prototype vehicles to tests of emission control devices. This new testing policy is a good Federal response to the problem.

But there is strong evidence that we also need State laws requiring periodic tests of emission control devices after the cars have been sold and driven for a while. An independent organization of scientists in New York recently conducted tests which revealed that on 63 percent of tested cars the pollution devices were not performing properly, and this after only 2,000 miles on the road. The devices are supposed to function for 50,000 miles.

All car sales should be contingent upon the dealer's certification that the emission control device is functioning properly. This should hold for sales of new and used cars.

It is interesting that the California Air Resources Board is working with the highway patrol to develop a workable quick-test device which can be used along the roadside to measure the effectiveness of pollution-control devices that have been in operation for some time. This will permit random testing. Perhaps on future Saturday nights we will see patrolmen testing the breaths of both cars and drivers.

Air pollution from automobiles, which causes 90 percent of Los Angeles' air pollution, is expected to decline as cars sold with required antipollution devices gradually replace older cars.

It is also encouraging to learn that we may not have to wait for all these older cars to wear out before we are free from their pollution. Just 8 days ago the General Motors Corp. announced that it will soon be marketing an antipollution system for cars sold before 1966, when pollution control systems became standard equipment.

This system will cost no more than $35 and will be sold first where cars are most numerous and pollution is most serious—in California.

This and related developments make it possible to expect that by 1980 in Los Angeles this kind of air pollution may be down to levels experienced in 1940—a year which Los Angeles residents recall as a golden age of—relatively—clean air.

Dr. Lee A. DuBridge, Science Adviser

to the President estimates that within 5 years the emission on pollutants from automobiles will be down to one-fifth—or less—of current levels.

As one Detroit executive recently confessed:

> For over half a century, emission control wasn't even among our criteria in making cars. Now it has become the number one criterion.

Edward N. Cole, president of General Motors Corp., thinks a fume-free car is in the offing. He says:

> We have already demonstrated in our laboratories that these improvements are technically feasible. As a result, it is my opinion that the gasoline internal combustion engine can be made essentially pollution free.

Accordingly, GM is devoting considerable resources to this project.

Mr. Cole's optimistic view may be accurate. It may not be, and the Government must look ahead to the possibility that Mr. Cole is not accurate.

The Government must not neglect the real good that can come from improved fuels and emission control devices. But the really troubling possibility is that if the automobile is not made virtually pollution free, then the gains from such improvements may be erased by the inexorable growth in the number of automobiles. This may happen even if we have the good sense to start driving smaller cars equipped with less powerful engines.

The number of automobiles is growing faster than the population. Detroit is producing 22,000 cars a day, and the rate may increase to 41,000 by the end of the decade. By 1985 there will be 170 million cars, buses, and trucks on the road—over 60 percent more than there are today. By 1995 there will be twice as many automobiles on the road than there are at present. State highway officials say we will need an additional 40,000 more miles of highways to handle the burden. But even if we can spare the land, and can afford the cost of putting 40,000 more miles of highway on the land, we will only be aggravating the air pollution problem.

We should bear in mind the President's solemn warning, contained in his environment message to Congress:

> Our responsibility now is also to look beyond the Seventies, and the prospects then are uncertain. Based on present trends, it is quite possible that by 1980 the increase in the sheer number of cars in densely populated areas will begin outrunning the technological limits of our capacity to reduce pollution from the internal combustion engine. I hope this will not happen. I hope the automobile industry's present determined effort to make the internal combustion engine sufficiently pollution-free succeeds. But if it does not, then unless motor vehicles with an alternative, low-pollution power source are available, vehicle-caused pollution will once again begin an inexorable increase.

NEW POWER SOURCES

Clearly we must press ahead with research on modifications, or even replacements, for the internal combustion engine. We must not allow memories of the ill-fated Stanley steamer, or a host of electric cars, to convince us that the current engine is the only possible power source for modern automobiles.

The President's Council of Environmental Quality has $45 million to spend on investigation of a new power source for automobiles. Similar investigations are underway with the State governments of New York and California.

As an incentive to private developers, the President has ordered the Federal Government to purchase privately produced unconventional vehicles for testing.

The only frequently mentioned alternative power source is an electric motor operated by advanced batteries. At present we do not have batteries that could be marketed at a suitable price.

And even if suitable batteries were developed and marketed, new environment problems would result.

If the electric car were to make a comeback every filling station would need to be equipped to charge batteries. They would have to use power supply outlets from the utility companies, and this would require an enormous increase in the generation of electric power. But such generation will involve burning coal or oil and this will result in air pollution. Or it will involve nuclear power which creates problems of disposal of nuclear waste, as well as disposal of heated water which causes thermal pollution.

Of course one way of easing the pollution problems caused by the growing number of automobiles powered by normal engines is to find a substitute means of transportation. Urban and interurban rapid transit systems are one form of substitute.

In this regard I want to recur to two ideas from one of my previous statements in this series on the environment. These are the ideas of "hidden policies" and of "cross-commitment."

A government has a "hidden policy" when a policy designed for one kind of problem has unintended and unnoticed effects on another kind of problem.

A government is practicing "cross-commitment" when it designs two programs which aim at different goals, but which interact in such a way that each program promotes the achievement of the other program's goal.

In the inescapable interrelation between the problems of urban transportation and air pollution we are confronted with the danger of detrimental hidden policies. But we are also presented with the opportunity for creative cross commitment.

If we neglect to provide mass transit facilities in our urban areas our negative policy in this regard will inevitably result in even more automobile traffic in and around our congested cities.

Thus our policy of neglecting mass transit will be a not very hidden—and very detrimental—environment policy.

If, in contrast, we recognize the virtues of mass transit—virtues that are manifold and manifest—we can begin a meaningful commitment to improved transportation. And this commitment will serve as a cross commitment to an improved environment.

It is true that many rapid transit systems will operate on electric power. But this does not mean that an increase in rapid transit passenger service will just transfer the source of pollution from the engines of automobiles to the generating plants of electric power companies.

Obviously an increase in electric railroad service would result in some increase in the total amount of electric power used in America. But the additional air pollution that would result—even assuming that nuclear powerplants would not take on this burden—would not be anything like the amount of pollution that would be eliminated by removing large numbers of cars from the roads, and especially from the highways leading into our great cities.

A few statistics will make clear why this is so. A single track of rapid transit line, using 100-passenger vehicles in 10 car trains operating on 90-second headways, can carry 40,000 persons per hour at speeds up to 80 miles per hour.

In contrast, a single lane of express highway can carry a maximum of 2,000 cars an hour at top speed of 50 miles per hour. When traffic moves faster than 50 miles per hour the highway capacity for cars begins to decline because safe driving requires greater distances between the cars.

Figuring an average of 1.5 persons per car, a freeway lane can accommodate 3,000 persons per lane per hour, as compared with the 40,000 persons carried—and carried faster and safer—on a single track of rapid transit.

Clearly the improvement in transportation efficiency is enough to recommend rapid transit systems. But the case for rapid transit becomes overwhelming when we remember how this will function as a beneficial "hidden" environment policy, and as an instance of "cross-commitment" in our efforts to improve our transportation and our environment.

Remember that automobiles produce, on average, 60 percent of the air pollution now plaguing our metropolitan areas. If we get people out of cars and on to safe, swift, pollution-free trains, then urban air pollution is going to fall dramatically.

In fact, this has already happened—briefly—in Sweden.

When Stockholm switched from left hand to right hand driving, cars were banned from the center of the city for 1 day while rapid transit trains continued to operate.

In spite of the fact that this put an added burden on the powerplants, and in spite of the fact that these plants are located near the center of Stockholm, air pollution in Stockholm fell by 50 percent during the automobile ban.

Mr. President, I hope all Americans understand the close relation between transportation policies and environment policies. I am proud to note that the Department of Transportation will soon construct a test center near Pueblo, Colo. Tests at this center will involve rail transportation at speeds up to 300 miles per hour. If such rail travel becomes a reality, and I hope it will, then passenger trains will become competitive with regional air service. And we will all benefit, as travelers and persons who breathe the threatened American air.

Mr. President, as I have indicated, there are many problems to be faced and solved. As I have emphasized, the relation between our transportation and environment policies is complicated by the fact that these two policies are rerelated to all our energy policies, and especially to the growing need for electric power. This is an important facet of the problem of air pollution from stationary sources. That problem will be my topic in my next statement on environment problems.

INCREASE IN COST OF LIVING

Mr. CANNON. Mr. President, the 6 percent rate of increase in the cost of living reported at the end of 1969 makes it difficult to oppose publicly any measures regarded as anti-inflationary. It is particularly difficult for one such as myself, who is not an economist, not a banker and not associated as much as some of my Senate colleagues with economic issues to make statements which seem not to recognize the perils of inflation. Yet, both because of my personal views and because my State, more than most others, depends heavily on growth, prosperity and the progressive realization of our national objectives in defense, space and nuclear development, I must make some direct and blunt statements concerning inflation and its cure.

First, I am not willing to see unemployment increase by even a small amount, even though the conventional wisdom seems to be that such an increase is essential to stable prices.

Second, I do not intend to cringe in fear of the high rates of economic growth which our marvelous technology should bring in the 1970's. I do not accept the conclusion that a growth rate of 4 to 6 percent, which still puts us far below that of many other nations, is not sustainable in our Nation.

Third, I believe in jobs as the ultimate solution, and the most effective means of immediate relief, of the many problems of our disadvantaged minorities, our inner cities and our rural poor, both black and white. In my view a 3 percent unemployment rate, rather than a 5 to 6 percent rate is far more effective sociologically than an army of social workers and government poverty workers in improving the status—and the hope—of America's less fortunate people.

Fourth, I cannot join those who fear a high level of spending by business on new plant and equipment on the grounds of its inflationary potential. Such investment is in fact essential to a reduction, through higher efficiency, in the real prices we pay for our goods. If our financial system does not function well, there may be temporary price problems from high levels of business investment, but incomes also will rise and quickly will overtake price increases derived from rapid business investment.

Fifth, I believe that if we do not have an adequate private investment in our future in terms of new industry and other business developments, then there must be Federal or State and local government expenditure on social capital improvements to help keep our work force employed. Whatever financial or fiscal problem we may have, there can be no justification for allowing to stand in sickening idleness the manpower which could have built the factories, tools, roads and other resources capable of reducing the real cost to us of the things we want. I would also reiterate my belief that most Americans prefer the dignity of work to the charity of the dole.

Finally, I believe that special attention must be given to housing. For financial and fiscal reasons, our housing starts are but a fraction of those needed. At the start of this year, more than 2,000 housing units are desperately needed in Nevada which present policies cannot supply. We have the productive capability to rebuild our cities, and to begin solving the neglected pollution problems that beset our State and Nation. Better housing is equally important in the drive against crime as other elements of the anticrime program.

My justifications for the beliefs I have stated are basically uncomplicated. In the first place, money and price systems must be kept in their proper role as tools of the economy, not as ends in themselves. Our financial system should permit us to achieve our true economic potential in terms of real output of goods and services. If it does not do so, then it is ailing or crippled, and should be redesigned or repaired where necessary. If we adopt the more usual view that we must cripple our real economy in the hope that a crippled financial system can handle it—a course which the administration seems to have charted—we still may fail to achieve price stability. In fact, the lesson of the past year seems to point precisely to such results, as prices increase at their most rapid rate even though real growth is stifled and unemployment increases steadily.

If we are to repair our financial system rather than settle for stagnation in a vain hope for price stability, I suggest that we look first at all sources of artificially high pricing. Some price supports and some sources of prices above those of a totally free market undoubtedly are justified. However, our present situation demands that each be reexamined and rejustified. The list of artificial price situations is too long to include here, but I can mention some metal prices in the face of softening demand and the need to exclude much foreign steel and titanium sponge. Automobile prices also were raised this year and remain at their higher levels despite many layoffs in the industry, and Government-induced shortages in agricultural goods which are deliberately designed to keep prices from falling. We have good reason to believe from past recessions and depressions that reduction of demand through unemployment and income reduction will do little to lower many prices in our economy. Instead, the result is simply more unemployment, as managers cut back production rather than prices, as indeed the automobile example shows today.

Just as our industrial technology is the source of our general economic potential, so our failure adequately to make technical progress in homebuilding and an adequate investment in housing fabrication is the source of our housing problems. It is housing costs, borne of inefficient methods in addition to the high interest rate which is pricing housing beyond those who need it. I am convinced that we need an imaginative program of Federal developmental spending in housing. I am encouraged to see some of our aerospace firms, who are now developing some unused capacity, turn their magnificent capabilities to the housing problem.

I oppose inflation. But unless artificial prices in certain elements of the economy can be adjusted, hopefully on a voluntary basis, and unless there is more chance that prices which should be lowered can be lowered, then I must admit to a willingness to accept a manageably small amount of inflation as the cost of keeping the country moving ahead and avoiding economic stagnation.

Nevada's economic destiny has always been tied to its ability to attract venture capital. A favorable investment climate, which historically produced several mining bonanzas and the more recent recreation—tourist industry boom, must be continually encouraged so that the State's prosperity may continue.

THE ECONOMIC SITUATION

Mr. HANSEN. Mr. President, I think the President's actions yesterday concerning the present economic situation in the United States demonstrate clearly and without question one aspect of President Nixon's character—his flexibility.

He is willing to meet changed situations as they arise. He is willing to change course when the need is apparent.

He is not so deeply committed to one set of economic programs that he cannot back out or move in another direction.

Frankly, this is a welcome relief. For 8 years men sat in the White House surrounded by advisers who simply could not change. Once they had launched the Nation on a course of action, their own egos or their own ideologies would not permit them to change their minds.

The result has been disastrous to our economy.

The present inflation which has so eroded the buying power of the dollar can be traced to just such stubborn insistence by the Johnson administration that their course was the only course the Nation could follow.

The former Chairman of the Council of Economic Advisers, Arthur Okun, has written that as early as 1965 President Johnson and his top advisers were being warned that they had launched an inflationary policy and that time was fast running out on them if they were to stop it.

But the Johnson administration was so totally inflexible that it could not change course. It was so dedicated to the economic policies it had adopted that it could not reverse its field.

Senators will recall that it was not until 2 years later that the administration finally realized the mistakes it had made and tried to change. By then it was too late. Inflation had already turned from a fire into a roaring conflagration.

Even when he did change, President Johnson suggested only half-measures and steadfastly refused to curb the inflationary trends within his own administration. He not only allowed enormous deficits, he encouraged them at every stage. He felt it was politically unappetizing to cut back any of the Federal programs that his administration had advocated. We just kept spending and spending and spending.

President Nixon, the moment he entered the White House in 1969, moved to curb the voracious appetite of the Federal bureaucracy. He is still keeping a tight lid on spending where that spending can be harmful to the economy as a whole, no matter how appealing to any particular pressure group or voter group.

The President realized from the start it would take strong medicine to cure the disease so insidiously implanted in the American economic life by the previous administration. He was willing to administer that strong medicine.

Now, with the realization that there are economic problems that could lead to recession, President Nixon has changed his attack and is directing his attention squarely to these new problems. In doing so he shows clearly that his administration is willing to accept change, and to change its own approach to meet new circumstances. This is the kind of approach the Nation needs in its leadership in this complex and complicated age in which we live.

I just hope the leadership of Congress is equally flexible and equally willing to accept the responsibilities we all must shoulder.

THE ENVIRONMENT

Mr. FULBRIGHT. Mr. President, I have been much encouraged in recent months to see the emphasis which the administration has put on the need to expand our national effort to halt the decline in the quality of our environment—the land, the water, and the air.

There is increasing evidence that we are beginning to restructure our priorities—even to the extent of limiting the inordinate proportion of the national budget which has been devoted either to obsolete or to peripheral military expenditures.

I have recently read several articles suggesting that pollution of the air is reaching the point where our society is moving rapidly in the direction of using the oxygen in the air more rapidly than nature is able to replace it. An article published in the New York Times of March 12 reports a 500-percent rise in deaths in New York City from emphysema during the last decade. It is "unmistakable," reported the city medical examiner, that "the person who spent his life in the Adirondacks has nice pink lungs. The city dweller's are black as coal."

How ironic it would be if we managed to make the Nation absolutely safe from nuclear attack by multiplying our nuclear weapons, only to find that no one was left to push the ABM button.

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

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

500 PERCENT RISE IN EMPHYSEMA DEATHS IN LAST DECADE REPORTED FOR CITY

(By John Sibley)

The fastest-growing cause of death among New Yorkers is pulmonary emphysema, a mortality rate that has risen 500 per cent in the last 10 years. During the same period, deaths from chronic bronchitis have increased 200 percent.

A city medical examiner, talking of the health effects of air pollution, puts it more pungently.

"On the autopsy table it's unmistakable," he remarked the other day. "The person who spent his life in the Adirondacks has nice pink lungs. The city dweller's are black as coal."

But despite such anatomical displays, and despite the overwhelming statistical evidence that air pollution sickens and kills, there is little solid medical proof that specific pollutants cause specific diseases.

This generality holds true not only for air pollution, but for the effects on human health of contaminated water and excess noise.

The Public Health Service reports, for instance, that deaths from lung cancer occur in large metropolitan areas at twice the rural rate, even when allowance is made for differences in smoking habits.

Yet Dr. Ernest Wynder of the Sloan-Kettering Institute for Cancer Research doubts that air pollution plays a major role in the growing incidence of lung cancer. Dr. Wynder notes for one thing that lung cancer is six times as prevalent among men as among women, though both are exposed equally to air pollution.

Some of the most intensive research into the health effects of air pollution has been undertaken by Dr. Stephen H. Ayres, director of the Cardio-Pulmonary Laboratory at St. Vincent's Hospital here. But in an article soon to be published in a professional journal, Dr. Ayres acknowledges:

"Ideally, one would like to identify the body burden of a given pollutant and be in a position to measure the physiologic effects of that particular body burden. With most pollutants, neither the body burden nor the quantitative relationships between burden and health effects is known."

No tidy set of symptoms acts as a signpost for the diagnosing physician, for in fact there is no "air pollution disease" as such. Among the experts, however, there is general agreement that pollution's primary effect on health is to exacerbate a variety of existing diseases.

A FORMIDABLE HAZARD

Yet despite the lack of precise knowledge, experts have no doubt that air pollution is indeed a formidable hazard and that vigorous remedial measures are called for. Dr. Robert Horton, chief of the government's Health Efforts Research Program, told the New Yorker in an interview a year ago:

"The British reduced cholera and typhoid in the nineteenth century before they knew bacteria existed, and we may have to regulate our air supply before we have complete knowledge about air pollution.

"The methods we have for detecting excess deaths are so crude that there has to be a pretty big excess for us to realize that it's there at all. What we do know is that people get killed by air pollution, and I don't see any excuse for there being enough air pollution to kill people. Do you?"

Those "excess deaths" occur most often in New York, whose air is the dirtiest in the United States and second only to London's in the world. New York's average level of sulphur dioxide, for instance, is half again as high as that of Chicago, its nearest American competitor.

During the Thanksgiving weekend of 1966, severe smog caused by a temperature inversion resulted in the deaths of 168 more New Yorkers than normally die in the same length of time.

This figure was calculated by Dr. Leonard Greenburg, who was the city's first Commissioner of Air Pollution Control and is now chairman of the Department of Environmental and Preventive Medicine at the Albert Einstein College of Medicine.

Perhaps this country's most widely publicized episode came in 1948, when an inversion over Donora, Pa., a mill town of 14,000, made half the inhabitants sick with a four-day fog filled with sulfur dioxide and other pollutants from chemical and steel plants.

Twenty Donora residents died during the siege. And a study made 10 years later showed that those who had been acutely ill during the episode were having a higher rate of sickness and were dying at an earlier age than other townspeople.

WATER PROBLEM STUDIED

In water pollution, public health officials are concerned with three types of contamination: microbiological, chemical and radioactive. Generally, separate standards of purity are set for drinking water, shell-fish waters and bathing beach water.

The standard measure of microbiological contamination is the concentration of coliform bacteria. These are not a health hazard in themselves, but they are relatively easy to count and usually indicate the presence of pathogens, which are disease-causing organisms.

The New York City Health Department will not approve drinking water that contains more than 1 coliform bacillus per 100 milliliters (about 3 ounces). A concentration of 700 is the maximum allowed for shellfish waters, and swimming beaches are closed when the concentration exceeds 2,400.

The city's standard for swimming water is the most lenient in the United States. The standard for shellfish waters is an academic one; all sea water within New York City contains more than the permissible concentration, and shellfishing has been prohibited here for years.

The problem with shellfish is that their filtration systems collect contaminants and store them in much greater concentrations than exist in the surrounding water. One study of oysters, for instance, showed them capable of storing radio-activity in concentrations 1,000 times as great as the water's.

The most common health hazard in contamined shellfish is infectious hepatitis, whose virus is carried in human feces. Huge quantities of untreated sewage are pumped into New York Harbor continually.

Years ago, typhoid fever was a major threat from polluted water, and though the disease is rarely heard of in this country today, Deputy Health Commissioner Frederick S. Kent said the other day: "I still don't rule out typhoid as a hazard."

The Health Department is currently keeping track of about 200 typhoid carriers in the metropolitan area. They are not permitted to work in food industries.

About 25 new typhoid cases are reported here each year. About one-third of the victims contract the disease elsewhere (usually overseas) and another one-third get it from a carrier in the family.

A type of "pollution" that is relatively new to public health officials is excessive noise. In a report earlier this year, Mayor Lindsay's Task Force on Noise Control stated:

"Noise has reached a level intense, continuous and persistent enough to threaten basic community life."

The report added: "More than at any time in the city's past, there seems to be no es-

cape for city residents and workers from daily accoustical assaults on the senses. Vehicular traffic, jet aircraft, subway trains, construction equipment and air conditioners, as major noise sources, degrade the health and well-being of New York residents."

A medical subcommittee of the task force, headed by Dr. Wilbur James Gould, reported that subway motormen and conductors may suffer permanent hearing loss. Other health effects are psychological and not precisely measurable: "annoyance, anxiety, constrained and explosive rage, disturbed sleep, irritability, concentration and energy draining tensions."

At more than 140 decibels, acute pain is experienced. A moving subway train produces 100 decibles, a jet airplane at close range 150.

Mr. Kent has classified environmental pollution into a priority system of four categories: (1) concentrations that cause death, (2) amounts that cause illness or injury, (3) levels that permit "effective living" at work and play and (4) levels that permit "esthetic enjoyment."

"The first two categories obviously can't be tolerated," says Mr. Kent. "They are the responsibility of the Health Department, and so—to a large extent—is the third category. The fourth category is largely a matter of economics, and must be weighed against other city needs that require taxpayers' money."

NEW TOOLS NEEDED

Mr. HARTKE. Mr. President, our chance of building a better America rests largely on the caliber of the education we offer our youth today. At present, too little is done to insure that slow learners in economically deprived areas receive the educational tools they need to compete in a country which prizes learning so highly.

In his "Potomac Watch" column in the Washington Post of March 16, William Raspberry points to the promising results attended by Dr. Douglas G. Ellson, of Indiana University, in the field of developmental reading. Called programed tutoring, this new technique to improve reading skills would appear to have much to recommend it.

I ask unanimous consent that Mr. Raspberry's column be printed in the RECORD.

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

SCHOOL RESEARCH ISOLATED

(By William Raspberry)

One reason why educational experiments have produced so little improvement in public education is that the word of successful experiments does not get around.

Let a Stanford scientist make an important discovery in, say, endocrinology, and his fellow scientists at Johns Hopkins soon know all about it, and their own work is influenced as a result.

But if the St. Louis public school system develops a superior way of teaching math, it may be years before the Washington school system learns anything about it.

It may take years, in fact, for word of a successful experiment in a Northwest Washington school to filter down to teachers in Anacostia—unless it happens to be sufficiently dramatic to make a good news story.

Thus, the local school system is deriving no benefit from an interesting program that has been under way in Indianapolis since 1964.

Dr. Douglas G. Ellson of Indiana University (Bloomington), where he formerly headed the psychology department, claims encouraging success with a new technique for teaching reading to slow learners in the black slums.

He pretends no miracles for his "programmed tutoring" technique, but he has recorded gains of as much as 17 points among the slowest learners compared with their control group counterparts.

Basically, programmed tutoring involves 15 minutes a day of specialized help for slow learners, with each step so clearly spelled out that Dr. Ellson has been able to use high school graduates and dropouts as tutors.

One example of how the technique works: A poor reader is asked to read a simple sentence. The tutor has been instructed on exactly what to do for every possible response.

If the child reads the sentence correctly, he is praised (reinforced) and moved on to the next unit. Missed words are first isolated physically (in a word list) then psychologically (in the sentence). If the child still cannot read them, he is taught those words, then taken back to the original sentence until he can read it.

Success is emphasized; failure is not. It simply serves as a signal to the tutor for the next step.

In many ways, the Ellson approach sounds rather ordinary. Its results, however, are not.

Dr. Ellson was careful to find out just how successful the technique is.

"Whenever we try the program for the first time," he said, "we pick two groups—from the bottom third of the class—as exactly matched as possible. We then tutor one group but not the other.

"We found that the poorer the pupil is (scholastically), the greater the gain."

This is especially interesting. In most special teaching programs, the brighter pupils show the greater gains. Dr. Ellson says his technique doesn't help at all with a child who is average or above.

For reasons of which he is not certain, it also seems to work better with city children, he said.

Another bonus, he said, is that in the schools where the technique has been employed for as much as three or four years, the children in the control groups appear to be showing more progress that would normally be expected.

He thinks one reason his technique works so well is that it demands a good deal of verbal communication between pupil and tutor, communication that is based on printed words.

"This is important," he said. "That's one reason I am opposed to the kind of storytelling hours that the public libraries often do. You shouldn't tell stories to children; you should read them stories. It's terribly important for them to learn that all these interesting things come from books. That makes them want to read."

BALTIMORE SUN RESUMES PUBLICATION

Mr. ALLOTT. Mr. President, this morning the weather was uncommonly nasty, and the news was as depressing as usual. But there was one pleasing bit of news this gloomy March day.

The Baltimore Sun, one of the Nation's great newspapers, is back on the newsstands.

A 74-day strike—the longest strike against a publisher in Baltimore history—had kept the Sun shut down since January, depriving all of a source of news and lively commentary from their highly respected newspaper.

We are delighted that labor and management have resolved their differences, and that the Sun is back where it belongs—on the newsstands and in the hands of its loyal readers.

SENATOR FOR ZPG

Mr. DOLE. Mr. President, the junior Senator from Oregon (Mr. PACKWOOD) was the subject of a column written by Kenneth Crawford and published in Newsweek magazine for March 23, 1970. Entitled "Senator for ZPG," Mr. Crawford's article focuses on a dramatic proposal which is best characterized by the slogan "Zero Population Growth." Believing that this country is faced by a severe problem of population control, the Senator from Oregon has demonstrated significant initiative in developing a comprehensive program which should receive serious consideration by Congress. In only his second year in the Senate, the junior Senator from Oregon is establishing a remarkable record with his innovative approaches to complex national problems.

Mr. President, I commend Mr. Crawford's article to the Senate and ask unanimous consent that it be printed in the RECORD.

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

SENATOR FOR ZPG

(By Kenneth Crawford)

Sen. Robert Packwood, freshman Oregon Republican, is breaking some of the most rigid taboos of politics. He is opposing population growth both in his state and in the nation, thus defying traditional American boosterism. He is advocating contraception, abortion and family planning, thus outraging fundamentalist religious belief. And he is pre-empting a cause bound to be high on the agenda of the '70's, thus stealing a march on his elders, who have been hesitant about grasping this nettle.

The young Senator out of the West seemed an unlikely taboo smasher when he arrived in Washington after defeating the flamboyant Democrat Wayne Morse, in a campaign notable for lack of flamboyance. He settled quietly into the Republican minority, conforming to the unwritten rule that a new senator should be seen but not heard. Sometimes he voted for Nixon Administration bills, sometimes not. Unless they were soliciting his vote, Packwood's colleagues took him for granted as an able lawyer and politician who, if he were re-elected often enough, might sometime be admitted to the club.

Packwood ceased to be just another backbencher the day he introduced two bills of startling boldness and explained them in a speech so lowkeyed that it might have been in defense of Mother's Day. One of the bills would legalize abortion on request, no questions asked, in the District of Columbia, where Congress has unquestioned jurisdiction. The other bill would revise the income-tax laws to create a financial incentive for limiting the size of families—for holding them down to three children at most.

EXAMPLE

The senator said he would like to legalize abortion nationwide but doubted the authority of Congress to do so. In any case, he hoped a District law would set an example for the states, encouraging them to do what Hawaii already has done. As for taxes, he proposed that, as of Jan. 1, 1973, families be granted a $1,000 income exemption for the first child, $750 for the second, $500 for the third and none thereafter. This would not apply to children born before the operative date. Since Packwood drafted his tax bill, a

Treasury study has shown that its cost would be high. So he is considering modifications.

In addition to his own two bills, Packwood is co-sponsor of a third to set up a Federal family-planning center, which would conduct research on contraception and make the best information about birth control available to all who want it.

Touchy and politically dangerous as the cause of population control still is, Packwood took it on with his eyes wide open. He regards himself not as a knight in shining armor but as a practical politician looking for practical results. He thinks his abortion bill has a chance in this Congress and that his tax incentives will eventually win acceptance. His mail from Oregon, where he has made five speeches expressing the hope that this sparsely populated state will never have more people than it has now, is running 2 to 1 in his favor. From the country, where his ideal is expresssed by the slogan, "Zero Population Growth," the favorable ratio is 9 to 2.

DECISION

However, the mail against Packwood's project makes up in intensity what it lacks in volume. The burden of it is that no decent man can be for the unmentionable things Packwood is mentioning. It comes not only from Catholics loyal to the Pope but from shocked Protestants as well.

Packwood arrived at his decision to devote himself to population control by way of conventional conservationism, derived from his Western boyhood, and a kind of social claustrophobia, developed during the three years he studied law at New York University. The crowding of Greenwich Village, where he lived as a student, and of the Washington-to-Boston corridor, where he traveled to see the sights, appalled him. What would it be by the year 2000, when at the current rate of growth there would be 300 million Americans instead of present 200 million? And shortly thereafter 400 million to 500 million? They could be fed and clothed, no doubt, but could they live good lives in such limited space?

Agreeing with the ecologist who see population stability as central to the preservation of habitable environment, Packwood argues that the only choice this country has is between voluntary restraint now and compulsory control later. He favors voluntarism now. In this cause he is willing to be the senator for ZPG.

DUMPING MUST BE STOPPED

Mr. HARTKE. Mr. President, the recent request of Westinghouse Electric Corp., for an investigation of the dumping of large power transformers into the United States by manufacturers in Europe and Japan charges the kind of unfair foreign competition I have been pointing to for many years, and I have again urged the U.S. Treasury Department to spare no effort in the dumping investigation which is vital to the welfare of this important U.S. industry.

I and other members of the Committee on Finance were successful a couple of years ago in preventing the U.S. representatives at the Kennedy round of trade negotiations from unlawfully amending U.S. antidumping procedures. Again this year I have asked Congress to overhaul our Antidumping Act to be sure that American industries will not be injured by this unfair trade practice. Meanwhile, we shall be watching carefully to see whether the Treasury Department pursues this matter under our present law with the vigor and objectivity which it urgently requires.

It is ironic that the dumping of large power transformers into the United States from foreign countries has been aided and abetted by agencies of the U.S. Government, such as the Bonneville Power Administration, the Bureau of Reclamation of the Interior Department, and the Tennessee Valley Authority. These Government agencies have led the way, using public money, to buy low-priced foreign equipment in their determination to provide low-cost electricity to the people they serve. Meanwhile, working men at Muncie are being deprived of employment in manufacturing large power transformers for these Government agencies. This situation makes it all the more urgent that the Treasury Department conduct this dumping investigation vigorously and as rapidly as possible.

Power transformer manufacturers in Great Britain have sold their products to the U.S. Government agencies at discriminatory export prices longer than the manufacturers of nearly any other foreign country. Yet last week, an official of the British Electrical and Allied Manufacturers Association denied to a Wall Street Journal reporter in London that British manufacturers are dumping large power transformers into the United States.

A thorough and well-documented 1969 study by Horace J. DePodwin, dean of the graduate school of business administration at Rutgers University, points out in great detail that British manufacturers have repeatedly dumped this type of product into the United States in recent years.

Furthermore, a 1969 report made in Great Britain by Prof. G. B. Richardson, Oxford fellow and economist for the British Transformer Manufacturers Association, clearly acknowledges that British transformer manufacturers engage in cut-price selling overseas and even defends this practice as essential to the welfare of the power transformer manufacturing industry in Great Britain.

These two studies by outstanding educators in the United States and Britain should help to persuade our Treasury Department not to be misled by self-serving denials of spokesmen for British transformer manufacturers.

OIL AND INTERIOR

Mr. PROXMIRE. Mr. President, Evans and Novak have detailed Chevron Oil Co.'s "willful disregard of Secretary of the Interior Walter Hickel's tightened antipollution regulations, which is symptomatic of the oil buccaneers operating in the dirty-dirty gulf coast offshore drilling areas."

As a result of these blatant violations, the beautiful coast of Louisiana, its wildlife, and its shrimp and oyster industries are now threatened by serious oil pollution.

I sincerely hope that the oil industry will wake up to the fact that the days of "public be damned" are over. I would also urge Secretary of the Interior Hickel to take whatever steps are necessary to make sure that another such disaster does not occur, including making an example of those who are responsible for this disaster.

I ask unanimous consent that the Evans and Novak column be printed in the RECORD.

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

CHEVRON OIL CO. DISREGARDED HICKEL'S TIGHTENED POLLUTION RULES

Exactly five days before fire broke out on Feb. 10 in drilling Platform Charlie of Chevron Oil's massive Gulf Coast oil operations, a confidential letter from the Interior Department's regional oil and gas supervisor warned the company to get busy and install official ordered safety equipment.

"There appears to be a certain hesitancy among some company field personnel to rely on such (safety) equipment," the letter said.

In fact, the phrase "certain hesitancy" was an extraordinarily mild form of official rebuke for suspected violations. The specific equipment that might have prevented the fire—a downhold storm choke—had been surreptitiously removed from the offending well several months ago, a clear violation of Interior Department regulations.

Had the choke been in place, the sudden release of pressure produced by the outbreak of fire probably would have choked off the flow of oil far beneath the surface of the water. As it is, after the fire was put out last week, the well started cascading an estimated 1,000 barrels of crude oil a day into the gulf, threatening serious damage to the untold riches in oyster beds, fisheries, and wild life sanctuaries in coastal areas.

Chevron's willful disregard of Secretary of the Interior Walter Hickel's tightened antipollution regulations (resulting from the Santa Barbara blow-out last summer) is symptomatic of the oil buccaneers operating in the dirty-dirty gulf coast offshore drilling areas. So blatant have these violations been since the new regulations were issued last August that Hickel now has a prima facie case to collect millions of dollars in penalties if he chooses, and the Justice Department agrees, to invoke them.

Hickel is moving in that direction. He's drafting a report now that will claim a total of at least 137 downhold storm choke violations in Bloc 41 alone—the bloc of wells that includes Platform Charlie. The penalty can be as high as $2,000 a day for each violation, and Hickel's report is certain to allege violations that go well beyond storm chokes—for instance, rusting fire-control equipment, lying on the tops of platforms, that was never installed.

Thus, Chevron, which is wholly owned by Standard Oil of California, may become the government's first real test case of toughening government control, riding the wings of the national antipollution binge, over offshore oil companies that operate only by sufferance of Uncle Sam on federally owned lands.

Hickel's report, moreover, will show that part of the blame for the oil bust on Platform Charlie lies right in the lap of the Nixon administration. For years, Interior has failed to build its enforcement machinery anywhere close to the manpower levels needed to keep the oil operators honest.

Last spring, in his budget for fiscal 1970 (the year ending next June 30), Hickel asked Budget Bureau approval to more than double the pitifully inadequate number of federal inspectors of offshore drilling operations—from 34 to 86. The Budget Bureau cut him back to a force of 45 inspectors at a mere $1 million savings.

Now Hickel will ask Congress, with or without Budget Bureau approval, to give Interior 21 more inspectors under a supplemental money bill. For the new fiscal year

starting July 1, he'll insist on his original request of 86. Considering the public fury over industrial pollution today, it is unthinkable that Congress won't give them to him, with or without the consent of the Budget Bureau.

But what is more inexplicable than this shortsighted, pennywise policy of the Budget Bureau are the shortsighted pound-foolish policies of some of the offshore oil companies. Chevron, for example, started losing money at the rate of $1 million a day, at a conservative estimate, in cleanup operations and loss of oil production the day the fire started on Platform Charlie.

If the government decides to invoke the maximum penalty for violations and charges the company for the federal revenues lost as a result of the production cutoff of all Bloc 41 wells (a total of 67,000 barrels a day), the total loss to stockholders could easily run into tens of millions of dollars.

That's what Hickel wants to recommend to the Justice Department. If he persists, the offshore oil operators may wake up, as they did not wake up after the Santa Barbara disaster, to the surprising fact that the days of "public be damned" are over.

COMMUNISTS ARE REAL CAUSE OF LAOTIAN MESS

Mr. CURTIS. Mr. President, so many people never take time to praise their own country. There are many people, unfortunately some of them in public life, who never have any words of praise for their own country, the United States of America.

Some of these same people also fail to mention the wrongdoing of the Communists. Wittingly or unwittingly, they leave the impression that the United States is the real culprit in the world and that the Communists are really the good guys.

Mr. President, while I realize that these people constitute a very tiny minority of the American public, they are a noisy minority. They create a great deal of confusion. They mislead people at home and abroad.

Mr. President, the Indianapolis News for Saturday, March 14, contains a story entitled "Communists Are Real Cause of Laotian Mess." It was written by Mr. Lou Hiner, Jr. Mr. Hiner should be commended for his forthright statement and his dedication to truth. I ask the unanimous consent that his article be printed in the RECORD.

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

COMMUNISTS ARE REAL CAUSE OF LAOTIAN MESS

(By Lou Hiner, Jr.)

So much is being distorted about what the U.S. is doing in Laos that the American people again are engulfed in confusion.

Sen. Barry M. Goldwater, R-Ariz., recently discussed the situation on the Senate floor and reminded his fellow senators that the U.S. is not the "real culprit" in the Laotian mess.

The Arizona senator placed the entire "Declaration on the Neutrality of Laos," dated July 23, 1962, in the Congressional Record, and made a few pointed remarks about it.

"Russia is given a responsibility to maintain peace in Laos, both as a signer of the 1963 declaration and as a co-chairman of the 1962 conference," Goldwater said.

"This may come as s surprise to some senators . . . but the Russians, and let us add to them the People's Republic of China and the Democratic Republic of Vietnam, all pledged themselves to respect the neutrality of Laos."

Goldwater then quoted from the Declaration the pledge of the signatory countries that they "will not introduce into the kingdom of Laos foreign troops or military personnel in any form whatsoever, nor will they in any way facilitate or connive at the introduction of any foreign troops or military personnel."

Now, who is causing the trouble in Laos today, and for that matter in South Vietnam and Northwest Thailand, Goldwater asked, and answered, "the Communists, whether they be Russian, North Vietnamese or Red Chinese."

The United States has been trying to live up to its responsibilities outlined in the declaration. This has involved giving the Laotian Army U.S. support on the Plain of Jars, Goldwater said, and commented:

"I have a feeling that this is the least we can do for that country which is allowing us to bombard unmercifully at the Ho Chi Minh trails and the three major passes by which access is gained from North Vietnam and into Laos and then into Cambodia and South Vietnam."

The 1964 Republican presidential candidate suggested that those senators who are criticizing the United States for its actions in Laos should take time to point their fingers at Russia, Red China and North Vietnam and ask, "What are you doing upsetting the neutrality of Laos?"

The Declaration cited by Goldwater spells out the independence of the Laotian people and promises they will make no military alliances or agreements with any other country.

The document also prohibits any foreign troops, regulars or guerrillas, in Laos. To help Laos adhere to this provision, the Declaration says the International Commission for the Supervision and Control of Laos, Canada, India and Poland shall "lend proper assistance."

Thus far, the commission has done nothing to kick out the North Vietnamese and their sordid Russian and Red Chinese advisers.

But the Communists never respect such scraps of paper as the Declaration.

SUPPORT FOR THE VICE PRESIDENT

Mr. DOLE. Mr. President, countless articles and editorials from great metropolitan newspapers are printed in the CONGRESSIONAL RECORD each year. It is well to remember, however, that the small daily or weekly paper is still a powerful and vital force in America. Thousands of these papers are published in every section of the country and serve rural as well as urban and suburban populations.

The quality and vigor of these smaller newspapers' editorial columns match that of any giant's. In many cases they display a clarity of vision and freedom from ingrained pomposity which their "great" counterparts would be well advised to emulate.

The State of Kansas has a great tradition of quality local journalism dating back before the days of Ed Howe and William Allen White.

An editorial published in the Baxter Spring Citizen was written by Clelland Cole, editor of the St. John News. Both these newspapers have a long history of service to their communities, and this editorial exemplifies the continuing high standards of Kansas journalism.

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

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

THIS MAN HAS RUNG THE BELL

(By Clelland Cole, St. John News)

The television networks, some radio commentators, liberal newspaper and magazine reporters, riot sympathizers and others whose toes have been crunched by Spiro Agnew in recent months can go right ahead with their frantic efforts to belittle the man, but they might just as well learn immediately that they are paddling clumsily against the tide.

America has waited for many years for some nationally known person to call a spade a spade and a radical a radical, and Spiro has done that. He has, with the man in the street, the housewife in the home, the taxpayer digging in his pockets and the patriot standing in awe of the flag, said what was in their hearts and he has endeared himself with that vast so-called "silent majority."

Too long have the network experts "opinionated" with clever throat cutting on anybody whom they dislike; too long have they avoided the facts in favor of interpretative diatribes; too long have some huge newspapers and magazines presented information colored in their favorite tints.

Too long have those who hold law in contempt been treated with deference instead of being labeled honestly; too long have enemies within the nation's borders been immune to proper description, using the measure of patriotism. Too long have too many accepted the blessings of freedom while carrying on vicious campaigns to destroy it.

Spiro has laid the truth on the line and he has stood his ground in the face of the inevitable fury of those at whom he pointed the finger of truth. Meanwhile, plain old loyal, patriotic, freedom loving, law abiding Americans love it and say: Hooray for Spiro.

THE GENOCIDE CONVENTION—AN EDITORIAL IN THE ATLANTA CONSTITUTION

Mr. PROXMIRE. Mr. President, I invite the attention of Senators to an interesting and forceful editorial published in the Atlanta Constitution of February 25, 1970. The editorial put this fine newspaper on record as strongly supporting Senate ratification of the United Nations Genocide Convention. In a powerful and succinct style, the editorial summarizes many of the basic points that have been raised by the proponents of the convention.

As the editorial has pointed out so well, genocide is not a crime from which Americans are excepted. The principle behind international law is that it applies equally to all nations, large and small, rich and poor, powerful and weak. The Senate must correct the impression that many may have now that this country feels it is above laws that apply to all other nations. This can be accomplished through the prompt ratification of the Genocide Convention.

I ask unanimous consent that the editorial entitled "The Genocide Convention" be printed in the RECORD.

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

THE GENOCIDE CONVENTION

Genocide is an ugly word defined as "the deliberate and systematic destruction of a racial, political or cultural group."

The word came into common usage after World War II when Nazi extermination of some six million Jews and gypsies staggered the conscience of mankind. In 1948 the U.N. General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. This made mass murder of a people a matter of international concern. The United States signed the convention but has never ratified it, and it has no effect in our country.

Surely Americans are not indifferent to the deliberate mass slaughter of innocents.

Then why haven't we taken a stand with 74 other nations by ratifying the convention?

For a long time it was held that treaties of this sort would supersede our constitution or interfere with sovereignty. But President Nixon, backed up by Secretary of State Rogers and Attorney General Mitchell, says there is no constitutional obstacle and has urged the Senate to approve the Convention.

One influential organization has opposed ratification from the beginning. The American Bar Association, meeting in Atlanta, has once again gone on record as opposed to ratification, though the vote was close—130 to 126. They argue that Americans could be tried in foreign courts, or that our troops in Vietnam might be accused and tried on charges of genocide.

This attitude, we'd guess, is greatly appreciated by those employed in the propaganda bureaus of America's enemies. It seems to suggest that genocide is a terrible crime unless Americans are committing it. One delegate said quite bluntly: "I wouldn't be in this country if it weren't for genocide. It was either the white man or the Indian and the Indian went down the drain." This memorable quotation is probably framed on the office walls in Hanoi and Moscow right now.

Rational Americans know well enough that we intend no genocide in Vietnam or any where. But we're being accused of it. This is unjust, but perhaps it is behind the President's desire to place the nation firmly on record. "I believe we should delay no longer," he told the Senate, "in taking the final convincing step which would reaffirm that the United States remains as strongly opposed to the crime of genocide as ever."

The enormity of the crime, it seems to us, makes the objections look like petty quibbling over technicalities. We support the President wholeheartedly.

GROWING MENACE OF POLLUTION IN NEW YORK CITY

Mr. JAVITS. Mr. President, it was very disheartening to read that deaths from pulmonary emphysema have dramatically increased in New York City over the last 10 years. This is only the latest evidence that air pollution is one of the great dangers to the health of the American people. An article published in the New York Times, of March 12, fully discusses the air pollution, the water pollution, and the noise pollution problems. The noise problem is one which has not received adequate attention and is rapidly becoming also a great threat to the life of the city dweller. I ask unanimous consent that the article be printed in the RECORD.

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

FIVE-HUNDRED-PERCENT RISE IN EMPHYSEMA DEATHS IN LAST DECADE REPORTED FOR CITY

(By John Sibley)

The fastest-growing cause of death among New Yorkers is pulmonary emphysema, a mortality rate that has risen 500 per cent in the last 10 years. During the same period, deaths from chronic bronchitis have increased 200 per cent.

A city medical examiner, talking of the health effects of air pollution, puts it more pungently.

"On the autopsy table it's unmistakable," he remarked the other day. "The person who spent his life in the Adirondacks has nice pink lungs. The city dweller's are black as coal."

But despite such anatomical displays, and despite the overwhelming statistical evidence that air pollution sickens and kills, there is little solid medical proof that specific pollutants cause specific diseases.

This generality holds true not only for air pollution, but for the effects on human health of contaminated water and excess noise.

The Public Health Service reports, for instance, that deaths from lung cancer occur in large metropolitan areas at twice the rural rate, even when allowance is made for differences in smoking habits.

Yet Dr. Ernest Wynder of the Sloan-Kettering Institute for Cancer Research doubts that air pollution plays a major role in the growing incidence of lung cancer. Dr. Wynder notes for one thing that lung cancer is six times as prevalent among men as among women, though both are exposed equally to air pollution.

Some of the most intensive research into the health effects of air pollution has been undertaken by Dr. Stephen H. Ayres, director of the Cardio-Pulmonary Laboratory at St. Vincent's Hospital here. But in an article soon to be published in a professional journal, Dr. Ayres acknowledges:

"Ideally, one would like to identify the body burden of a given pollutant and be in a position to measure the physiologic effects of that particular body burden. With most pollutants, neither the body burden nor the quantitative relationships between burden and health effects is known."

No tidy set of symptoms acts as a signpost for the diagnosing physician, for in fact there is no "air pollution disease" as such. Among the experts, however, there is general agreement that pollution's primary effect on health is to exacerbate a variety of existing diseases.

A FORMIDABLE HAZARD

Yet despite the lack of precise knowledge, experts have no doubt that air pollution is indeed a formidable hazard and that vigorous remedial measures are called for. Dr. Robert Horton, chief of the government's Health Effects Research Program, told the New Yorker in an interview a year ago:

"The British reduced cholera and typhoid in the nineteenth century before they knew bacteria existed, and we may have to regulate our air supply before we have complete knowledge about air pollution.

"The methods we have for detecting excess deaths are so crude that there has to be a pretty big excess for us to realize that it's there at all. What we do know is that people get killed by air pollution, and I don't see any excuse for there being enough air pollution to kill people. Do you?"

Those "excess deaths" occur most often in New York, whose air is the dirtiest in the United States and second only to London's in the world. New York's average level of sulphur dioxide, for instance, is half again as high as that of Chicago, its nearest American competitor.

During the Thanksgiving weekend of 1966, severe smog caused by a temperature inversion resulted in the deaths of 168 more New Yorkers than normally die in the same length of time.

This figure was calculated by Dr. Leonard Greenburg, who was the city's first Commissioner of Air Pollution Control and is now chairman of the Department of Environmental and Preventive Medicine at the Albert Einstein College of Medicine.

Perhaps this country's most widely publicized episode came in 1948, when an inversion over Donora, Pa., a mill town of 14,000 made half the inhabitants sick with a four-day fog filled with sulfur dioxide and other pollutants from chemical and steel plants.

Twenty Donora residents died during the siege. And a study made 10 years later showed that those who had been acutely ill during the episode were having a higher rate of sickness and were dying at an earlier age than other townspeople.

WATER PROBLEM STUDIED

In water pollution, public health officials are concerned with three types of contamination: microbiological, chemical and radioactive. Generally, separate standards of purity are set for drinking water, shellfish waters and bathing beach water.

The standards measure of microbiological contamination is the concentration of coliform bacteria. These are not a health hazard in themselves, but they are relatively easy to count and usually indicate the presence of pathogens, which are disease-causing organisms.

The New York City Health Department will not approve drinking water that contains more than 1 coliform bacillus per 100 milliliters (about 3 ounces). A concentration of 700 is the maximum allowed for shellfish waters, and swimming beaches are closed when the concentration exceeds 2,400.

The city's standard for swimming water is the most lenient in the United States. The standard for shellfish waters is an academic one; all sea water within New York City contains more than the permissible concentration, and shellfish has been prohibited here for years.

The problem with shellfish is that their filtration systems collect contaminants and store them in much greater concentrations than exist in the surrounding water. One study of oysters, for instance, showed them capable of storing radioactivity in concentrations 1,000 times as great as the water's.

The most common health hazard in contaminated shellfish is infectious hepatitis, whose virus is carried in human feces. Huge quantities of untreated sewage are pumped into New York Harbor continually.

Years ago, typhoid fever was a major threat from polluted water, and though the disease is rarely heard of in this country today, Deputy Health Commisioner Frederick S. Kent said the other day: "I still don't rule out typhoid as a hazard."

The Health Department is currently keeping track of about 200 typhoid carriers in the metropolitan area. They are not permitted to work in food industries.

About 25 new typhoid cases are reported here each year. About one-third of the victims contract the disease elsewhere (usually overseas) and another one-third get it from a carrier in the family.

A type of "pollution" that is relatively new to public health officials is excessive noise. In a report earlier this year, Mayor Lindsay's Task Force on Noise Control stated:

"Noise has reached a level intense, contin-

uous and persistent enough to threaten basic community life."

The report added: "More than at any time in the city's past, there seems to be no escape for city residents and workers from daily accoustical assaults on the senses. Vehicular traffic, jet aircraft, subway trains, construction equipment and air conditioners, as major noise sources, degrade the health and well-being of New York residents."

A medical subcommittee of the task force, headed by Dr. Wilbur James Gould, reported that subway motormen and conductors may suffer permanent hearing loss. Other health effects are psychological and not precisely measurable: "annoyance, anxiety, constrained and explosive rage, disrupted sleep, irritability, concentration and energy draining tensions."

At more than 140 decibels, acute pain is experienced. A moving subway train produces 100 decibels, a jet airplane at close range 150.

Mr. Kent has classified environmental pollution into a priority system of four categories: (1) concentrations that cause death, (2) amounts that cause illness or injury, (3) levels that permit "effective living" at work and play and (4) levels that permit "esthetic enjoyment."

"The first two categories obviously can't be tolerated," says Mr. Kent. "They are the responsibility of the Health Department, and so—to a large extent—is the third category. The fourth category is largely a matter of economics, and must be weighed against other city needs that require taxpayers' money."

FEDERAL PUBLIC WORKS PROGRAM REQUIRES COMPLETE OVERHAUL

Mr. PROXMIRE. Mr. President, one of the most inefficient and wasteful programs in the Federal budget is the public works program of the Army Corps of Engineers. In spending over $1 billion per year of taxpayers' money, this program provides enormous subsidies to a limited number of people who in turn use their largess to lobby for an ever-increasing flow of taxpayers' money into corps projects.

We who have followed this program as it erects its enormous structures on the Nation's rivers have come to understand the tactics used by the corps and its supporters to maintain and increase the flow of Federal largess. These tactics include the consistent overestimation of the economic benefits which are claimed for proposed projects, through the tacking on of secondary effects, and the development of other evaluation procedures which are strongly biased upward. They include the use of very low interest rates to evaluate the present worth of the future impacts of these projects, a practice which artificially bloats the benefit-cost ratio. They include the neglect, indeed disdain, of the environmental disbenefits which appear as side effects to the manipulation of natural rivers. They include the understatement of the cost of these projects, both construction and future operation and maintenance costs. They include the establishment and maintenance of a close and congenial hand-in-glove working arrangement with the lobbies and vested interest groups who are subsidized by water resources development.

Although those of us who have long followed the Corps of Engineers have been aware of these tactics, it has been difficult to bring them to the attention of the American people. In the current issue of the Atlantic, Miss Elizabeth B. Drew has performed a major service by bringing out into the open, the nature of the corps program and the inefficiency which characterizes it. Because of the importance and timeliness of this important article, I wish to bring it to the attention of the full Senate.

In her article entitled, "Dam Outrage: The Story of the Army Engineers," Miss Drew analyzes the corps program and puts the spotlight on its inefficiency and on the adverse environmental side effects which it creates. She states that the Corps of Engineers "is a prime example of a bureaucracy that is outliving its rationale, and that is what is getting it into trouble. As the corps impelled by bureaucracic momentum and political accommodation has gone about its damning and dredging and 'straightening' of rivers and streams, it has brought down upon itself the wrath of more and more people disturbed about the effects on the environment."

As Miss Drew so closely points out, in this period in which budgets are limited and in which national priorities are shifting radically, it is essential that we ferret out and expose the wasteful, outdated, and ineffective programs in the budget and either modify them so that they serve the public interest or abandon them. She states:

In a period of great needs and limited resources, a high proportion of public works program amounts to inefficient expenditures and long-range commitments of money on behalf of those who make the most noise and pull the most strings. Despite all the talk amout "reordering priorities," the Nixon administration's budget for the next year increases the money for the Corps at a time when a number of our domestic arrangements are coming under reexamination, this one is a prime candidate for reform.

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

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

DAM OUTRAGE: THE STORY OF THE ARMY ENGINEERS

(By Elizabeth B. Drew)

As times change so do the nation's needs and priorities. But the Army Corps of Engineers just keeps rolling along as it has for decades, working one of the most powerful lobbies in Washington, winning more than $1 billion a year from the Congress to straighten rivers, build dams, and dig canals that frequently serve only narrow interests and too often inflict the wrong kinds of change on the environment. Here the *Atlantic's* Washington editor tells how the Engineers do it, and suggests that a changing public opinion may at last force a change in their habits.

The St. Croix River, one of the few remaining wild rivers in the nation, forms a stretch of the border between Wisconsin and Minnesota before it runs into the Mississippi below Minneapolis. Not long ago, Senator Gaylord Nelson of Wisconsin discovered that the Army Corps of Engineers was considering the construction of a hundred-foot-high dam on the St. Croix. At the same time, Nelson and Senator Walter Mondale of Minnesota were trying to win legislation that would preserve the river in its natural state. Nelson took the unusual step of going before a congressional committee to oppose a Corps project in his own state. "The Corps of Engineers," he said, "is like that marvelous little creature, the beaver, whose instinct tells him every fall to build a dam wherever he finds a trickle of water. But at least he has a purpose—to store up some food underwater and create a livable habitat for the long winter. Like the Corps, this little animal frequently builds dams he doesn't need, but at least he doesn't ask the taxpayer to foot the bill."

Few politicians publicly criticize the Corps, because almost all of them want something from it at some point—a dam, a harbor, a flood-control project. A combination of Corps diplomacy and congressional mutuality keeps most of the politicians content, and quiet. The overwhemling majority of Corps projects are attractive federal bonuses, given free of charge to communities—some local contributions may be involved in small flood-control or municipal-water-supply projects—and therefore they are highly prized. "They take care of all of the states," said one Senate aide. "If there's water in a faucet in one of them, they'll go in there and build a dam."

There is no question that the civil works program of the Army Corps of Engineers, viewed over its long history, has benefited the country. It has made waterways navigable and provided hydroelectric power and flood control. Communities to which it has brought help have been genuinely grateful. Now, however, it is a prime example of a bureaucracy that is outliving its rationale, and that is what is getting it into trouble. As the Corps, impelled by bureaucratic momentum and political accommodation, has gone about its damming and dredging and "straightening" of rivers and streams, it has brought down upon itself the wrath of more and more people disturbed about the effects on the environment. A secret poll taken by the White House last year showed environmental concerns to be second only to Vietnam in the public mind. This rather sudden general awareness of the science of ecology—the interrelationships between organisms and their environment—has brought projects which disturb the environment and the ecology, as Corps projects do, under unprecedented attack. The Corps' philosophy, on the other hand, was recently expressed in a speech by its chief, Lieutenant General F. J. Clarke. "With our country growing the way it is," he said, "we cannot simply sit back and let nature take its course."

Criticism of the Corps and what its programs are all about is not based solely on environmental issues. The broader question, given the claims on our national resources, is whether it makes sense to continue to wink at traditional public works programs, and the self-serving politics which sustain them. The nation is now committed, for example, to making Tulsa, Oklahoma, and Fort Worth, Texas, into seaports, although each is about 400 miles from the sea, at costs of at least $1.2 billion and $1 billion respectively. There are other questions that might be raised at this point, such as whether subsidizing the barge industry should be a national priority; or whether we want to continue to dredge and fill estuaries and build flood-control projects for the benefit of real estate developers and wealthy farmers. The Army Corps of Engineers and its work have been a very important force in American life, with a few questions asked. Yet it is not fair simply to castigate the Corps, for the politicians have made the decisions and the public has gone along. General Clarke has made a point when he said that the Corps is being put "in the unhappy and, I can't help feeling, rather unfair position of being blamed for presenting a bill by people who have forgotten that they ate the dinner."

The Corps is part of a growing hodgepodge of federal bureaucracies and programs that work at cross-purposes. The Department of Agriculture drains wetlands while the Department of Interior tries to preserve them. The Corps dams wild rivers while the Department of Interior tries to save them. The Corps and the Bureau of Reclamation in Interior provide farmlands for crops which farmers are paid not to produce. The government spent $77 million to build the Glen Elder Dam in Kansas, a Bureau of Reclamation project which provided land to produce feed grains, for which the government pays out hundreds of millions of dollars a year to retire. The Tennessee Valley Authority is also still building dams, and it does strip-mining.

But of these water programs, the Corps' is by far the largest. Each year Congress gives it more than a billion dollars, and each year's budget represents commitments to large spending in the future. In a deliberate effort to spread the money around, new projects are begun and ones already under way are permitted to take longer to complete, in the end driving up the costs of all of them.

The annual Public Works appropriations bill provides money for, among others, the Panama Canal, the Water Pollution Control Administration and the Bureau of Reclamation in the Interior Department, and various public power administrations, as well as the Corps of Engineers. This year it came to $2.5 billion, of which the Corps received $1.1 billion. The Corps is now at work on 275 projects. The total future cost of these will be $13.5 billion, not accounting for the customary price increases. Another 452 projects have been authorized by Congress, but have not yet been started. The Corps says that the total cost of these would be another $10 billion, clearly an underestimation of some magnitude. For every project to which the country is already committed, the Corps, the politicians, and the local interests who stand to gain have many, many more in mind.

DESTINY

The Corps' official history traces its beginnings to a colonel who dug trenches "in the darkness of the morning" during the Battle of Bunker Hill, and the subsequent orders of President Washington to establish a corps of military engineers and a school to train them. In 1802, the Corps was established, and West Point was designated to provide its members. The history of the Corps is interwoven with that of the country and its frontier ethic. It is a very proud agency. "They led the way," its history says, "in exploring the great West. They were the pathfinders sent out by a determined government at Washington. They guided, surveyed, mapped, and fought Indians and nature across the continent. . . . They made surveys for work on the early canals and railroads. They extended the National Road from Cumberland to the Ohio and beyond. They made the Ohio, Missouri, and Mississippi safe for navigation in the Middle West. They opened up harbors for steamships on the Great Lakes." After the war with Mexico, in which "the part played by the Army Engineer officers was impressive . . . the last segment of the great Western Empire was soon annexed. These things were all accomplished by the application of America's greatest power. That is the power of Engineering Character, Engineering Leadership, and Engineering Knowledge. All employed to fulfill our destiny." Following the Civil War, the civil works program of the Corps "was revived to benefit all sections of the reunited nation," and that is how the Corps has been fulfilling our destiny ever since. In 1936 the Corps was given major responsibility for flood control (until then largely a local function).

The major activities of the Corps are the damming, widening, straightening, and deepening of rivers for barge navigation, building harbors for shipping, and construction of dams and levees and reservoirs for flood control. It also works on disaster relief and tries to prevent beach erosion. A project can serve several purposes: building waterways, providing flood control, hydroelectric power, or water supply. As the Corps completed the most clearly needed projects in these categories, it found new purposes, or rationales, for its dams. The newer justifications are recreation and pollution treatment.

Pollution treatment (the government calls it "low-flow augmentation") is provided by releasing water from a dam to wash the wastes downstream. But there are now more effective and less expensive ways of dealing with pollution.

Recreation is provided in the form of still-water lakes behind the dam, for speedboating, swimming, and fishing. But the fish that were previously there often do not continue to breed in the stilled water. And the recreation, not to mention the scenery, of the natural river that used to be there, is gone. A flood-control channel is usually surrounded by cement banks, and the trees are cut down when a levee is built. When the water in a reservoir is let out during the dry months, or for "low-flow augmentation," the "recreation" area can become a mud flat.

These problems arise because the Corps of Engineers' mission has been narrowly defined. Other ways of dealing with transportation, power, and pollution are not in the Corps' jurisdiction, so the Corps is left to justifying what it is permitted to do. What hydroelectric power is left to be developed will make a very small contribution to the nation's power needs. The Corps builds its projects on sound engineering principals. If a highway cuts through a park or a city, or a dam floods more land than it protects, those are the breaks. A "straight" river is an engineer's idea of what a river ought to be. A talk with a Corps man will bring out a phrase like, "When we built the Ohio River . . ."

The Corps argues that having military men conduct civil works "is an advantage of outstanding importance to national defense." Actually, the military men in the civil works section of the Army Corps of Engineers represent only a thin superstructure over a large civilian bureaucracy. Most of the 1100-man uniformed Corps work solely on military construction. The civil works section of the Corps, in contrast, comprises about 200 military men, and under their direction, 32,000 civilians.

Generally, the career military engineers come from the top of their class at West Point, or from engineering schools. Once they join the Corps, they rotate between military and civil work, usually serving in the civil works division for three-year tours, the civil work is sought after, because it offers unusual responsibility and independence in the military system, and the experience is necessary for reaching the high ranks of the Corps. Through the civil work, a Corps officer can gain a sharpening of political acumen that is necessary for getting to the top. And there is the tradition: "The Corps built the Panama Canal," one officer said, "and every Corps man knows that Robert E. Lee worked on flood control on the Mississippi." It is a secure life, and when he retires, a military corps officer can get a good job with a large engineering firm or become a director of a port authority.

The civilian bureaucracy is something else. The Corps, like other government agencies, does not attract the brightest civilian engineering graduates, for it does not offer either the most lucrative or the most interesting engineering careers. The Corps work is largely what is known in the trade as "cookbook engineering." A ready-made formula is on hand for each problem. The Corps' bureaucracy draws heavily from the South, where the engineers who built the first dams and controlled the floods are still heroes.

The military patina gives the Corps its professional aura, its local popularity, its political success, and its independence. The military engineers are, as a group, polite, calm, and efficient, and their uniforms impress the politicians and the local citizens. The engineer who heads one of the Corps' forty district offices, usually a colonel, is a big man in his area; the newspapers herald his coming, and he is a star speaker at the Chamber of Commerce and Rotary lunches. But the military man gets transferred, so smart money also befriends the civilian officials in the district office. These men stay in the area, and want to see it progress. The Tulsa office of the Corps, for example, has about 1500 employees, of whom only three are military. The local offices are highly autonomous, for the Corps operates by the military principles that you never give a man an order he can't carry out, and that you trust your field commanders. If a district engineer believes strongly in a project, it is likely to get Corps endorsement. The Corps has mastered the art of convincing people that its projects are desirable, and so the projects are not examined very closely. Corps engineers are impressive in their command of details that non-engineers cannot understand, assiduous in publishing books that show what the Corps has done for each state, and punctilious about seeing that all the right politicians are invited to each dedication of a dam.

And so the Army Corps of Engineers has become one of the most independent bureaucracies in the federal government. The Corps' civil works section is neither of great interest to the Pentagon nor answerable to more relevant civilian bureaucarcies. It makes its own living arrangements with the Congress, and deals not with the Armed Services Committees of the House and Senate, but with the Public Works Committees. Theoretically, the Corps reports to the appointed civilian chiefs of the Department of the Army, but these men are usually preoccupied with more urgent matters than Corps projects, and after a spell of trying to figure out what the Corps is doing, or even to control it, the civilians usually give up. "It was," said one man who tried not long ago, "like trying to round up the Viet Cong for an appearance on the *Lawrence Welk Show.*"

I THINK I UNDERSTAND

The power of the Corps stems from its relationships with Congress. It is the pet of the men from the areas it has helped the most, who also usually happen to be among the most senior and powerful members, and the ones on the committees which give the Corps its authority and its money. Thus, when the late Senator Robert Kerr of Oklahoma was a key member of the Senate Public Works Committee as well as the Senate Finance Committee, he devoted his considerable swashbuckling talents to winning final approval of a plan to build a navigation system stretching 450 miles from the Mississippi, up the Arkansas River, to Catoosa, Oklahoma, giving nearby Tulsa an outlet to the sea. The $1.2 billion project is said to be the largest since the Tennessee Valley Authority was built. The entire Oklahoma and Arkansas delegations, quarterbacked by a member of Kerr's staff, carried it through. The story goes that President Kennedy, having been advised to oppose the Arkansas River project, met with Kerr to seek his help on a tax bill. Kerr, not a very subtle man, told the President "I hope you understand how difficult I will find it to move the tax bill with the people of Oklahoma needing this river transportation." "You know, Bob," the President is said to have replied, "I think I understand the Arkansas River project for the first time." After Kerr's death, Senator John McClellan

inherited the mantle of chief protector of the project, which reached the Arkansas-Oklahoma border last December, an event that was marked by a grand dedication.

The legislation that authorizes and appropriates the money for Corps projects encourages manipulation and swapping because of the unusual way in which it parcels out the money on a project-by-project basis. It is as if a housing bill had designated X dollars for a development here and Y dollars for a development there.

A very formal document—known around Capitol Hill as "eighteen steps to glory"—explains the procedures by which a project is initiated. In actuality, what happens is that local interests who stands to gain from a Corps project—barge companies, industrialists, contractors, real estate speculators—get together, often through the Chamber of Commerce, with the district engineer and ask for a project. The Corps literature is quite explicit about this: "When local interests feel that a need exists for any type of flood control, navigation, or other improvement, it will be most profitable for them to consult at the outset with the District Engineer. He will provide full information as to what might be done to solve their particular problem, the authorities under which it might be accomplished, and the procedures necessary to initiate the action desired." Then the local groups ask their congressman, who is responsive to this particular segment of his constituency, to secure legislation authorizing the Corps to make a study of the project. Usually the Corps man is already aboard, but if not, he is not very far behind. "Sometimes," said a congressman who, like most of his colleagues, declined to be named when talking about the Corps, "the Chamber of Commerce will call me, and I'll say get in touch with Colonel So-and-so in the district office and he's over there like a shot; or the Corps will make an area survey and go to the community and drop hints that they might have a dam if they work on it." Frequently the project's promoters will form a group—the Mississippi Valley Association, the Tennessee-Tombigbee Association, the Arkansas Basin Development Association, and so on. The Florida Waterways Association, for example, boosters of the controversial Cross-Florida Barge Canal, has among its directors a realtor, representatives of a consulting engineering company, a dredging company, chambers of commerce, port authorities, newspapers, and a construction company. The associations meet and entertain and lobby. The Lower Mississippi Valley Association is noted for its days-long barge parties. Some twenty- to thirty-odd people from an association descend on Washington from time to time, to testify and to see the right people in Congress and the Executive Branch.

The power to authorize the study of a project, then to initiate it, and to appropriate the money for it is held by the Senate and House Public Works Committees, and by the Public Works Subcommittees of the Appropriations Committees of the two bodies. This is a total of seventy-one men; as is usual with congressional committees, a very few of the most senior men wield the key influence. It all comes down to a chess game played by the same players over the years—the committees, their staffs, and the Corps. There are always demands for more projects than can be studied, authorized, or financed, and so the Corps and the politicians are always in a position to do each other favors. One study can be moved ahead of another by the Corps if a man votes correctly. One project can get priority in the authorizing or appropriating stages. "Everyone is in everyone else's thrall," said a man who has been involved in the process, "unless he never wants a project."

The Corps has managed to arbitrate the demands for more projects than its budget can include through its highly developed sense of the relative political strengths within the Congress, and by making sure that each region of the country gets a little something each time. "We try to satisfy 10 percent of the needs of each region," said a Corps official. From time to time, the Corps has been pressed by the Budget Bureau to recommend instead the most feasible projects in the nation as a whole, but the Corps has resisted the impolitic approach. The Secretary of the Army rarely changes the Corps' proposals. The Budget Bureau does examine the Corps' proposals on a project-by-project basis, but it runs a poor third to the Corps and Capitol Hill in deciding what the Corps program should be. The President, who is but a passerby, cannot establish control over the public works process unless he decides to make the kind of major political fight that Presidents usually do not think is worth it. On occasion, the White House will oppose a particularly outrageous project—or, out of political exigency, support one. Outsiders are unable to penetrate the continuing feedback between the Corps and the congressional committees, and are insufficiently informed to examine the rationale, the nature, and the alternatives of each project.

There may have been a Corps of Engineers project that was rejected on the floor of Congress, but no one can recall it. Every two years—in election years—a rivers and harbors and flood-control authorization bill is passed by Congress, and every year, money is appropriated. It has been calculated that, on the average, the authorization bills have provided something for 113 congressional districts (or more than one-fourth of the House of Representatives) at a time, and the appropriations bills for 91 districts. "We used to say," said a man involved in the process, "that we could put our mortgage in that bill and no one would notice, and then the appropriations committees would cut it by 15 percent." The most recent appropriation carried something for 48 states. On occasion, a senator, Paul Douglas of Illinois for one, or William Proxmire of Wisconsin for another, has spoken out against a particular Corps project, or the "pork-barrel" technique of legislating Corps projects, but they have not been taken seriously. "One hundred fifty-five million dollars has been spent as a starter," Proxmire once argued on the Senate floor in futile opposition to the Cross-Florida Barge Canal, "that is what it is, a starter—to make many more jobs, to make a great deal of money, and a great deal of profit. That is the essence of pork. That is why senators and congressmen fight for it and win re-election on it. Of course people who will benefit from these tens of millions of pork profit and jobs are in favor of it. That is perfectly natural and understandable. It will snow in Washington in July when a member of Congress arises and says spare my district the pork. What a day that will be."

Douglas fought rivers and harbors projects for years and then, in 1956, made a speech saying that he was giving up. "I think it is almost hopeless," he said, "for any senator to try to do what I tried to do when I first came to this body, namely, to consider these projects one by one. The bill is built up out of a whole system of mutual accommodations, in which the favors are widely distributed, with the implicit promise that no one will kick over the applecart; that if senators do not object to the bill as a whole, they will 'get theirs.' It is a process, if I may use an inelegant expression, of mutual back scratching and mutual logrolling. Any member who tries to buck the system is confronted with an impossible amount of work in trying to ascertain the relative merits of a given project."

GROWING BANANAS

The difficulty in understanding what a given Corps project will do, and what its merits are, comes not from a lack of material supplied by the Corps, but from an overabundance of it. A Corps report on a proposed project—the result of a survey that may take three to five years—is a shelf-long collection of volumes of technical material. Opponents of the project are on the defensive and unequipped to respond in kind.

Most of the projects that Congress asks the Corps to survey are, of course, turned down, because a congressman will pass along a request for a survey of almost anything. By the time a project moves through the Corps' bureaucracy to the Board of Engineers for Rivers and Harbors in Washington—what the Corps calls an "independent review group"—it has a promising future. The Board is made up of the Corps' various division engineers, who present their own projects and have learned to trust each other's judgment.

The supposedly objective standard for deciding whether a project is worthy of approval is the "benefit-to-cost" ratio. The potential benefits of a project are measured against the estimated costs, and the resulting ratio must be at least one-to-one—that is, one dollar of benefit for each dollar spent (the Corps prefers the term "invested")—to qualify. There is, however, considerable flexibility in the process, and at times the benefit-cost ratios of controversial projects are recomputed until they come out right. This was true of the Trinity River project to make Fort Worth a seaport, the Cross-Florida Barge Canal, and projects along the Potomac River. "There is enough room in the benefit-cost ratio," said a man who has worked with the Corps on Capitol Hill, "for the Corps to be responsive to strong members of Congress who really want a project." It has been remarked that the measurements are pliant enough to prove the feasibility of growing bananas on Pikes Peak.

There is much argument over the Corps' method of arriving at prospective benefits. For example, business that might be drawn by a project is considered among the benefits, even though there is no real way of knowing what business the project will attract and what the effects will be. The lower prices to a shipper of sending his goods by barge rather than by rail is also considered a national benefit; such a benefit may involve the fact that a wheat farmer is growing and shipping more wheat because of the lower prices, even though we do not need the wheat. The windfalls to real estate investors who have been lucky or clever enough to have bought inexpensive land—some of it underwater—in the path of a future project can turn up as a boon to us all in the form of "enhanced land values." The land, which can then be sold and developed for industrial, housing, or resort development, undergoes extraordinary value increases.

There are serious questions about how to estimate future benefits of flood control; the 1955 Hoover Commission report said that they are often "considerably overstated." In any event, in the three decades since the Flood Control Act was passed, annual losses due to floods have increased (in real prices). The apparent explanation is that the construction of flood-control dams, which cannot be built to guarantee protection against all manner of floods, do nevertheless encourage developers to build expensive properties on lands that will still be hit by floods. The protection of buildings which a flood-control dam attracts is counted as a national benefit, even though the buildings might have been built in a safer place, and there are less expensive ways to protect them. Antipollution treatment and hydroelectric power are counted as benefits even though there are cheaper ways of cleaning water and providing power. The benefits and costs are

not compared with the benefits and costs of doing these things any other way. Promised benefits appear higher than they will turn out to be because of an unrealistic way of projecting the decline of the value of the dollar. Projected recreation benefits, which have accounted for an increasing proportion of the benefit to the nation from building these projects, are based on an assumption of how much people would be willing to pay for recreation privileges, even though they don't. The Corps lobbies to keep its parks free, in contrast to other national parks. The life of a project used to be estimated at 50 years in adding up the benefits; as fewer projects qualified, the Corps has simply shifted to a basis of 100 years. The cost of the loss of a wilderness, or a quiet river valley, is not deducted, there being no market value for that.

Since more projects are authorized than are given money to be begun, hundreds of them lie around for years, forgotten by all but the sponsors, or the sponsors' sons, and the Corps. If a project becomes too controversial, its backers can simply outwait the opponents. When old projects, sometimes thirty years old, are dusted off, they may be started without reconsideration of either the original purposes or the benefits and costs.

Once a project is begun, its costs almost invariably outrun the estimates. Project proponents, on the other hand, argue that the benefits are consistently underestimated. The Corps is very sensitive about cost "overruns." They say that one must keep inflation in mind, and that such projects get changed and enlarged as they go along. Such changes, undermining the original benefit-cost rationale, do not seem to trouble the Congress. The Trinity River project, estimated at $790 million when it was authorized in 1962, is now expected to cost a little over $1 billion, and construction has not yet begun. The increases are not limited to the controversial projects. A look at project costs in a 1967 Corps report, the most recent one available, shows "overruns" of over 300 percent.

THE WILDEST SCHEME

Last year, despite a tight budget policy against "new starts," money to begin the Trinity River project was included in Lyndon Johnson's final budget, and was approved by the Congress. During most of his White House years, Mr. Johnson was sensitive about bestowing federal rewards upon Texas, which had benefited so handsomely from his congressional career. Nonetheless, in the end, he overcame his scruples. The fact that he did can be credited to the persistence, and the excellent connections, of the Texas lobbyists for the project.

The major purpose of the Trinity project is to build a navigable channel from the Fort Worth-Dallas area 370 miles to the Gulf of Mexico. Like many other projects, this one has been boosted for a long, long time. It is said that Will Rogers was brought down to Texas once to make a speech in behalf of the Trinity, which is barely wet during some of the year. "I think you're right," Rogers told the Trinity Improvement Association, "I think you ought to go ahead and pave it." There have been a number of restudies of the feasibility of the Trinity project. At first it was justified on the basis of the shipping of wheat. The current justification assures a great deal of shipping of gravel, although there is some question as to the need to ship gravel from one end of Texas to the other. "It's the wildest scheme I ever saw," said a Texas politician who dared not be quoted. "They have to dig every foot of it. Then they have to put expensive locks in. You could put five railroads in for that price. I'm not carrying any brief for the railroads. You could put in a railroad and make the government pay for every inch of it and call it the United States Short Line and save a hell of a lot of money."

The Trinity River will feed barge traffic into another Texas-based waterways scheme, the Gulf Intracoastal Canal, which, when completed, will run from Brownsville, Texas, on the Mexican border, to the west coast of Florida. From there it will link up with the Cross-Florida Barge Canal, and then another channel all the way to Trenton, New Jersey. This has given the whole network a great deal of backing, which comes together in Washington through the efforts of Dale Miller, a long-time representative of a number of Texas interests. Miller, a white-haired, soft-spoken Texan came to town in 1941 with his ambitious, ebullient wife, Scooter, and took up his father's work in promoting projects for Texas. Miller represents the Gulf Intracoastal Canal Association, the Port of Corpus Christi, the Texas Gulf Sulphur Company, and the Chamber of Commerce of Dallas, for which the Trinity project is "the number-one program." He is also the vice president of the Trinity Improvement Association. ("So I have a direct interest in the Trinity at both ends.")

From the time they arrived in Washington, Dale and Scooter Miller played bridge almost every weekend with the young Corps lieutenants who lived at Fort Belvoir, just outside Washington, and now they are "good friends" with the important members of the Corps. "We move in military social circles," says Miller. "We have them to our parties, and they have us to theirs." The Millers also moved in Washington's political circles, and were close friends of Lyndon and Lady Bird Johnson, and other powerful Washingtonians. Miller was the chairman of Johnson's inauguration in 1965. But he and his wife had the good sense to maintain bipartisan contacts. Last year they gave a large party that was described in the social pages as "50–50 Democrats and Republicans." Miller says that the coming of a Republican Administration has not hindered his work: "I just put on a more conservative tie, and I'm still in business." He works out of a suite in the Mayflower Hotel, its rooms filled with photographs of Johnson and Sam Rayburn, a harp, and a painting of the Dale Miller Bridge over the Intracoastal Canal in Corpus Christi. "It gives me an opportunity for that wonderful line," says Miller, "'I'm not too big for my bridges.'"

COST INCREASES ON CORPS PROJECTS

Name of project	Cost estimate at time project was authorized	Amount spent through fiscal year 1966	Percentage overrun
Whitney (Texas)	$8,350,000	$41,000,000	391
John H. Kerr (North Carolina and Virginia).	30,900,000	87,733,000	185
Blakely Mountain (Arkansas).	11,080,000	31,500,000	184
Oahe Reservoir (North and South Dakota).	72,800,000	334,000,000	359
Jim Woodruff (Florida).	24,139,000	46,400,000	92
Chief Joseph (Washington).	104,050,000	144,734,000	39
Fort Peck (Montana)	86,000,000	156,859,000	82
Clark Hill (Georgia and South Carolina).	28,000,000	79,695,000	185
Bull Shoals (Arkansas).	40,000,000	88,824,000	122

Miller is also president and chairman of the board of the National Rivers and Harbors Congress, an unusual lobbying organization made up of politicians and private interests who support federal water projects. The chairman emeritus of the Rivers and Harbors Congress is Senator John McClellan. Among its directors are Senators Allen Ellender of Louisiana (chairman of the Public Works Appropriations Subcommittee) and Ralph Yarborough of Texas, and Congressmen Hale Boggs of Louisiana and Robert Sikes of Florida. Other officers of the group represent industries which use water transportation for their bulk cargo—such as Ashland Oil, farmers, and the coal business—and the Detroit Harbor and dredging companies. The resident executive director in Washington is George Gettinger, an elderly Indianan who has been in and out of a number of businesses and was a founder of the Wabash Valley Association, and "learned from my cash register" the value of federal water projects. "Your directors of your churches have businesses," says Gettinger, "your trustees of your universities have businesses. Sure our people make a living in water resources, just like other people. So help me, it's time we sat down and started looking at the benefits that have derived from this program. It's one of the bright spots in solving the population problem. It has settled people along rivers so they don't have to live in the inner city. The ghettos in this country are something it's not good to live with."

In its pursuit of a solution to the urban crisis, the Rivers and Harbors Congress meets every year in Washington, at the Mayflower Hotel. Its members discuss their mutual interests and then fan out about town to talk to politicians and government officials. There is a projects committee which chooses priorities among the various proposed projects. "It asks the federal agencies about the projects," explains Gettinger. "Until the Rivers and Harbors Congress there was no kind of national clearance. Their endorsement has meant so much because it comes from a group that serves without pay." The project committee holds hearings at each convention, and then it adjourns to Dale Miller's suite to decide the public works priorities. As it turns out, the projects that are mainly for navigation receive the most support. "We have no axes to grind," says Miller. "We're just in favor of development of water resources."

The nationwide coalition of interested groups keeps the momentum behind the public works program, and gives the barge industry, probably the program's largest single beneficiary, and an important national industry some seventy-five years ago, the strength to continue to win its federal largess. Besides working with the Rivers and Harbors Congress, the barge companies have their own trade associations, which have warded off tolls for the use of the federally constructed waterways.

The only major group that opposes most Corps projects is the railroad industry, which inevitably resists federally subsidized competition. On occasion, it succeeds. It is generally believed, for example, that the railroads, working through the Pennsylvania state government, blocked "Kirwan's ditch," a controversial project named after Mike Kirwan of Ohio, the chairman of the House Public Works Appropriations Subcommittee. At a cost of almost $1 billion, "Kirwan's ditch" was to link Lake Erie and the Ohio River.

The railroads also opposed the Trinity River project, but they did not succeed. Trinity had too much going for it: Jim Wright, a congressman from Fort Worth and a friend of President Johnson's, is a senior member of the House Public Works Committee. Dale Miller, with valuable assistance from Marvin Watson when Watson was the President's appointments secretary and later when he was the Postmaster General, was able to help the representatives of the Trinity Improvement Association get a sympathetic hearing from all the important people, including the President. Balky officials were called into Postmaster General Watson's office to be persuaded of the value of the Trinity project.

Watson, as Miller put it, had "great familiarity with water projects in the Southwest." He had worked for the Red River Valley Association, and the Chamber of Commerce of Daingerfield, Texas, and then Lone Star

Steel, which is located just outside Daingerfield. Watson had been a major force in securing, with the help of then Senator Johnson, a Corps water project which left Lone Star Steel with water and several of the surrounding little towns with higher taxes to pay off bonds which they had approved, in the mistaken impression that they too could draw water from the project. (It was later determined that they were too far away, and Watson became a very controversial figure in East Texas.) Watson maintained his efforts on behalf of the Red River Valley projects after he took up official positions in Washington. The Red River navigation project, to build a waterway from Daingerfield, Texas, to the Mississippi River, was authorized in 1968 to go as far as Shreveport.

After many years of success. Dale Miller's projects, like so many others, are now coming under fire because of what they will do to the environment. There is a "missing link" between the Gulf Intracoastal Canal and the Cross-Florida Barge Canal on the long way from Brownsville, Texas, to Trenton, New Jersey. The link has been authorized, but construction is being opposed. A navigation channel from Miami to Trenton already exists. "That doesn't carry a tremendous amount of tonnage," Miller says, "but it carries a tremendous amount of recreational traffic, people in their yachts and everything.

"The problem which all developers—which we are—now face is the growing awareness of environmental problems. I mean ecological change. It's a very difficult area because we don't know too much about it—what effects dredging will have on baby shrimp, or marine life. It cuts both ways. We had developed that whole Gulf part of it before anyone raised the question of the effects. Nature is much more resilient than people think it is. In dredging, you may disturb an estuary where baby shrimp and marine life were, but it didn't mean permanent destruction, just change. They were breeding somewhere else in a year. In this missing link we're going to have to satisfy the ecologists in advance, and it's going to be very difficult. I'm convinced that the developers and the preservationists are not as far apart as people think. I think the difference can be reconciled and then we can move even faster. The problem a lot of us have, paraphrasing the little-old-ladies-in-tennis-shoes approach, is that we're not dealing with the knowledgeable and experienced people in ecology, but the bird watchers and butterfly-net people who don't want anything changed anywhere, and you can't deal with them."

CONTROVERSIAL CORPS OF ENGINEERS PROJECTS

Cross-Florida Barge Canal

The Oklawaha River in northern Florida is—or was—one of the few remaining wild rivers in the nation. A fast-moving clear river, the Oklawaha runs through cypress swamps and wilderness. The river itself holds bass, sunfish, and other fish, and the woods contain deer, bear, and wild turkey; this was the country of *The Yearling*. But it was also in the path of the Cross-Florida Barge Canal, whose dams will turn some 45 miles of the Oklawaha into shallow lakes, and flood 27,000 acres of the surrounding forests.

The Cross-Florida Barge Canal was talked about as a possibility as far back as the early 1800s, at that point as a way of protecting shipping from pirates. The idea was revived in the 1930s as a job-producing program, and then again in the 1940s as a way of defending shipping from enemy submarines. It is now under way. Work on it finally began in 1964 as a navigation and recreation project. A Florida legislator who is taking the unusual posture of opposition to the project says, "The villain in the case of the barge canal is like an octopus. One of the tentacles is the Corps of Engineers and its blundering construction. Another consists of self-serving politicians, and still another is made up of the special interests, such as the phosphate, transportation, and paper industries. And finally, there are the state agencies, which from the start ignored the conservationists' warnings."

The benefit-cost ratio of the project has been a thing of change. From time to time new "benefits" have been added—flood control, "land-enhancement benefits" from the improved real estate around the reservoirs, and recreation. The interest rate charged against benefits is unusually low. Still, the benefits are to be only $1.50 for every $1.00 "invested."

At one time the U.S. Fish and Wildlife Service wrote a report on the project predicting that the dredging and damming and flooding of the area would destroy the game, the fishing, and the land; that the habitats supporting waterfowl, deer, and squirrel would be ruined. The Florida Board of Conservation, however, said that "it is inaccurate to think of the river as being destroyed or despoiled. Instead, a different set of wildlife and esthetic values will emerge. . . . The river in its original form is admittedly a stream of great beauty, but its retention in its original state would become a preservationist ideal involving enjoyment by a comparatively small group of elite purists rather than fuller use and greater enjoyment by a broad segment of the people. The economic benefits that would be foregone by a failure to complete the canal would place an extraordinarily high premium and economic burden on a less elite but overwhelming majority." The Florida Board of Conservation (now with a new title) contains the Division of Waterways Development. The head of the division was the Corps' district engineer for the project at the time it was revived in 1962.

One dam on the Oklawaha has already been completed. Behind it was created a giant, shallow, still pool filled with debris, logs, and weeds. The Corps has been trying to clear the pool; it sprayed the weeds with chemicals, which led to rotting weeds. This is expected to lead to algae and dead fish. The pool caused a new outcry over the project, and conservationists and ecologists from around the country have joined to try to stop it or move it. In a new approach a suit has been filed against the Corps to stop the canal. The grounds are that the Corps committed the people of the United States to expenditures "far in excess of the amounts contemplated" and that it denies "the rights of the people . . . to the full benefit, use and enjoyment of the economic, recreational, educational, social, cultural and historic values of the *Oklawaha Regional Ecosystem*."

The project's defenders suggest that the railroads are behind the uproar. The canal's supporters have been holding meetings and ceremonies and fish fries to drum up enthusiasm for the project. They stress that the canal will provide business growth and add to the national defense.

Everglades National Park

To the south of the canal, the Everglades National Park has been endangered by Corps projects. The park's plant life, fish, alligators, and birds are linked in a complicated state of mutual dependence, all dependent in turn on a steady flow of fresh water from the North. A good part of that water has been diverted by the Corps for the benefit of farmers and developers in South Florida, and during a drought a few years ago, the park did not receive the necessary water from the flood-control project. This led to the death of thousands of birds and fish, and turned grassy areas into cracked, lifeless flatlands. The park has not yet recovered.

Now the Corps proposes to expand the South Florida water project. Yet it refuses to guarantee that in times of water shortages the park would receive the necessary water. It says that it cannot impose such a requirement on the state of Florida. Senator Nelson, who had been leading the fight in Washington to protect the park, charges that "the Corps is playing the game with the industrial development of Florida, and not protecting the other constituency, the Everglades, a park that belongs to the country."

The controversial plan to build a jetport in the Everglades does not involve the Corps. The plan has now been scaled down to one for a temporary training strip, which some predict will still have serious consequences for the park. There are yet other schemes for developing South Florida that would change the flow of the water in the park. Without some national protection, the Everglades could well be doomed.

The Oakley Dam

In Illinois, a dam to supply water to the city of Decatur, population 100,000, has been filling with silt, and so the city's Chamber of Commerce and the Corps dusted off a 1939 plan for a larger dam, the Oakley Dam. The new dam is to provide water, flood control, and recreation, with the water supply being the smallest component of the project. When the benefit-cost ratio came out negative, the Corps added "low-flow augmentation" as a purpose. Decatur real estate developers have formed the Oakley Land Owners Association in anticipation of the real estate profits—they expect the price to go from $300 to $3000 an acre—from the land near the new dam. The opposition to the dam arose when it was realized that the reservoir would flood Allerton Park, a 1500-acre nature area maintained by the University of Illinois.

The Allerton Park opposition was better equipped than opponents in the usual Corps controversy because the university hired an engineering consultant. The engineering report showed that there was an underground supply of water for Decatur, and that advanced waste treatment was more efficient than "low-flow augmentation." But both are alternatives which the Corps, by the definition of its job, does not consider. And both would cost Decatur, as opposed to the federal government, more money.

Other dams

In Indiana, conservationists are fighting a dam on a Wabash River tributary, Big Walnut Creek, which would flood one of the few virgin forests remaining in the Midwest.

In Arkansas, Corps plans to dam the free-flowing Buffalo River raised so much controversy that even the state's senators are proposing that it be preserved as a wild river.

There are disputes over proposals by the Corps to place some dams along the Potomac River, at one time justified on the basis of hydroelectric power, then on pollution treatment, and then on water supply and recreation. The basis of the opposition is that it would destroy a beautiful valley and the natural life that lies within it.

Opponents of the project retained a consulting engineer, who reported that there were more feasible methods of obtaining both a water supply and pollution abatement.

The Corps has plans to place a dam on the last remaining natural stretch of the Columbia River in the Northwest, a breeding ground for salmon, bass, and other fish as well as birds; the main purpose is water navigation.

As the country runs out of choice land near the cities, the solution has been to fill in the adjacent waterways. Besides what such schemes do to the scenery, it is now beginning to be understood what they do to natural life. Estuaries, or those places where rivers meet the sea, provide a special balance of salt and fresh water that is essential to certain fish, such as oysters and shrimp. They also provide food and habitats for waterfowl. The damming of rivers has also damaged estuarine life. Local governments are often willing to have the estuaries

dredged and filled, for this raises the real estate values, and hence the local tax base. One-third of San Francisco Bay, for example, has already been filled in, most of it for airport runways, industrial parks, and areas proposed for residential subdivisions. "It is conceivable," said Congressman Paul McCloskey, who had fought for conservation as a lawyer before coming to Congress in 1967, "that by 1990 the filling of shallow waters of the Bay could reduce it to the status of a river across which our grandchildren will be skipping rocks."

In response to criticism of its easiness with granting land-fill permits, and to a recent federal requirement that the Corps consider the effects on fish and wildlife, the Corps has begun to deny some permits. One such denial, however, was challenged in court, and a district judge in Florida ruled that the Corps did not have discretion to deny a permit on any grounds other than that it would impede navigation. The case is still in the courts. The Corps argues, with some validity, that it should not be making zoning decisions for local governments. "This points up the fact," said McCloskey, "that some new national land-use authority must be created which will have the power to put federal zoning on waterways, historic sites, and land areas of partcular national significance." Such a policy would protect such areas as the Everglades. Congressman Richard Ottinger of New York, also a man interested in conservation before it became fashionable has been pushing legislation to require that the effects on the environment must be taken into account in any federal program which contributes to construction or issues licenses—the Corps, airport and highway programs, and so on.

LUXURIOUS AREAS

The Corps of Engineers public works program has been, among other things, an income-transfer program, and this is a good time to look more closely at who has been transferring what to whom. The federal government has been paying for the Corps program—or rather, all of the taxpayers have. And the Corps program consists in the main of subsidies for irrigation, navigation, and flood control. Some projects have been for the benefit of only one particular industry. Former Senator Douglas has charged, for example, that a project to deepen the Detroit River was for the benefit of the Detroit Edison Company alone, and that a project to deepen the Delaware River from Philadelphia to Trenton was to serve one mill of the United States Steel Corporation, which was quite able to pay for the project itself. An industry or developer builds on a flood plain and then asks the federal government to save it from floods. A wild river is converted for use by an industry; subsequently a federal subsidy is given to clean up the industry's pollution of the river. The barge industry is kept afloat because it is there.

Robert Haveman, an economist and author of *Water Resource Investment and the Public Interest*, has shown that the preponderance of Corps projects has gone to three regions: the South and Southwest, the Far West, and North and South Dakota, but mainly to the South, in particular the lower Mississippi River area. Within an area, the rewards are not evenly spread. The major beneficiaries of the flood-control projects which also provide water for irrigation have been the large landholders—in particular, in the Mississippi Delta and San Joaquin Valley. These are the same landowners who are paid the largest federal farm subsidies for not growing the crops which the federal water projects make it possible for them to grow. The Corps is still preparing to produce more farmland, in the name of flood control, in the Mississippi Delta region.

The Corps, in a publication called "The Army Engineers' Contributions to American Beauty," notes: "In Dallas, the flood-control project for channeling the flood waters of the Trinity River through the center of town (once some of the least desirable real estate in the city) is being made into a long, winding stretch of parkway. In Los Angeles and other Pacific Coast cities built below mountain slopes, the development of attractive and sometimes luxurious residential areas has been made possible by Army Engineer projects which curb flash floods."

AN IDEA

The Corps established an environmental division a few years ago, to advise on the environmental effects of its projects. This summer it is sponsoring a seminar on how it can better "communicate" with the public. Corps officials have been urging greater environmental concerns on the Corps members, and on their clientele, appealing, among other things, to their self-interest. In a recent speech, Major General F. P. Koisch, director of the Corps' Civil Works Division, told the Gulf Intracoastal Canal Association to listen to "the voice of the so-called 'New Conservation.' "

"By and large," he said, "it's advocates oppose the old concepts of expansion and development. Yet they are not merely negative, for they are willing to lavish huge sums on programs which embody their own conceptions of natural resource management. Their theories and concepts are not always consistent nor fully worked out. They are less concerned with means than with ends and goals—their vision of a better America. But they do seem to represent an idea whose time has come. So it grows clearer every day that it is up to us, who like to think of ourselves as scientific, practical men who know how to get things done, to make this new idea our own and make it work. . . . This can open a whole new career for the Gulf Intracoastal Canal Association. . . . This business of ecology," says General Koisch, "we're concerned, but people don't know enough about it to give good advice. You have to stand still and study life cycles and we don't have time. We have to develop before 1980 as much water resource development as has taken place in the whole history of the nation."

"It is a fact," said General Richard H. Groves, his deputy, in a speech, "that our nation is engaged in a struggle to survive its technology and its habits. It is a fact, too, that we are defiling our waters, polluting our air, littering our land, and infecting our soil and ourselves with the wastes which our civilization produces. These are serious problems, but we cannot permit ourselves to yield to an emotional impulse that would make their cure the central purpose of our society. Nor is there any reason why we should feel guilty about the alterations which we have to make in the natural environment as we meet our water-related needs."

In an interview, General Groves said he did not believe that the basic rule of the Corps would change. "Certainly, parts of it will. One part that is obvious is control of pollution, control of the ecology, which is more or less the same. There are very heavy pressures that have developed, and nobody in this business can ignore them. We would hope that in responding to these pressures we don't lose sight of the need to keep everything in perspective. The program keeps growing. The program as you know is tied to people, and the people double every forty years. . . . We build the program," he said—and here is the heart of it all—"on the notion that people want an ever-increasing standard of living, and the standard of living is tied to water programs. If you conserve undeveloped areas, you're not going to be able to do it. If you double the population and they double their standard of living, you have to keep going. It's not as simple as the people who take an extreme view say."

Clearly, no rational settlement of the conflict between "progress" and the environment is going to come from dam-by-dam fights between the Corps and the conservationists. The conservationists have been out there all alone all these years and they have worked hard, but they have lacked a national strategy. In some instances, they have tried to have it all ways: opposing not only hydroelectric projects but also alternatives such as generating power through burning fuels (air pollution) or building a nuclear plant (thermal pollution and radiation hazards). Some conservationists have been interested in "preserving" the wildlife so that they could shoot it. Where engineers have been pitted against engineers as in the case of the Oakley and Potomac dams, the opponents have been more successful. "The only way to resist," says Representative John Saylor of Pennsylvania, a critic of the Corps for years, "is to know a little more about the Corps than the Chambers of Commerce do." The new approach of trying to build a body of law on the basis of the "rights of the people" against public works projects could be of profound importance.

Some water economists have suggested quite seriously a ten-year moratorium on water projects. There is an ample supply of water, they say. Problems arise where industries use it inefficiently because it is provided so cheaply, and pollute much of it. The answer for the pollution, the experts say, is sewage treatment at the point where the pollution originates.

So one solution to the problems the Corps program creates would be simply to stop it. The Corps and the Public Works Committees and the river associations could give themselves a grand testimonial dinner, congratulate themselves on their good works, and go out of business. There are more effective ways of transferring money—for instance, directly—if that is what we want to do; there are others who need the money more. But such suggestions are not, of course, "practical."

For as long as anyone can remember, there have been proposals for removing the public works program from the military, and transferring the Corps' civil functions, or at least the planning functions, to the Interior Department or a new department dealing with natural resources. President Nixon considered similar ideas, but rejected them in preparing his message on the environment. The Corps likes being where it is, and the powerful Forest Service and Soil Conservation Service, which are secure in the Agriculture Department, and the congressional committees whose power derives from the present arrangements, have habitually and successfully resisted up to now. "The two most powerful intragovernmental lobbies in Washington are the Forest Service and the Army Engineers," wrote FDR's Interior Secretary Harold Ickes in his diary in 1937, in the midst of a vain effort to reorganize them and Interior into a new Department of Conservation. Whatever the chances for reform, it has never been clear who would be swallowing whom as a result of such a change. The closed-circuit system by which public works decisions are made should be opened to other interested parties. Certainly a federal program that is more than a century old should be overhauled. The Corps is now at work on some internal improvements, but bureaucracies are not notably rigorous about self-change, and the water interests do not want change.

If there are to be a Corps and a Corps public works program, then proposals to expand the Corps' functions make sense. Making the Corps responsible for sewage treatment, for example, would give it a task that needs to be done, local governments a benefit which they really need and which would be widely shared, and politicians a new form of largesse to hand around. Antipollution could be spared the pork barrel through a

combination of requirements for local action and federal incentives, and through adequate financing. Yet making antipollution part of the pork barrel may be just what it needs. Programs which appeal to greed are notably more politicaly successful than those that do not. The Corps' engineering expertise, in any event, could be put to use for something other than building dams and straightening rivers. It is the judgment of just about every economist who has studied the public works program that there should be cost-sharing and user charges. There have been proposals for making the beneficiaries of flood-control and navigation projects and harbors pay for them, or at least part of them.

In a period of great needs and limited resources, a high proportion of the public works program amounts to inefficient expenditures and long-range commitments of money on behalf of those who make the most noise and pull the most strings. Despite all the talk about "reordering priorities," the Nixon Administration's budget for the next year increases the money for the Corps. Even if the nation should want to double its standard of living (leaving aside for the moment the question of whose standard of living) and even if the public works programs really could help bring that about, it would be good to know more about the nature and price of such a commitment. At a time when a number of our domestic arrangements are coming under re-examination, this one is a prime candidate for reform. Meanwhile, the changes it is making in the nation are irreversible.

DIRECT POPULAR VOTE

Mr. GRIFFIN. Mr. President, in view of the Senate debate on electoral reform expected in the near future, I wish to focus attention on a well-reasoned article supporting the direct election of the President which appears in the current issue of the American Bar Association Journal.

The author, Mr. William T. Gossett, is a distinguished scholar and past president of the American Bar Association, who now practices law in Detroit, Mich.

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

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

DIRECT POPULAR ELECTION OF THE PRESIDENT

(By William T. Gossett)

One of the most vital issues facing our nation is reform of the process by which the President and Vice President of the United States are elected. The House of Representatives has given an overwhelming 339-to-70 approval to a constitutional amendment embodying the recommendations of the American Bar Association's Commission on Electoral College Reform, which were adopted by the Association's House of Delegates in 1967 and which provide for the direct popular election of the President and Vice President.[1]

President Nixon, who favored the direct election reform but considered it politically unachievable, now has said, "It is clear that unless the Senate follows the lead of the House, all opportunity for reform will be lost this year and possibly for years to come." The direct election amendment now is before the Senate, where action is needed to send it to the states for ratification.

The Presidential election of 1968 demonstrated the potential hazards of our present electoral college system and confirmed the conclusion of the Association's commission that the "electoral college method of electing a President of the United States is archaic, undemocratic, complex, ambiguous, indirect, and dangerous".

If there had been a shift of a relatively few popular votes in Ohio and Missouri, or if President Nixon had lost California, or if George G. Wallace had carried three border states, no Presidential candidate would have had a majority of the electoral votes. The electors pledged to Mr. Wallace would have held the balance of power, and he would have been tempted to play the role of President-maker. If he had decided against that role and his electors had voted for him, then the choice of President would have shifted to the House of Representatives under an inequitable one-state, one-vote formula susceptible to political wheeling and dealing and frustration of the popular will. The twenty-six least populated states, representing 16 per cent of the nation's total population, would have had the power to elect the President. It is conceivable that no candidate might have been able to obtain the votes of twenty-six states by inauguration day and that a Vice President selected by the Senate would have had to assume the powers and duties of the President. It is also conceivable that the House and Senate might have selected a split ticket by inauguration day. It is also conceivable that neither house might have been able to make a choice, in which event the Speaker of the House of Representatives would have become the Acting President.

The subject of electoral reform is not new. No sooner was the Constitution adopted than proposals were introduced in Congress to reform the electoral college. The first was introduced in 1797, and since then more than 500 proposals have been offered.[2] The major plans of reform—the district, proportional, automatic and direct-vote plans—have their roots in proposals introduced in Congress during the nineteenth century.

The workings of the electoral college over the past 190 years show that it is something completely different from the institution envisioned by the Framers. Not until the final weeks of the Constitutional Convention was the electoral college adopted. Election by Congress was rejected because it was believed that the President would be subservient to the legislative branch and it opened the door for "intrigue, cabal or faction".[3] A direct vote by the people was criticized on the grounds that the people were too "uninformed" and would be "misled by a few designing men". One delegate said that an election by the people would be like referring a "trial of colours to a blind man".[4] What seemed to move the delegates to accept the electoral system were certain practical considerations, dictated not by political ideals but by the social realities of the time—realities that no longer exist.

The electoral college was envisoned by the Framers as a kind of elite gathering in which the most distinguished and talented persons in the various states would participate. These electors would deliberate and cast an informed and independent vote for President.[5] Because the large states would have considerable influence in the electoral voting, the Framers, in an effort to allay the fears of the small states, provided for the House of Representatives to choose the President, with each state having the same influence, when no candidate received a majority of the electoral votes. The convention debates indicate that many of the Framers were of the view that most elections would be thrown into Congress.

The design of the Framers in creating the electoral college was not fulfilled. Political parties appeared and the electors' role became a purely mechanical one of voting for their party's candidate. As they became partisan functionaries, their names and reputations became far less known to the citizens than those of the candidates. The Constitution having left to the states the right to determine the manner of selecting the electors, in the first elections a number of states gave the right of choice to the members of their legislatures rather than to the people. It was not until late in the nineteenth century that every state had entrusted the right of choice to the people. Today, of course, due to state law, the people choose the electors, who are expected to register the will of their constituents in the electoral college.

DEFECTS OF PRESENT SYSTEM SHOWN BY EXPERIENCE

Experience has shown that the electoral college is riddled with defects that could operate to frustrate the will of the people.

First, the popular will of the majority of the nation can be defeated by mathematical flukes. Under the winner-take-all or unit-vote rule for allocating a state's electoral votes, a candidate could win an electoral victory and yet receive fewer popular votes than his opponent. Success in twelve key states alone will give a candidate an electoral majority, regardless of his margin of victory in those states and regardless of whether he has received any votes in the other thirty-eight states. Three times in our history—1824, 1876 and 1888—the popular vote loser was elected President.[6] In fifteen elections a shift of less than 1 per cent of the national vote cast would have made the popular-vote loser President.

Second, the choice of the President can be thrown into the House of Representatives, where each state has but a single vote. While it has been 144 years since the House of Representatives has had to choose a President, we have had seven narrow escapes since then, including the elections of 1948, 1960 and 1968. A shift of less than 1 percent of the popular vote in a few key states would have thrown those elections into Congress, with the consequent risk of political deals and possibly the election of a President who was rejected by a majority of the voters. This feature of our system is clearly a political monstrosity, fully distorting the most elementary principles of self-government.

Third, Presidential electors can take matters into their own hands and reject the will of the people who chose them. The so-called constitutional independence of electors can take various forms. It can take the form of pledged electors defecting, as in our most recent election, and in 1956 and 1960; of unpledged elector movement, as in 1960; or third-party electors being instructed by their Presidential candidate to vote for one of the major candidates. Under the electoral college system, the decision of the people is meaningless unless it is approved by, in effect, another body of government. Such a barrier between the people and their President is both anachronistic and abhorrent.

The electoral college system violates fundamental democratic principles in other ways:

The winner-take-all feature of the system suppresses at an intermediate stage all minority votes cast in a state. The winner of the most popular votes in a state, regardless of his percentage of the votes cast, receives all of that state's electoral votes.[7] The votes for the losing candidates are in effect discarded, while those for the winner are multiplied in value.

The present system discriminates among voters on the basis of residence. While a small state voter might seem to enjoy an electoral vote advantage because his state receives two electoral votes regardless of size, a large state voter is able to influence more electoral votes, and it is in the large industrial states that Presidential elections are usually won or lost. There is no sound reason why every citizen should not have an equal vote in the election of our one official who serves as the symbol and spokesman for all the people.

Footnotes at end of article.

The electoral college system fails to reflect the actual strength of the voter turnout in each state. Under the system each state casts its assigned electoral votes regardless of voter turnout. Thus, voters in states where the turnout is small are given a premium. It is not uncommon to find a great disparity in the voter turnout in states having the same number of electoral votes.[8]

DIRECT POPULAR ELECTION IS RECOMMENDED

To remedy these evils, the American Bar Association's Commission on Electoral College Reform proposed a system of direct popular election of the President and Vice President, and the House of Delegates of the Association endorsed the commission's recommendations at its Midyear Meeting in February of 1967. Here are the major features of the proposal:

A candidate must obtain at least 40 per cent of the popular vote to be elected Presdent or Vice President. The commission concluded that a majority vote requirement was not desirable because it would frequently happen that no candidate had a majority and therefore a second election would be required to decide the outcome. In this regard, it should be noted that one third of our Presidents received less than a majority of the total popular vote cast.[9] Additionally, the commission feared that a majority-vote requirement might encourage proliferation of the parties, since a small group might have the potential to cause the election to be resolved under the machinery established for a contingent election. In arriving at a 40 per cent plurality, the commission was of the view that it was high enough to furnish a sufficient mandate for the President and low enough so that the first election probably would decide the contest.

The Association recommends that in the event no candidate receives at least 40 per cent of the popular vote, a national runoff election should be held between the top two candidates. The commission believed that a runoff was preferable to an election by Congress because it would avoid the possibility of political wheeling and dealing and assure the election of the popular vote winner. The commission also believed that a national runoff, together with a 40 per cent plurality requirement, would operate to discourage proliferation of the parties. The commission reasoned that it would rarely occur that no major candidate had at least 40 per cent, even with minor party candidates in the field. However, if that happened, the people would choose between the top two.

We recommend that the President and Vice President be elected jointly by a single vote applicable to both offices. The purpose of this recommendation is to eliminate the possibility of a split ticket.

Congress should be empowered to establish the days for the original election and any runoff election, which should be uniform throughout the United States. Under our recommendation, Congress would set the date for the election by statute, as it does at present. This recommendation is similar to what now appears in the Constitution with respect to Congress' establishing the day on which the electors shall vote for President and Vice President.

Under the Association's proposal the places and manner of holding Presidential elections and the inclusion of the names of candidates on the ballot would be prescribed by the state legislatures, subject to a reserve power in Congress to make or alter such regulations. This is similar to provisions now in the Constitution governing elections for representatives and senators. The reason for giving Congress the residual power to legislate on the question of appearances on the ballot is to insure that the people of every state have the right to vote for major party candidates.

We recommend also that the qualifications for voting in a Presidential election be the same as those for voting in a Congressional election. The qualifications for voting for members of Congress being defined by state law and tied in with the qualifications for voting for members of the most numerous branch of the state legislature, the commission concluded that this would make substantially uniform the voting qualifications in both federal and state elections. Under the recommendation, states would be specifically authorized to establish special residence qualifications for voting in Presidential elections. This recommendation is premised on the fact that a majority of the states already have passed laws relaxing the residence requirement and that these laws are desirable in this day of great mobility among our people.[10] The commission also recommended in the area of voting qualifications that Congress be given the reserve power to establish uniform age and residence qualifications.[11]

Finally, we recommend that a constitutional amendment on direct election embody the necessary provisions for remedying gaps caused by the death of a candidate.

ADVANTAGES OF DIRECT ELECTION OVER OTHER PROPOSALS

The advantages of direct popular election over other proposals are numerous. It is the only method that can assure that the candidate with the largest number of popular votes will be elected President. It is the only method that would eliminate once and for all the principal defects of our system: the "winner-take-all" feature and its cancellation of votes, the inequities arising from the formula for allocating electoral votes among the states, the anachronistic and dangerous office of Presidential elector, and the archaic method by which contingent elections are handled. There would no longer be "sure states" or "pivotal states" or "swing voters", because votes would not be cast in accordance with a unit rule and because campaign efforts would be directed at people regardless of residence. Factors such as fraud and accident could not decide the disposition of all a state's votes. Direct election would bring to Presidential elections the principle that is used and has worked well in elections for senators, representatives, governors, state legislators, mayors and thousands of other officials at all levels of government. Under a popular vote system, Presidential elections would operate the way most people think they operate and expect them to operate.

Objections to the proposed reforms have arisen, however. Any suggestion to change old ways of doing things always invites vigorous objections—a healthy enough tendency in matters calling for constitutional amendment.

ANSWERING THE ARGUMENTS AGAINST DIRECT ELECTION

The main arguments raised against direct election may be grouped under three headings: (1) large or small-state advantage, (2) threats to the two-party system, and (3) vote counting procedures.

1. *Will either large or small states lose a present advantage?*

(*a*) *The Small State Advantage Argument*—In the past, too many have dismissed direct election proposals without reaching their merits, claiming that such an amendment could not possibly be ratified by three fourths of the states, because thirty-six of them have added weight in the election of the President by reason of the electoral college system.

Behind this is a deceptively simple mathematical view of relative voter strength in Presidential elections. Based on the 1960 census, Alaska has one elector for each 75,389 persons; at the other extreme, California has only one electoral vote for each 392,930 persons. The easy inference is that an Alaskan has five times the weight of a Californian. By the same method, each Nevadan (one elector per 95,093 persons) has four times the weight of each New Yorker (one elector per 390,286 persons). Thirty-five states and the District of Columbia have a more favorable ratio than the national average of one elector per 333,314 persons.

In a law journal article inserted in the *Congressional Record*, direct election was opposed recently on the theory that it will deprive small states of a present advantage.[12] It was noted that Alabama cast 2 per cent of the nation's electoral votes, while casting less than .9 per cent of the national popular vote; and the writer concluded that New York had only four times the electoral power of Alabama, even though it had ten times as many voters. Similar figures were shown for the twenty-five least populated states, and it was concluded that the American Bar Association's proposal "will not sell" to the less populated states. Reserving for a moment the mathematical issue, let us examine the view that the citizens of small states cannot be sold on the principle of voter equality in Presidential elections.

First, this prophecy is not justified by the positions of their elected leaders. No public official has a higher duty to represent the interests of a state in national politics than does its United States senator. It is noteworthy, therefore, that senators from smaller states are increasingly prominent among those who are sponsoring direct election proposals. They include Senators Gravel of Alaska, Inouye of Hawaii, Magnuson and Jackson of Washington, Hatfield and Packwood of Oregon, Bible of Nevada, Church of Idaho, Mansfield and Metcalf of Montana, Burdick of North Dakota, McGovern of South Dakota, Pearson of Kansas, Bellmon of Oklahoma, Randolph and Byrd of West Virginia, Ribicoff of Connecticut, Pell of Rhode Island, Aiken of Vermont, McIntyre of New Hampshire, and Smith and Muskie of Maine.

But what of the legislatures of these small states? Here, too, we are not left to speculation. In 1966 Senator Burdick of North Dakota polled state legislators on their preferences among the various proposals for electoral college reform.[13] A suprisingly high return, 2,500 of 8,000 polled, showed 58.8 per cent in favor of direct election. It was supported by 50 per cent or more of the legislators replying from forty-four states. Most significantly, there was little variation between large and small states. Among the most heavily populated states, California legislators voted 73.5 per cent for direct election; New York legislators, 70.0 per cent; Pennsylvania, 55.8 per cent; Michigan, 52.4 per cent; and Ohio, 57.1 per cent. In the five smallest states—those with only three electoral votes—Vermont voted 60.9 per cent for direct election; Nevada, 62.5 per cent; Wyoming, 55.5 per cent; Delaware, 53.8 per cent; and Alaska 50.0 per cent.

The House of Delegates of the American Bar Association, a cross-section of American lawyers, approved its commission's recommendations by a three-to-one margin. Direct election has also been endorsed by other organizations representing wide segments and sections of American life, including the AFL–CIO, the United States Chamber of Commerce, the United Auto Workers and the National Federation of Independent Business. Public opinion polls show that 79 to 81 per cent of people throughout the country favor our proposal. Thus, those who accept the principle of popular election of the President should not assume that citizens of small states do not accept it.

The small state advantage argument is diametrically opposed by a plausible theory that it is large states who profit from the present system.

Footnotes at end of article.

(b) *The Large State Advantage Argument*—In a curious cross fire, direct election is also opposed by some champions of large states' interests. They claim that the small state advantage in ratio of electors to population is more than offset by the advantages accruing to large states from the winner-take-all laws. One such observer recently wrote that the features of the present system have bred in modern times the decisive influence in Presidential elections of the large, populous, heterogeneous states, where bloc voting, as by ethnic or racial minorities or other interest groups, often determines the result. Much of the popular vote in the smaller, relatively homogeneous states, is simply wasted. Politicians and political scientists have at any rate long assumed that the Presidency is won or lost in the large states . . . we can now establish mathematically why modern Presidents have been particularly sensitive to urban and minority interests. . . . And only men who can be so responsive are generally nominated and elected.[14]

The mathematical proof referred to is John Banzhaf's analysis of voter power,[15] which calculated by computer the individual voter's chances of affecting the outcomes in both his state and the national totals. This is a functional view of voting power; it is defined simply as "the ability to affect decisions through the process of voting". Mr. Banzhaf found that an individual voter in states such as New York and California has more than two and a half times as much chance to affect the ultimate Presidential outcome as a resident of a smaller state. This results from the fact that the large state voter influences a much larger unit of electoral votes. Each New Yorker now votes for forty-three electors and thus participates in casting fourteen times as many electoral votes as does a Nevadan.

This analysis confirmed what scholars and national politicians had sensed for many years. The historical record was updated recently when Delaware, joined by twelve other states, unsuccessfully sought United States Supreme Court relief to invalidate the state general ticket laws. Delaware alleged:

Sixteen of the two parties' 50 nominations for the Presidency from 1868 through 1964 have gone to New Yorkers. Of the total of 100 nominations for President and Vice-President, citizens of New York have been nominated in 24 instances. Six large states (New York, California, Illinois, Indiana, Massachusetts and Ohio) account for 68 of the total of 100 nominations, while the citizens of 26 states, including Plaintiff, have been totally excluded from the nominations. Plaintiff is one of eight of the original 13 states (Connecticut, Delaware, Georgia, Maryland, North Carolina, Rhode Island, South Carolina and Vermont) which has never elected one of its citizens President in the 45 elections conducted in our 177-year history and these citizens have been totally excluded from nomination for either President or Vice President during the past century. . . . Plaintiff and other small states as virtual bystanders do little more than watch while the large states serve as the field of contest in national elections.[16]

The present system obviously cannot favor both large and small states. But it is impossible to justify any system on the ground of voter inequality. Both arguments are unsound in principle. As a matter of constitutional structure, surely no citizen's influence upon his President should depend upon his geographical location within the United States. Only direct election will achieve this voter equality.

2. *Effects Upon the Two-Party System*—This question of parties occupied much of the commission's attention, and it adopted its position with confidence that direct election carries no risk of producing a multiparty system. Nonetheless, such objections have been raised. They are difficult to answer to the opposition's satisfaction because none of us can prophesy future political events with absolute certainty—including those who predict dire consequences to the two-party system. We can, however, project probabilities upon the basis of relevant experience and expert opinion. This we did in 1967; and recent reappraisals in light of the 1968 election only strengthen our position.

Those who oppose direct election on third-party grounds labor a hard oar after the 1968 election, which demonstrated most dramatically the potential for third-party leverage under our present system. I have mentioned three contingencies which in 1968 could have prevented any candidate from winning a majority of the electoral votes. Direct election would fully cure the defects in our system that the Wallace candidacy sought to exploit. It also would remedy other faults that could magnify third-party efforts. Close analysis proves that direct election will actually strengthen the two-party system—not weaken it—by removing special incentives to third parties and equalizing all voters throughout the nation.

Analytically, there are three distinct types of third-party efforts—local, regional and national. The first two would undoubtedly be weakened by direct election. Local, or intrastate, parties now may sometimes have a pivotal power to tip a state's electoral bloc for or against one of the major candidates. Under direct election the votes of a splinter group would count only for what they are worth in numbers of persons; and votes for major candidates would always count nationally.

Regional or sectional parties may generate a plurality of popular votes in a few states, deliver large blocs of electoral votes and possibly produce a balance-of-power position in the electoral college. Under direct election all votes would be counted as cast, and a third candidate could receive no disappointing leverage from being able to carry a few states.

The final type of third-party effort, the national one, is more difficult to analyze. Some argue that national third-party efforts would be encouraged by direct election merely because all state popular vote totals would be reflected in the national totals, whether or not any states were carried. This question was studied in depth by our commission. We found little evidence that elimination of the electoral college would harm the two-party system and concluded that direct election is more likely to strengthen it.

Among the voluminous materials studied by the commission was a collection entitled "Why Two Parties?" which was furnished us by the commission's adviser, John D. Feerick of the New York Bar. After personally exhausting the literature on the subject, Mr. Feerick selected for study by the entire commission excerpts from the writings of ten political scientists who have given special attention to the causes and functioning of political party systems. We learned that no single factor accounts for the two-party system and that there is considerable disagreement as to its major causes.

Among the causes listed as accounting for our American commitment to the two-party system are: persistence of initial form; election of officials from single-member districts by plurality votes; the normal presence of a central consensus on national goals; cultural homogeneity; political maturity; and a general tendency towards dualism. Some of the experts list the electoral college as a factor that may contribute; others ignore it; and some suggest that it is functionally opposed to two partyism and that our party system may have survived despite the electoral college rather than because of it.

The experts are virtually in agreement on one point, however. It is that election of legislators and executives by plurality votes from single-member districts is the chief cause of two-partyism. This is the one element that all two-party systems have in common. No one proposes to alter our practice of electing members of Congress and state legislators, governors and mayors on this basis. To the extent that these elections undergird our two-party system, that support will continue. Furthermore, our proposal essentially places Persidential elections on the same basis and thus perfects and extends that feature which best serves the two-party system.

This has been apparent to the great majority of political scientists who have analyzed the American Bar Association recommendations. We concur in the following conclusions of Hugh LeBlanc of George Washington University:

The present system does discourage the rise of minor parties, but not because of its electoral college features. It is because the President runs for all intents and purposes in a single-member, national constituency in which minor party candidates have little hopes of winning.

The assertion that a national plebiscite would contribute to the development of minor parties . . . will not withstand analysis. Parties are most likely to offer candidates when they have some hope of electoral victory. Thus under a system of proportional representation, minor parties have an inducement to compete because they are rewarded by representation proportionate to their strength. Under single-member, plurality elections, no such incentives are present. This is precisely the system that would apply if the President were directly elected from a nationwide constituency. It is of no matter that the votes collected in all States contribute to a total. The mere accumulation of votes is meaningless except insofar as it cuts into the support that otherwise might have gone to support a major party candidate. In this regard, it might influence an election outcome. But is this threat any greater than that which now eixsts from a minor party whose electoral strength is geographically concentrated? I think not.[17]

Other political scientists who have reached similar conclusions include Paul David of the University of Virginia, David R. Derge of Indiana University, Joseph Kallenbach of the University of Michigan, Paul Piccard of Florida State University, and Robert S. Rankin of Duke University. Two elements of their analysis deserve emphasis:

First, the two-party system is not served by the electoral college as it is constitutionally structured but as the two national parties have caused it to function by extra constitutional devices. If present methods serve the two-party system, it is because they normally are expected to function as equivalent to national popular election. In this respect the direct election proposal will perfect, not damage, the electoral device that serves the two-party system.

The second point is that the functioning of a real two-party system in Presidential elections actually should be strengthened by direct election. By eliminating the disfranchisement of state minorities, it will prevent any votes from being written off as worthless. The result will be genuine two-party competition in every state.

Nonetheless, we were sufficiently concerned by the possibility of weakening the two-party system that a major provision of our proposal is directed largely at supporting it. This is the provision requiring runoff elections when no candidate obtains 40 per cent of the popular vote. This avoids peculiar evils of both majority and simple plurality requirements. A majority requirement would make runoffs the rule rather than the exception and postively encourage splinter can-

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Footnotes at end of article.

didacies. A simple plurality rule would enable a candidate to win with as little as one fourth or one third of the total vote—hardly a sufficient mandate to govern. This might encourage third and fourth parties. The 40 per cent rule incorporates our historical experience as a future norm.

Somewhat ironically, the runoff provision has been used to oppose the direct election proposal through an argument that runoff provisions encourage multiple candidacies and make runoffs more likely. Studies of nominating primaries in some Southern states are cited as proof. These were considered by the commission. Analysis shows that they are not comparable to national Presidential elections for three important reasons:

A. The Southern primaries involved competition within a one-party system, which is hardly equivalent to elections occurring against the backdrop of an established two-party system.

B. The Southern primary campaigns involve mutiple candidacies of individuals, not parties. We always have a few individuals who seek personal expression as nominal Presidential candidates, but individuals without party organizations are no threat to the system.

C. Most important, the Southern primary experiences are caused mainly by majority requirements for nomination. The commission profited from these examples when it chose a plurality, rather than a majority, requirement. True, the plurality must reach a certain level; but it is one likely of attainment, and the tendency of majority requirements to cause third-party efforts is eleminated.

3. *Vote-Counting Procedure*—Another objection made to direct popular election is that it could delay the certification of a President for a long period of time due to vote-counting procedures. This objection is addressed to the mechanics of a system of direct election and not to the principle. The vote-counting problems that are likely to be encountered under such a system, such as recounts, fraud, challenged ballots and the like, are really no different in kind from those that exist in the election of a governor or United States senator. Any system of direct election requires an accurate, rapid and final vote count. These requirements have been satisfied in the direct election of officials at other levels of government, and we see no reason why they cannot be satisfied in a direct election for President. In the larger states millions of votes are now cast and counted in state-wide elections held in areas of thousands of square miles.

There are now procedures in the various states for certifying the results of popular elections for other offices that could be adapted to a system of direct election of the President. Under the direct election recommendations, the operation and regulation of Presidential elections would be left to the states, with a reserve power in Congress to legislate in the field. The states thus would have the flexibility to adopt and change election procedures in the light of experience. It is foreseeable that the states might adopt a uniform state law standardizing the procedures for handling recounts and challenged ballots and that Congress might create an election commission with responsibilities in the vote-counting area.

The trend toward better regulated and more scientific vote counting has reduced and will continue to reduce the possibilities of irregularities while expediting the final outcome. With a co-operative effort on the part of the states and Federal Government, we are confident that procedures and methods can be adopted to assure an effective system of direct popular election of the President.

DEMOCRATIC PARTICIPATION SHOULD BE ENLARGED

The trend of our political system is toward direct democratic participation of the people at every level. That trend has been reflected in the Fifteenth, Seventeenth and Nineteenth Amendments to the Constitution. It should now be reflected in an amendment providing for popular election of the President.

FOOTNOTES

[1] AMERICAN BAR ASSOCIATION, REPORT OF THE COMMISSION ON ELECTORAL COLLEGE REFORM, *Electing the President*, 3–4 (1967). See also *Electing the President*, 53 A.B.A.J. 219 (1967).

[2] See Tienken, "Proposals To Reform Our Electoral System", *Library of Congress Legislative Reference Service* 20 (1966).

[3] See 1 FARRAND, RECORDS OF THE FEDERAL CONVENTION OF 1787, at 175 (1937 ed.); 2 FARRAND 29, 34, 500.

[4] 2 FARRAND 31, 114.

[5] THE FEDERALIST No. 68 (Hamilton).

[6] John Quincy Adams, with fewer popular and electoral votes than Andrew Jackson, was chosen President by the House of Representatives in the election of 1824. In the election of 1876, Samuel J. Tilden lost the Presidency by one electoral vote, although he had over 250,000 popular votes more than Rutherford B. Hayes. In 1888, Benjamin Harrison defeated Grover Cleveland, who had 100,000 more popular votes.

[7] In the 1968 Presidential election, for example, the winning percentage of the popular vote was less than 50 per cent in twenty-eight states with a total of 388 electoral votes and less than 40 per cent in four of those states.

[8] In the election of 1968 (1) in Illinois, over 668,000 more people voted than in Ohio although both states have twenty-six electoral votes; (2) almost 590,000 more people voted in Connecticut than in South Carolina, and yet each had eight electoral votes, nullifying each other in the election; (3) Utah went Republican and cast 186,000 more votes than Hawaii, which went Democratic; but each had the same electoral votes; (4) almost 125,000 more votes were cast in Virginia than in Georgia, although each had twelve electoral votes; and (5) Californians cast almost 360,000 more votes than New Yorkers, yet New York had three more electoral votes than California.

[9] These Presidents and their popular vote percentages are: John Quincy Adams (31.9); Polk (49.6); Taylor (47.3); Buchanan (45.6); Lincoln (39.8); Hayes (47.9); Garfield (48.3); Cleveland in 1884 (48.5); Harrison (47.8); Cleveland in 1892 (46.0); Wilson in 1912 (41.9); Wilson in 1916 (49.3); Truman (49.6); Kennedy (49.5); and Nixon (43.4).

[10] HUPMAN & TIENKEN, NOMINATION AND ELECTION OF THE PRESIDENT OF THE UNITED STATES 252–259 (Gov't Printing Office Pub. No. 3671, 1968).

[11] This recommendation was intended to be in addition to the powers Congress now has under the Constitution with respect to voting qualifications. See, *e.g.*, *Katzenback* v. *Morgan*, 384 U.S. 641 (1966).

[12] Thornton, *An Analysis of Electoral College Reform*, 29 THE ALABAMA LAWYER 398 (1968); reprinted in the CONGRESSIONAL RECORD, vol. 115, pt. 2, p. 1795.

[13] PIERCE, THE PEOPLE'S PRESIDENT 265 (1968).

[14] BICKEL, THE NEW AGE OF POLITICAL REFORM 5–7 (1968).

[15] Banzhaf, *One Man, 3.312 Votes: A Mathematical Analysis of the Electoral College*, 13 VILL. L. REV. 303 (1968).

[16] *Delaware* v. *New York*, 385 U.S. 895 (1966) (complaint, pages 12–13).

[17] *Hearings on Election of the President Before Subcom. on Constitutional Amendments of the Senate Com. on the Judiciary*, 89th Cong., 2d Sess.; 90th Cong., 1st Sess. at 623.

HEW SEEKS CONTROL OF JUNIOR COLLEGES IN ALABAMA

Mr. ALLEN. Mr. President, Congress had no sooner stopped demonstrating the absurdity of subordinating sound education considerations to arbitrary racial ratios and "racial balance" doctrines in primary and secondary grade schools than this administration started imposing racial ratios and the racial balance doctrine in institutions of higher education.

This administration, and specifically the Department of Health, Education, and Welfare and the U.S. Attorney General kept this plan to impose racial ratios in institutions of higher education a carefully guarded secret until after Congress concluded debate on the appropriation bill for the Department.

Mr. President, the U.S. Attorney General and the Department of Health, Education, and Welfare have since launched out into what is clearly an attempt to establish a legal basis for Federal control of higher education.

I have in hand a set of detailed Federal regulations governing the administration of junior colleges in Alabama. These regulations are in the form of recommendations submitted by the U.S. Department of Education to a Federal district court in Alabama for the purpose of having such regulations adopted by the Federal court and implemented by judicial decree and enforced by mandatory injunction under threat of fine and imprisonment of local education officials without benefit of trial by jury. This action was initiated by the U.S. Attorney General.

Because of the revolutionary innovations set out in these regulations, I ask unanimous consent that they be printed in the RECORD.

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

(See exhibit 1.)

Mr. ALLEN. Mr. President, junior colleges in Alabama, as in most of the States, are under supervision and control of State boards of education. Therefore, any regulations which can be prescribed by the Federal Government for junior colleges can also be prescribed for 4-year colleges and universities which are likewise under control of State boards of education.

The fact that regulations which apply to junior colleges are included with regulations which apply to technical colleges and trade schools cannot obscure the main thrust and purpose of the regulations which is to establish a legal basis for imposing Federal control of institutions of higher education including a power to impose racial ratios as the controlling consideration in accepting pupils for enrollment in institutions of higher education.

Some of the regulations recommended by this administration are nothing short of shocking. Among other things, the administration asserts a power to regulate employment of college faculties; promotion, demotion, transfer, and arbitrary exchange of faculty members; to prescribe curriculums; to close schools; to consolidate schools and faculty; to order abandonment of facilities; and to establish priorities for use of tax funds including capital outlay expenditures for new construction and for improvements and expansion of existing facilities.

This administration asserts a power to prescribe attendance areas for junior

colleges and to confine pupil enrollment in such institutions to those who reside in prescribed geographic reservation; to regulate the transfer, exchange, and busing of pupils attending such institutions. I must repeat that the asserted authority to impose such regulations for junior colleges is an authority to impose the same regulations for 4-year colleges and universities under State control.

Mr. President, this is indeed a shocking development. However, the most ominous and potentially dangerous assertion of power is in a proposed regulation by this administration to establish by judicial decree a new administrative agency in State government—an agency empowered to fix policies, coordinate programs, and provide supervision of education in separate areas of the States.

This is a fantastic departure from fundamental tenets of constitutional government. It simply defies belief. Education agencies are created by State legislatures. Duties and responsibilities of the officers of these agencies are prescribed by State legislatures. State legislatures appropriate funds for operation of such agencies. How, in the name of commonsense can it be supposed that a completely new agency of State government can be created by Federal court decree? Are we to believe that State legislatures can be compelled by injunction to appropriate tax funds to pay the salaries and otherwise fund a new agency over which a State legislature has no control?

This administration, through the agencies of the Department of Health, Education, and Welfare and the U.S. Attorney General has come into Federal court in Alabama and insisted on such regulations as matters required by the Constitution. It has insisted on the reservation concept for enrollment of students in junior colleges as a concept required by the Constitution. In several instances, the Department drew Berlin Walls, so to speak, around counties and seeks by judicial decree to deny pupils residing in the remaining 55 counties of the State the right to attend the tax-supported junior college of their choice. This, too, according to the administration is required by the Constitution.

In another instance, the Department of Health, Education, and Welfare regulations threaten a junior college with bankruptcy. This particular junior college has been confined to a two-county reservation for enrollment of students but heretofore has drawn 90 percent of its resident students from outside the area assigned to it. If this reservation concept for enrollment is established by judicial decree as recommended by the administration, the college will be left with resident halls and $1.5 million mortgage and annual payments of $106,000 without any means of paying the obligation. This action too is defended by the administration as required by the Constitution.

Mr. President, it must be clear that every institution of higher education in the Nation is threatened by this new "reservation" concept of pupil enrollment. It is junior colleges today—tomorrow it will be 4-year colleges and universities.

This reservation concept is the result of a decision by the administration that it is the quickest means of establishing pupil and faculty racial ratios and racial balance in such institutions. And, of course, the administration insists that such racial ratios in institutions of higher education are required by the U.S. Constitution.

Thus, "new federalism" under this administration means, among other things, monolithic Federal control of education from kindergarten to graduate school.

And, in the words of the distinguished minority leader, "as required by the Constitution."

Mr. President, I suggest that we add the term "new federalism" to the junk heap of deceptive political slogans labeled, "good for political campaigns only."

With political considerations out of the way, I think Congress ought either to affirm or repudiate the administration's racial ratio doctrine for higher education. It is my intention to submit a resolution which will give Senators an opportunity to go on record on this issue.

EXHIBIT 1

PLAN FOR DESEGREGATION OF ALABAMA STATE TRADE SCHOOLS AND JUNIOR COLLEGES

1. Mobile State Junior College and William L. Yancey State Junior College:

a. The attendance area for Mobile State Junior College will comprise Mobile and Washington Counties. Students from Mobile and Washington Counties will not be permitted to attend the William L. Yancey State Junior College except for programs that presently do not exist at Mobile State. Yancey State College will draw its students from Baldwin County and adjacent areas to the north and east. Yancey State Junior College will not send buses into Mobile County and Mobile State Junior College will not send buses into Baldwin County. Mobile State Junior College will henceforth be considered the community college for Mobile, its county, and Washington County. Students from Mobile and Washington Counties wishing to enroll in programs not yet offered by Mobile State, will register for these programs at Mobile State prior to enrolling at Yancey State. Students from the Yancey State attendance area who may wish to enroll in any program offered by Mobile State not offered by Yancey State will register at Yancey State prior to enrolling at Mobile State.

b. Since Mobile State Junior College has the most limited facilities of the state junior colleges, a complete curriculum enabling Mobile State to compete with Yancey State is not yet possible. Therefore, facilities will be constructed and curriculum developed so as to greatly expand the program at Mobile State. Facilities construction and curriculum development will be designed to attract a large proportion of white students as well as Negro students. No further capital outlay project will be undertaken at any college (not including trade schools) under jurisdiction of the State Board of Education until Mobile State Junior College has been transformed into a fully desegregated, two-year institution serving, primarily, Mobile County, and designed to serve the special needs of Mobile County, and is equal in physical facilities to Yancey State Junior College. Construction at Mobile State will receive priority so that the first phase of expansion as provided for in the Mobile State master plan is fulfilled.

c. Immediate curriculum improvements to be undertaken at Mobile State include acquisition of a computer needed to develop a computer science and data processing program; associate degree programs in nursing, medical technology, and other health-related areas.

d. When the construction and curriculum development programs described above have been completed, students from Mobile and Washington Counties will no longer be permitted to enroll at Yancey State Junior College.

2. Wenonah State Junior College and Jefferson State Junior College:

a. To take advantage of the proximity of the medical and nursing schools and hospitals of the University of Alabama, all nursing, medical technology, and other health-related programs will be transferred from Jefferson State Junior College to Wenonah State Junior College. The nursing program will be operated in conjunction with the medical and nursing schools of the University, and the school of nursing at the University will aid Wenonah in the orderly transfer and establishment of these programs. The school of nursing at the University will then be able to arrange a transfer program for those students who complete the two-year nursing program at Wenonah and who wish to transfer to the baccalaureate program in nursing at the University. Shuttle buses between Wenonah State and the University clinics will be operated. Transfer of these programs will include faculty, students, and moveable equipment. Space for these programs will be provided by closing the trade school at Wenonah.

b. The computer sciences and other data processing programs at Jefferson State will be closed and moved to Wenonah State. This will include faculty, students, computers, and other data processing equipment. (Any administrative data processing needs of Jefferson State now done on their own equipment will be processed by the program to be established at Wenonah State).

c. Since Jefferson State is operating at capacity, transfer of these programs to Wenonah State will permit expansion of other programs at Jefferson State.

d. Any building or renovation program at Wenonah State needed to accomplish these transfers of programs will be undertaken as rapidly as possible, and will take priority over all other construction or renovation projects except those at Mobile State Junior College.

3. Dual Trade Schools:

a. Since Bessemer State Technical Institute (479 students) is operating at about half capacity, and since its facilities are superior to those of Wenonah State Technical School (280 students), the latter institution will be closed and its program, students, faculty, and movable equipment transferred to Bessemer State Technical Institute. Since Bessemer is operating at about half capacity, transferring of the Wenonah technical school to Bessemer will not require additional construction, although some alteration may be necessary.

b. When the transfer of Wenonah State Technical School to Bessemer State is completed, bus service will be provided throughout the attendance areas formerly assigned to Wenonah State Technical School and Bessemer State Technical Institute.

c. In Mobile, Montgomery, Tuscaloosa, and Gadsden, no new courses will be offered at any trade school if the other school in that city offers that course and it could be expanded. Courses and programs will be expanded or newly instituted on the basis of need for them by all students in the area, both white and Negro.

d. J. F. Drake and Calhoun trade schools will have separate attendance areas. Drake Trade School in Huntsville will not send buses into Morgan County and John C. Calhoun Trade School in Decatur will not send buses into Madison County.

e. The State Department of Education's Division of Vocational and Technical Education, in cooperation with local trade school directors, should re-examine the population characteristics and employment opportunities in the area served by the schools in each of the four remaining dual trade school areas (Montgomery, Gadsden, Mobile, Tuscaloosa), based on information supplied by the State Employment Service Agencies, Economic Development Agencies, universities or other sources. From such information, the present extent of facilities utilization should be assessed, and plans made for immediate and long-range programs to be offered under a unified system in each dual trade school area.

f. The Alabama State Board for Vocational Education, through its Executive Officer, the State Superintendent of Schools, will establish a single administrative unit headed by a coordinator for each area, Gadsden, Mobile, Montgomery, and Tuscaloosa, where dual systems now exist. The coordinator, under the general supervision of the State Director of Vocational and Technical Education, will develop policies to meet the occupational needs of all students in the area served by the two schools, and he will coordinate the programs of the two schools to fully utilize the facilities of both schools in providing needed occupational training for all eligible students in the area to be served. The present position of director of each school should remain. The area coordinator will serve as an integral part of the unified system by coordinating activities of each campus. The newly appointed coordinator, in cooperation with directors of the two trade schools, will formulate a program whereby the duplication of courses within these schools will be substantially reduced or eliminated. The State Superintendent will report to the Court on the steps taken, and plans to implement the recommendations for eliminating duplication, by 30 days after an order is entered into this matter. It is recommended that all action be implemented not later than September 1, 1970.

g. The coordinator, in cooperation with the directors of the two schools, will review all programs and enrollments and where feasible specific courses would be offered in only one of the two trade schools. Where enrollments now fully utilize the work stations in the facilities provided in both schools, or where combining the courses in one facility would require extensive remodeling or adding new facilities, the initial phase of the instructional program should be offered in one school with the advanced phase of instruction in the other school. For example, the first year of an auto mechanics program should be offered in school A and the second year in school B. The following recommendations are made either to eliminate duplicate programs or to provide initial and advanced phases of programs in the two schools where conditions warrant:

TUSCALOOSA

Tuscaloosa State Trade School and Shelton State Technical Institute: The Barbering program now offered in both schools would be discontinued at Tuscaloosa State Trade School and offered only in the Shelton State Technical Institute. The Upholstery program will be closed at Tuscaloosa State and moved to Shelton State. Mechanical Drafting and Design Technology will be closed at Shelton State and transferred to Tuscaloosa State. The Refrigeration and Air Conditioning program now offered in both schools would be discontinued at the Shelton State Technical Institute and offered only in Tuscaloosa State Trade School. The cosmetology program will be closed at Tuscaloosa State and transferred to Shelton State. The Practical Nursing program at Shelton State will be closed and moved to Tuscaloosa State.

Auto body repair

Initial Phase: Tuscaloosa State Trade School.

Advanced Phase: Shelton State Technical Institute.

Auto mechanics

Initial Phase: Shelton State Technical Institute.

Advanced Phase: Tuscaloosa State Trade School.

Industrial electricity

Initial Phase: Tuscaloosa State Trade School.

Advanced Phase: Shelton State Technical Institute.

Business education (Secretarial course)

Initial Phase: Shelton State Technical Institute.

Advanced Phase: Tuscaloosa State Trade School.

Radio and television

Initial Phase: Shelton State Technical Institute.

Advanced Phase: Tuscaloosa State Trade School.

GADSDEN

Alabama School of Trades and Gadsden State Technical Trade School: Enrollments and work stations indicate that the following programs offered at both institutions would be continued:

Auto body repair

Initial Phase: Alabama School of Trades.

Advanced Phase: Gadsden State Technical Trade School.

Auto mechanics

Initial Phase: Gadsden State Technical Trade School.

Advanced Phase: Alabama School of Trades.

Cabinetmaking

Initial Phase: Gadsden State Technical Trade School.

Advanced Phase: Alabama School of Trades.

Drafting

Initial Phase: Alabama School of Trades.

Advanced Phase: Gadsden State Technical Trade School.

Radio and television

Initial Phase: Alabama School of Trades.

Advanced Phase: Gadsden State Technical Trade School.

Business education

Initial Phase: Gadsden State Technical Trade School.

Advanced Phase: Alabama School of Trades.

MONTGOMERY

John Patterson State Vocational Technical School and Councill Trenholm State Trade School: Basic Electricity, now offered in both schools, would be discontinued at John Patterson State Vocational Technical School and offered only in Councill Trenholm State Trade School. Cosmetology will be closed at the Councill Trenholm School and transferred to the Patterson School, and Practical Nursing will be closed at the Patterson School and transferred to Councill Trenholm State Trade School.

Auto mechanics

Initial Phase: Councill Trenholm State Trade School.

Advanced Phase: Patterson State Vocational Technical School.

Auto body repair

Initial Phase: Councill Trenholm State Trade School.

Advanced Phase: Patterson State Vocational Technical School.

Air conditioning and refrigeration

Initial Phase: Patterson State Vocational Technical School.

Advanced Phase: Councill Trenholm State Trade School.

Radio and television

Initial Phase: Patterson State Vocational Technical School.

Advanced Phase: Councill Trenholm State Trade School.

Electronics

Initial Phase: Patterson State Vocational Technical School.

Advanced Phase: Councill Trenholm State Trade School.

Business education

Initial Phase: Councill Trenholm State Trade School.

Advanced Phase: Patterson State Vocational Technical School.

Data processing and computer programing

Initial Phase: Patterson State Vocational Technical School.

Advanced Phase: Councill Trenholm State Trade School.

MOBILE

Carver State Technical Trade School and Southwest State Technical Institute: The Data Processing program at Southwest State will be closed and transferred to Carver State; the Barbering, Cosmetology, and Practical Nursing programs at Carver State will be closed and transferred to Southwest State.

Auto body repair

Initial Phase: Southwest State Technical Institute.

Advanced Phase: Carver State Technical Trade School.

Auto mechanics

Initial Phase: Carver State Technical Trade School.

Advanced Phase: Southwest State Technical Institute.

Business education

Initial Phase: Southwest State Technical Institute.

Advanced Phase: Carver State Technical Trade School.

Technical drafting

Initial Phase: Southwest State Technical Institute.

Advanced Phase: Carver State Technical Trade School.

Electronics technology

Initial Phase: Carver State Technical Trade School.

Advanced Phase: Southwest State Technical Institute.

Welding

Initial Phase: Southwest State Technical Institute.

Advanced Phase: Carver State Technical Trade School.

h. In each case of a program transferred from one trade school to another, the faculty, students, and equipment will be reassigned to the trade school receiving the program. Programs having their initial phase in one trade school and advanced phase in the other school of the duality will reassign faculty as needed to bring about a racial balance of faculty.

i. Any alteration or remodeling of facilities in the dual trade schools needed to accomplish the program changes under part 3 will be accomplished without regard to the construction priorities established above for Mobile State and Wenonah State junior colleges. Alteration or remodeling of facilities will be done so as to permit implementation of these program changes in the dual trade schools by September 1970.

j. When course duplication is substantially eliminated in the dual trade schools of Gadsden, Mobile, Montgomery, and Tuscaloosa, these schools may be given the same attendance and transportation areas.

4. Transportation: Transportation will be provided only in the designated attendance areas to the institution serving that area, except that, where feasible, students who wish to enroll in a course not offered at the facility serving his area may be transported from his area to a facility where the course is offered.

5. Recruiting of Students:

a. Officials responsible for recruiting of students at each institution will make special efforts to recruit students who are of the race different from that of the students for which the institution was originally designed to serve.

b. Any recruiting team which visits high schools to discuss their institution with students will be composed of members of both races. Consideration should be given to using students as members of recruiting teams along with faculty or administrators. When this is done such student teams should represent both races to show the multiracial character of the institution.

c. All promotional literature and catalogs sent to high schools or to prospective students will state clearly that students are accepted without regard to race or color.

d. Recruiting teams from each institution will contact every high school in their assigned attendance areas to attempt to recruit students but will not contact high schools outside of their assigned area. Recruiting teams will be responsible for acquainting students in their area with programs and courses available at other schools which may be accessible to them, but which are not offered at the recruiting team's school.

e. The State Department of Education will prepare a brochure describing in detail all of the trade schools and junior colleges, the courses offered at each, and the attendance areas which these schools serve. A map showing these areas will be shown in the brochure along with the bus routes serving these areas. This brochure will state that it is the policy of the State for students to attend the school serving the area in which they live unless they wish to pursue a course not offered at their area school.

This brochure will be sent to every high school principal, and every city and county school superintendent, every trade school director and every junior college president in the State of Alabama, and copies will be made available to recruiting teams for use in recruiting and to members of the public upon request.

f. Group photographs used in catalogs or other promotional literature, or student yearbooks or other annuals, must show the multiracial character of the junior college or trade school.

6. Faculty and Administrative Staff Desegregation:

a. The director of each trade school and the president of each junior college will be notified that he has a legal and affirmative responsibility to recruit in good faith for faculty and administrative staff of all races.

b. The State Superintendent of Education will establish a central recruiting and referral service for faculty and staff employment in the trade schools and junior colleges. The State Superintendent will be responsible for maintaining a list of all vacancies, or new positions to be established, and a file of eligible applications. The State Superintendent will refer these applications to the trade schools or junior colleges whenever a vacancy occurs. Applications for faculty and staff employment received by the trade schools and junior colleges will be sent to the State Superintendent's office to be kept on file in the central referral service. Prior to filling any vacancies at their institutions the trade school directors and junior college presidents must consult the applications on file at the central referral service.

c. The State Superintendent of Education, through the referral service, and as overseer of the trade schools and junior colleges, will be responsible that the trade schools and junior colleges recruit faculty and administrative staff as described in part 6(a) above.

d. Jefferson State Junior College and Wenonah State Junior College will exchange faculty on part-time, temporary assignments until an integrated, racially balanced faculty is attained by these two institutions. For the 1970–71 academic year, and for future years until a racially balanced faculty is achieved, Jefferson State and Wenonah State will exchange faculty in curricula that overlap both institutions. Curricula where faculty may be exchanged are: Business and Accounting; Secretarial Science; Mathematics, Physical, and Natural Sciences; Education; Pre-engineering; Economics, History, and other Social Sciences; English, Foreign Languages, and the Fine Arts; Health, Physical Education, and Recreation.

e. Mobile State Junior College and Yancey State Junior College will exchange faculty on part-time, temporary assignments until an integrated, racially balanced faculty is attained by these two institutions. For the 1970–71 academic year, and for future years until a racially balanced faculty is achieved, Mobile State and Yancey State will exchange faculty in curricula that overlap both institutions. Curricula where faculty may be exchanged are: Business and Accounting; Secretarial Science; Data Processing; Mathematics, Physical and Natural Sciences; Education; Pre-engineering; Economics, History, and other Social Sciences; Health, Physical Education, and Recreation; English, Foreign Languages, and Fine Arts.

f. To the extent necessary to carry out this desegregation plan, the junior colleges and trade schools as designated in this plan shall direct members of their faculty and staff to accept new assignments or part-time exchange assignments as a condition of continued employment.

g. So long as the racial identity of a trade school or junior college by reason of the racial composition of its faculty has not been effectively removed by the employment or assignment of white and Negro faculty in such school or college in the approximate ratio that whites bear to Negroes in the general population of the geographic area served by the school or college, priority shall be given to recruiting staff and faculty members of the race which will tend to achieve that ratio.

h. If there is to be a reduction in the number of faculty, staff or other professional staff employed by the schools which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the schools concerned. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the State Superintendent will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the State Superintendent. The State Superintendent also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously or (3) under which the staff member is asked to teach a course other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

7. Committee on Comprehensive Planning for Trade Schools and Junior Colleges: Within 30 days from the date of an order in this matter, the State Superintendent will appoint a committee to be composed of the presidents of Mobile State Junior College, Yancey State Junior College, Wenonah State Junior College and Jefferson State Junior College, two employees of the State Department of Education, area coordinators of the trade schools in Mobile, Gadsden, Tuscaloosa, and Montgomery and any additional recognized educational experts or other professional educators in the field of post-secondary education from inside or outside the state who may be designated to serve by the State Superintendent. This committee will study in depth the dual system of trade schools and junior colleges based on race in Alabama and will devise additional specific measures necessary to carry out the requirements of this plan. They will report to the Court no later than 90 days after their appointment on the specific steps which they propose; this report will include, but not be limited to:

a. a schedule of priorities for construction projects at all junior colleges and trade schools under the State Board of Education over the next five years;

b. the specific courses and programs which will be offered for the 1970–71 school year at each institution in the State and the changes which will be made for future years;

c. plans for programs designed to attract students whose race is in the minority at each institution;

d. specific proposals for further construction and for any additional changes in the curricula and programs at Mobile State and Wenonah State junior colleges;

e. proposals for changes in the administrative organization of the trade schools and junior colleges necessary to facilitate the changes required by this plan;

f. plans to create comprehensive junior college districts in Birmingham and Mobile, and plans for the establishment of career education programs for students in the area trade schools who may wish to transfer to degree-credit programs in the junior colleges in their areas.

8. Effective Date: All stipulations under this plan will be implemented for the 1970–71 academic year except where necessary construction may cause delays.

VETERINARY MEDICINE: EFFORTS OF ADMINISTRATION TO PHASE OUT SUPPORT A TRAGIC MISTAKE

Mr. YARBOROUGH. Mr. President, I understand that President Nixon in an attempt to reduce the Federal budget is proposing to phase out Federal grants to schools of veterinary medicine. This, I submit, would be most unfortunate. Veterinary medicine plays too important a role in the health and well-being of our Nation for the Congress to permit this to happen. And I do not say this in terms of the Nation's pets but in terms of our entire population. All too often it seems, the general public equates veterinary medicine with pet care. This is unfortunate for nothing could be further from the truth. Veterinarians, for example, play a vital role in human nutrition

through their attention to food-producing animals.

They are responsible for protecting the health of the public against some 100 diseases transmittable to man from animals. They safeguard the wholesomeness of meat and meat products, poultry and milk and milk products. They prevent the introduction of animal diseases from foreign countries. They enforce health regulations in interstate and intrastate traffic in animal and animal products. They do all this and so much more, Mr. President, for the benefit of the entire Nation. And they are doing this under a severe handicap. There are not enough veterinarians to take care of our full needs. So long as this is so we have an obligation to provide Federal assistance to encourage careers in veterinary medicine.

Mr. President, I recently received a letter from Alvin A. Price, D.V.M., dean, College of Veterinary Medicine, Texas A. & M. University, which does a very fine job of describing the role of veterinary medicine in our society. I am sure my Senate colleagues would be interested in seeing it. I ask unanimous consent, therefore, that Dr. Price's letter dated March 9, 1970, be printed in the RECORD.

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

TEXAS A. & M. UNIVERSITY,
COLLEGE OF VETERINARY MEDICINE,
College Station, Tex., March 9, 1970.

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

DEAR SENATOR YARBOROUGH: I was sorry to have missed you on March 5 but pleased to have the opportunity to visit with Mr. James Babin and Mr. Henry Rodriguez with my veterinary medical colleagues, Dean W. T. S. Thorp of the University of Minnesota, Dean Clarence R. Cole of Ohio State University, Dean T. S. Williams of Tuskegee Institute, and Dr. Frank Todd of the AVMA Washington Office.

The group of five was representing the Association of American Veterinary Medical Colleges, the membership of which includes all of the colleges of veterinary medicine in the United States.

I wanted to express to you, personally, my profound thanks for your consistent stand on federal assistance to the colleges of veterinary medicine which constitute a national health resource and which are such an important part of the national health and public welfare team. Thank you, Senator, for your voting record on the HEW appropriation bill which was recently sent to the President and which contained assistance for colleges of veterinary medicine under P.L. 90-490 as authorized by Congress and in which you played such a vital role.

On February 26, 1970, there appeared an article in the Evening Star (Washington, D.C.) by Garnett D. Horner and titled "Nixon Seeking to Cut or End 57 Programs" in which the President was quoted as saying ". . . $3 million would be saved by phasing out federal grants to schools of veterinary medicine. . . ."

It is my understanding that, under questioning by Senator Bible, personnel of NIH have declared that $2.7 million is scheduled in FY 1970 for institutional grants to the 18 colleges of veterinary medicine by statutory formula. Our concern is that, in the light of the President's apparent concepts quoted above and in his exercise of the "2% clause," veterinary medicine may be cut out altogether in the appropriations for FY 1970.

Further, I understand that the appropriations plan of the Executive Branch for FY 1971 does, in fact, exclude veterinary medicine from the authorizations of The Health Manpower Act of 1968. This, obviously, is disturbing in the light of the documented contributions which veterinary medicine makes to the human health welfare of this country. It is being said that veterinary medicine could be excluded logically because veterinarians only take care of animals and not man. I submit the hard truth that the ultimate target of veterinary medicine is the welfare of man himself.

It appears on a superficial basis to superficially thinking people that pet care in the home is not very important. Many Americans seek the companionship of animals and these animals contribute to the social and psychological welfare of the people of this country at a level which has never been evaluated, much less understood. There are 68.5 million pets in American homes. Americans spend $3 billion each year for pet care. The sale of cat and dog food exceeds $500 million per year and almost as much is spent on supplies. Pets, like all animals, have diseases. Some of the diseases are transmissible to man. In the close confines of the apartment, the living room or the baby's nursery, disease transmission is particularly significant unless the health care for the animal is properly tended. Health conscious Americans rightly demand a high state of health care for the entire family, including the companion animals with which they live.

Although important, pet care is far from the major thrust of veterinary medicine in the welfare of man. Only 25 percent of the veterinarians of this country are engaged in small animal practices. Three-fourths of the professional manpower is pursuing a variety of endeavors directly related to man's health and welfare other than companion animal medicine.

Human health preventive medicine would be far from the advanced state it enjoys in America today were it not for that branch of medicine dealing with animal life below man. The epidemiologic considerations are vastly important to man's health, especially in our environment which is undergoing increasing pollution.

The world food shortage threatens the lives of millions of people daily. Protein starvation is real and America is not immune. The contributions of veterinary medicine to animal protein food production for human consumption are well documented. The costs of animal diseases vary from 15 percent of potential yield in the developed countries where veterinary medicine is an advanced science to as high as 50 percent in the developing countries where veterinary medicine has not been developed as a health resource. These great losses have been endured through the ages, but there is now a new and pressing urgency to limit this unnecessary toll. The world has now undergone great and unprecedented changes which require more effective disease control and more emphasis on livestock health if the livestock industry is to thrive and fulfill its potential in the production of food for man.

The federal government is the largest single employer of veterinary medical manpower, being engaged in a variety of endeavors for the health welfare of man. The regulatory forces of the U.S.D.A. are vital to this country, not only in economic considerations but in human health welfare as well. On every continent of this earth there exists reservoirs of pathogens capable of breaking into sweeping epidemics should the host-environment relationship be disturbed. Many of these pathogens have never found their way into the United States. Others have been eradicated after finding their way to our shores. History records the futility of man's efforts until there has been control of the diseases which plague him and the animals over which he has dominion. Veterinary medicine is very much an essential part of the nation's health team.

Biomedical research justly has had federal "infusion" during the past as the great thrust for improved health of our people has drawn national attention and imagination. The large measure of this important research has been done on animals lower than man for obvious and adequate reasons. This being the case, the veterinary medical manpower pool has supplied an increasing number of researchers to this gigantic national endeavor. Uncounted millions of dollars have been saved because the research data have been made valid by people—the veterinarians—who know and understand the physiologic and pathologic functions of these subhuman animals as they have answered the health questions so important to man. If veterinarians are eliminated from this health research input through curtailment of federal support for manpower development, this nation will have taken a blinded step into the past.

America's dramatic space program of the 60's was not without veterinary medical support. Six veterinarians have been engaged with the Manned Spacecraft Center in Houston, Texas, and many others have been employed elsewhere.

As man has looked to outer space, he also is looking to the seas of the earth where there is a vast resource of animal life subject to disease. Marine animal medicine is a province and responsibility of the veterinary medical profession and the colleges must train people for this growing endeavor in man's welfare.

The growing needs in veterinary medical college teaching and research, in industrial veterinary medicine, in the U.S. armed forces, in environmental control, in municipal and state health departments, in consumer protection, in animal care laws, in public health and many other programs, gives testimony to the essentiality of further development of veterinary medical manpower in this great country.

If veterinary medicine is "phased out" of the federal support to colleges of veterinary medicine, under the erroneous idea and despicable illusion that "veterinarians only treat pets," we effectively will have rendered great and irreparable damage to this nation's great health team.

Again, I express my appreciation and gratitude for your enlightened support of the past in the interest of the health and welfare of the people of this country and seek your strategic assistance in the current crisis we face in veterinary medicine.

Sincerely yours,

ALVIN A. PRICE, D.V.M.,
Dean.

POSTAL REGULATION FOR MAIL FROM ABROAD

Mr. McGEE. Mr. President, an extremely perceptive article by Marquis Childs appeared in today's Washington Post. Entitled "Further Inroad on Privacy Is Seen in New Postal Order," the article underscores the danger to the citizen's right of privacy, which is being daily chipped away.

The most recent inroad into our individual rights, according to the article, is the proposed rule change announced by the Postmaster General and the Secretary of the Treasury to permit the Bureau of the Customs to open first-class foreign mail believed to contain prohibited or dutiable material.

I commend Mr. Childs for giving this

serious matter his attention and the publicity which his column will bring to it. Yesterday, I introduced S. 3602, a bill to stop by law the proposed rule change. This bill would preserve and protect the confidentiality of first-class mail.

Mr. Childs' article poses pertinent questions about the proposed rule change. The article concludes with the view that an alert Congress committee should get some revealing answers.

In the hearing on S. 3602, scheduled for Friday, March 20, I am sure that the Post Office and Civil Service Committee will be able to compile useful information on this important matter.

Mr. President, I ask unanimous consent that the Marquis Childs column referred to be printed in the RECORD.

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

FURTHER INROAD ON PRIVACY IS SEEN IN NEW POSTAL ORDER

(By Marquis Childs)

The citizen's right of privacy is steadily chipped away with the reason that the virulent tide of mounting violence and crime justifies any action from wiretapping to "no knock" police entry. The rise of violence and crime is undeniable. Yet, whether the cure is a cure and whether the remedy may not be more of a threat to free Americans than the disease is surely debatable.

The latest chip to be knocked off is comparatively small and yet it is revealing of the steady trend and toward a Big-Brother-Is-Watching-Your-Way-of-Life. A new regulation issued by the Post Office Department, which went virtually unnoticed when it was published in the Federal Register is a form of "no knock" applied to the mails.

Any postal clerk is given the authority to refer any piece of mail, whether a sealed first-class envelope or an unsealed envelope, arriving from overseas to the Treasury Department's Customs Bureau. The Treasury is drafting new rules to put envelopes in the same category with packages and parcels. Therefore, they must be opened and inspected.

Merchandise entering the country has, of course, always been subject to Customs inspection. But those with authoritative background who have studied the new ruling believe that this never applied to first-class mail containing nothing but correspondence. The only law cited to justify this latest invasion of privacy is an 1866 tariff act allowing Customs officers to "board and search vessels," to "stop, search and examine . . . any vehicle, beast or person, on which or whom he shall suspect there is merchandise which is subject to duty," and "to search any trunk or envelope . . . in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law."

The new regulation is a broad net capable of sweeping in the big fish that may be suspect and myriad little fish as well. The mail from Mafia agents operating abroad and helping to frame the syndicates that smuggle in heroin is a source of invaluable information except that these agents are not so naive as to write down their plans in a letter to be sent through the international mails. Letters from one's children traveling abroad or from relatives overseas fall into the same net and are just likely to be read by Customs officials. While the regulation does not apply to domestic mail the powers of the Post Office Department are such that a stroke of the pen—as in the instance of overseas mail—could bring all mail under Big Brother's eye.

A department spokesman gives as the reason for the new ruling the attempt to check what is described as a flood of pornography from abroad. Martin Wolf, with the public information office working with the chief postal inspector, describes this flood in awesome terms. He says it comes from Denmark, Sweden, Ireland, the Middle East and South America. Mailing lists purchased by the purveyors of this hardcore pornography are used to distribute teasers in large numbers to addresses of individuals across the country. And the individuals, in turn, enter angry protests to the Post Office Department.

If the flood is on this scale it will take the work of a number of Customs officers to halt it and whether even with a large force there can be any effective check is doubtful. Pornography wholesalers in this country flood the mails with teasers sent to indiscriminate mailing lists, according to the department. Curtailing the domestic operation of the merchants of smut has proved difficult to downright impossible. Virtually every newsstand today has literature that stops just short of being hardcore pornography and that a few years ago would have been on the banned list.

The Post Office Department has long been concerned over the commercial exploitation of pornography through the mails. President Eisenhower's Postmaster General, Arthur Summerfield, put together a "chamber of horrors" of marginal and hardcore stuff, including several films. He gave members of Congress guided tours of his collection. There is little evidence that his campaign resulted in any slowdown in the pornography market.

Only a congressional committee can put the searching questions as to the motivation and the consequences of the new ruling. What about the Universal Postal Union and our postal treaties—do they authorize this invasion or prohibit it? Who initiated the changes? Was there a rush order from above? An alert committee should get some revealing answers.

FINANCING THE RIGHT TO READ

Mr. YARBOROUGH. Mr. President, the story "Financing the Right To Read" in the Washington Post of March 18 is a poignant account of how the education needs of American children are submerged in budgetary rhetoric.

The "right to read" is the only significant objective the administration has set for American education. Yet it is not unlike the objectives we had in mind when we enacted title I of the Elementary and Secondary Education Act to upgrade the instruction of children from disadvantaged homes.

Although title I has received scarcely half the money intended for it, its value is being downgraded by many in the administration as unproved. We can take notice now that unless "the right to read" receives ample financial backing, its value, too, will remain unproved.

As the budget figures in this article show, the vetoed appropriation bill for fiscal 1970 would have provided the $200 million for this effort which the President now says he will request of Congress.

Mr. President, raising the educational standard for American children will not be cheap, whether we call them disadvantaged or reading retardates. I ask unanimous consent to have this article by Mr. Robert Hartman printed at this point in the RECORD.

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

FINANCING "THE RIGHT TO READ"

(By Robert W. Hartman)

In October, 1969, U.S. Commissioner of Education James E. Allen Jr., speaking before the Citizens Schools Committee of Chicago, announced a new educational target: The "Right To Read" was to become for the 1970s what the pledge to land a man on the moon was to the 1960s. In his speech, which marked the first positive statement about the federal role in education to come from the new administration, Allen pointed to the "10 million American children and teen-agers [who] have some significant reading difficulty" and who were thus "denied a right—a right as fundamental as the right to life, liberty and the pursuit of happiness."

The significance of Allen's remarks was that they committed the Nixon administration to a program of education support for disadvantaged youngsters who comprise an indecent proportion of the 10 million reading-retardates and whose whole education cannot very well be separated from the acquisition of reading skills.

Allen said curiously little about what the "Right To Read" program was going to do for money, but the administration's budget message could be expected to fill in the dollars. In February, the budget was released. Here are all the mentions of "Right To Read" in the combined 1,973 pages of the Budget, the Budget Appendix and the Special Analyses of the Budget.

"An increase of $5 million in grants to States will fund additional adult basic education projects and contribute to the 'Right To Read' effort." (Budget p. 143.)

"In 1971, States will be encouraged to use these grants [for supplementary services, school libraries, guidance, counseling, and testing and equipment] to fund 'start-up' costs associated with new educational models, especially in connection with the 'Right to Read' program." (Budget Appendix, p. 423.)

It was not until March 3 that the administration spelled out fully its goals in elementary and secondary education. In a "Message on Education Reform," the President explained that, generally, he would hold off spending for education until "we gain . . . confidence that our education dollars are being wisely invested." The "Right To Read" was singled out, however, as being a "critical area" in which "we already know how to work toward achieving" the goal. Given all this knowledge, the President moved right up to the front of the message (for the newspapers to copy), his pledge.

"I propose new steps to help states and communities to achieve the Right to Read for every young American. I will shortly request that funds totaling $200 million be devoted to this objective during Fiscal 1971."

It sure looked to some reporters like the President was talking about putting $200 million into this new program. The New York Times, in an otherwise brutal editorial, said:

"Yet only the $200 million funding of the reading compaign can be considered a realistic pledge." (March 4, 1970).

Buried deep down in the education message was the detail on the President's pledge

"In the coming year, I will ask Congress to appropriate substantial resources for two programs that can most readily serve to achieve this new commitment—[school libraries and supplementary services].

"I will shortly ask Congress to increase the funds for these two programs . . . to $200 million. I shall direct the Commissioner of Education to work with State and local officials to assist them in using these programs to teach children to read."

In case the subtlety is beginning to overwhelm the reader and in case he is having trouble finding out exactly what is being

promised under the "Right to Read," I will now present a short budget history and description of the programs being designated for "Right to Read" yeomanship.

First of all, the administration has been trying to consolidate several so-called "categorical" programs in elementary and secondary education "to give states more choice in use of funds" (Special Analyses of the Budget, p. 113). As the second column of the table below shows, the administration wouldn't mind if, in the process of giving the states greater choice, it could save a few dollars. In the spring of 1969, the new administration cut back these state-grant programs by about two thirds.

The last Congress, in its euphoric mood, tripled the President's request to over $300 million, a sum which was vetoed in January by Mr. Nixon (See column 3).

APPROPRIATIONS

[Millions of dollars]

	Nixon vetoed		Final Nixon	
	Fiscal 1969	Fiscal 1970	Fiscal 1970	Fiscal 1971
Title III (Supplementary centers)	165	116	165	116	116
Title II (school libraries)	50	0	50	43	0
Guidance, etc.	17	0	17	15	0
Equipment, etc.	79	0	79	37	0
Total	311	116	311	211	116

On the very day that the President was announcing his enthusiasm about the "Right to Read" and promising to raise the 1971 budget request for Titles II and III to $200 million, his representatives in HEW were agreeing to support a level of expenditure for the categoricals in *1970 of $211 million*. In short, there is no question that the administration was going to have to raise its $116 million request for 1971 in any event. Why not say the increase is for the "Right to Read?"

Now we ask how does a cut of $11 million finance the "Right to Read" program? To answer this one requires that we look into the Title III and Title II programs that will carry the burden.

Both of these programs allot federal funds to state education authorities. These authorities, in turn, establish criteria for the reallotment of the funds to school districts. In any given year most of the Title III funds are used to continue the financing of projects begun in an earlier year. For example, in 1968, only one third of the funds appropriated were discretionary—the rest continued funding old projects. Given the slowdown in this program in 1969–70, it might be expected that half of the funds will be available for new projects. The commissioner will be doing well if he can persuade state boards to allocate half of these new funds to "Right to Read." Thus, "Right to Read" might reasonably be expected to get one-quarter (half of half) or all Title III funds in 1971.

The library assistance program is also a state-grant program. Funds are allotted within states according to need, but the states' interpretation of need varies widely and there are enormous pressures to spread the funds around among all school districts. What share would go to the children having trouble reading? No one knows, but if one-quarter of Title II redounded to their benefit, that would be an achievement.

The President will raise his request for Title II and Title III together to $200 million. About one quarter of those funds might be for the benefit of the needy readers. That's $50 million. There are 10 million needy children, according to Commissioner Allen. So we promise the "Right to Read at $5 per child per year.

Two or three years from now, some high administration official will take the podium, point his pointer, and announce gravely that after pouring one-half billion dollars into the "Right to Read" program the federal government, sadly, has little to show for its efforts (this is precisely the line now taken on Head Start and Compensatory Education) and that the administration must reluctantly conclude that further research is necessary before any more money is poured down the rat-hole.

This scenario is absurd—but all too likely to happen. Commissioner Allen's idea—the creation of a symbol of the failure of our educational system and the embodiment of "a target which unites rather than divides"—was a good idea. If the federal government means business, it should be talking about providing at least the monetary equivalent of one reading specialist costing about $9,000 per 30-child classroom (i.e., $300 per student). If there are, in fact, 10 million reading-retardates, we should be talking about a program of $3 billion to achieve—or move toward—the "Right to Read." Perhaps this sum of money cannot be spent fruitfully in 1971, but at the administration's spending rate it will be 60 years before $3 billion is reached. High rhetoric and low budgets failed American education in the past—can we live with an encore?

STUDENTS PETITION FOR A CLEAN ENVIRONMENT

Mr. BOGGS. Mr. President, earlier this week four students from Hanby Junior High School, near Wilmington, Del., paid a visit to my office.

They brought with them a petition bearing 673 names collected from the faculty and student body and pertaining to the quality of our environment.

Earlier the same day it was my privilege to participate in a Washington television program, during which the hostess expressed doubts about the sincerity of public concern with the environment. She said—and I must paraphrase—that if the public really were concerned about pollution, our environment soon would be cleaned up.

The job, of course, is a little more complicated than that. But I am convinced that there is a groundswell of opinion about pollution and that young people are in the vanguard.

The petition delivered to me by the Hanby students, Miss Marian McNeill, Miss Linda Sipala, Mark Foshee, and Jim Trueblood, said, in part:

> We . . . feel that not enough is being done by our government to stop the environmental destruction of our delicate ecological systems. Therefore, we petition our government officials to increase their concern and legislative action in matters dealing with environmental problems.

It was evident in talking to those young people that they were sincerely concerned about the problems and anxious to do what they could to resolve it.

Other young people feel much the same way. On April 22 college students and others throughout the country will celebrate "Earth Day," the launching of a national antipollution drive. Antipollution groups are active throughout the land.

While their activities range from the bizarre to the practical, they are evidence of great national interest and hold great hope for the future.

While it is fashionable to bewail the problems confronting us—and they are many and serious—I believe a concerned Congress and administration, an increasingly enlightened industry, and an aroused public provide us the necessary tools for the long and difficult job of restoring our environment.

MALNUTRITION AND HEALTH

Mr. YARBOROUGH. Mr. President, certainly one of America's greatest problems is the shocking nutrition gap in this the world's wealthiest Nation. There are literally millions of Americans—black and white—who are not getting adequate diets. This is a problem which we cannot permit to exist. As a member of the Select Committee on Nutrition and Human Needs and as chairman of the Health Subcommittee of the Labor and Public Welfare Committee, I have heard lengthy testimony on the relationship between hunger and malnutrition and health problems. Recently the Medical World News printed a very thorough article on this problem.

Mr. President, I ask unanimous consent that the article entitled "The Great American Paradox" from the November 28, 1969 edition of the Medical World News be printed in its entirety at this point in the RECORD.

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

THE GREAT AMERICAN PARADOX

The young West Virginia GP enjoyed listening to his new patient's whimsical tales of kin and neighbors up in the hills. She was a rosy-cheeked 35-year-old woman with eight living children, and despite her lack of book learning (her father's death had ended her schooling some time before she finshed the fourth grade), she took—and gave—much pleasure in the wit and style of her Elizabethan-flavored anecdotes. Like her father and grandfather before her, she had been endowed with the storytelling art that has enriched nonliterate societies since the dawn of man.

Physically, she seemed a bit more lethargic than one would expect from her blue-eyed sparkle and quick mind, and she had mentioned that she no longer seemed to have quite enough energy to keep up with children—several of whom, she was sorry to report, were doing poorly in school. But as an explanation for lethargy, the 40 extra pounds on her five-foot-four frame might easily have been accepted as adequate.

Unfortunately, however, obesity was only part of her problem. Her rosy cheeks bespoke not health but hypertension. Her dental problems—for which she had never seen a dentist—were real enough, but her bleeding gums were due less to them than to a lack of vitamin C. After finding a low hemoglobin, her physician took the trouble to have extra laboratory studies done. Serum levels of vitamins A and C were both well below normal. Money, always scarce in the patient's family, had been scarcer than ever since her husband's death in a mine accident six years before. Her tight budget and bad teeth had almost eliminated fresh fruits and vegetables, as well as meat, from her diet, and her overconsumption of starchy foods gave her far more calories than her body would burn.

As a result, this patient, descended from some of America's oldest non-Indian settlers, embodies both sides of America's present-day paradox of nutrition. Like at least ten mil-

lion other Americans, she doesn't have enough to eat. Like 40 million more, she eats too much. Her conscientious physician quite rightly refrained from simply telling her to eat less and exercise more.

Both malnutrition and "overnutrition" decrease life expectancy and increase the risk—and severity—of disease. And on the eve of the first White House Conference on Food, Nutrition, and Health, more and more scientists, health officials, and physicians are coming to fear that undernutrition, especially before birth and in early childhood, may be putting an unremovable physiologic damper not only on energy and physical health, but also on full development of the inherited mental capacity of millions of Americans. Even William Buckley, the *National Review* editor, former Conservative Party candidate for office in New York, and nationally syndicated columnist whose non-"liberal" credentials are in good order, has suggested that grocery stores across the land be supplied, for free distribution to all, with basic foods—bulgur wheat and dried beans, for example—that would guarantee an adequate, if not elegant, diet for every American.

The unexpected rediscovery of American malnutrition and hunger—which was greeted, especially in the South, by an initial official skepticism that has now largely receded—has held the spotlight for 2½ years since Dr. Raymond Wheeler of Charlotte, N.C., shocked a Senate subcommittee with evidence of starvation among hundreds of Mississippi Delta preschool children. U.S. overnutrition, on the other hand, has been a nagging concern of American medicine at least since World War II. Oddly, much of the interest in overnutrition in this country was touched off by forced undernutrition in war-torn Europe. There was, for example, a marked decline in hospital admissions for cardiovascular disease during the 900-day siege of Leningrad, followed by a resurgence of these diseases after the siege was broken and Leningraders returned to a more normal diet. At the same time, statistics gathered by life insurance companies in this country showed a correlation between excess death and excess weight.

Since then it has become a medical commonplace that obesity and overweight are related to an increased risk of death from hepatic disease, diabetes mellitus, surgical and postsurgical complications, cardiovascular disease, and even accidents. Of all the conditions linked to obesity or overweight (the clearest single criterion of overnutrition), it is generally conceded that cardiovascular disease, now responsible for more than half of the nation's deaths, is the most important. A recent National Heart Institute survey of 50,000 college students showed that obesity increased the risk of fatal heart disease by 33%. And an American Cancer Society study of 800,000 persons has shown that obese patients have 1½ to 3½ times as many fatal heart attacks and strokes as the nonobese.

One offshoot of the obesity-cardiovascular disease link is the still lively controversy concerning the relative influence of dietary cholesterol and of the ratio of saturated to unsaturated fats in the disease process. The position of the American Heart Association is that increased use of polyunsaturated fats should decrease the risks of cardiovascular and cerebrovascular disease. The association's Committee on Nutrition has urged that vegetable oils, particularly, be labeled as to polyunsaturate content.

Adverse psychological effects have also been linked to obesity. Dr. Jean Mayer, the famed Harvard nutritionist and special consultant to the President, who has spent the past six months organizing the White House nutrition conference, observes that the obese youngster sees himself as a member of a "minority group." Further, he notes, the obese may face many subtle types of discrimination, in college admissions, in employment. Sometimes the deprecatory self-image of the obese adolescent may be reinforced by parents and others to the point that he develops anorexia nervosa and literally starves to death.

Like many other aspects of American nutrition, the true dimensions of overnutrition have never been defined. The reason, says Dr. Carl C. Seltzer of the Harvard School of Public Health, is that the size of the problem depends on whether overweight or obese persons are counted. "Obesity," he explains, "is simply the presence of excess fat in body tissues; overweight is simply weight exceeding a value given by a particular 'average' or 'desirable' weight table."

How many Americans are overnourished? Estimates range from 20% to 25%. Preliminary results of the first national nutrition survey have convinced Dr. Arnold Schaefer, the trim HEW nutritionist who directs the survey, that the 25% is closer. Harvard's Dr. Frederick J. Stare believes that the recently reduced recommended daily dietary allowances are still 200 to 300 calories too high. To get the best break on the mortality statistics, Dr. Stare believes a typical 45-year-old man ought to weigh no more than five pounds more than he should have at 25, and should consume about 2,500 calories daily—10% less than the typical 25-year-old needs.

At least in some instances, Harvard pediatrician John D. Crawford suggests, physicians themselves may be partly responsible for the propensity of some adults to overeat. As can be demonstrated in animals, man also may have certain imprints—such as a "need" for a high food intake—"engraved" during the first 12 months of life. Children on artificial formulas and early solid foods, he notes, regularly exceed the old rule-of-thumb doubling of birth weight by six months and tripling it at one year. He points to "the lean, wiry physique of adolescents and adults whose early nutrition has been limited," and observes that "unusually rapid weight gain in the first year of life is strongly correlated with adolescent obesity."

Despite a series of citizens' and medical inquiries, countless articles, special television programs, and more than 60 days of congressional investigation which amassed a record that now exceeds 4,000 pages, data on malnourished Americans are even scantier than on the overnourished. In part, some suggest, this may stem from the fact that the undernourished have been far less visible to the medical profession than are the overfed, for undernourishment tends to be associated with poverty and all that goes with it—poor housing, poor education, poor access to medical care. The overweight, by contrast, tend to have better medical care and their problems have had greater attention from the profession.

The figure commonly given for the malnourished in this country—ten million or roughly a quarter of the number of overfed—was put forth by the Citizens' Board of Inquiry into Hunger and Malnutrition in the U.S. in their now-famous report issued in 1968. The total was derived from the fact that the board found that about a third of the poor people they surveyed were malnourished. The total of poor (those officially below the poverty line) was then estimated at 29 million.

The number of Americans with one or more indications of malnourishment, however, may be as high as 20 million, according to Dr. Schaefer. Preliminary results from the national nutrition survey, he says, are alarming. About 10% of the U.S. population—regardless of income—is apparently anemic. Vitamin A deficiency ranges from 8% to 20%, but "in one group of Head Start children we found 92% with vitamin A deficiency."

Covered in the survey, to be completed early next year, are serum vitamin A and C levels, as well as hemoglobin, plasma protein, serum albumin, urinary riboflavin, and thiamine. Percentages of the population having less than acceptable levels of these nutrients ranged from 19% in the case of riboflavin to a low of 9% for thiamine.

Dr. Schaefer's survey also turned up cases of kwashiorkor, marasmus, rickets, and Bitot's spots (reflecting vitamin A deficiency). Other startling findings: indications of growth retardation in 10% of children in preliminary samples, enlarged thyroid associated with low iodine intake in 5% of the entire populace, winged scapula and/or pot-belly in 4.5%.

Strongly upholding the preliminary results of the national nutrition survey is a review of recent studies of vitamin and mineral nutrition in this country, just completed by Dr. Thomas R. A. Davis (Arthur D. Little, Inc.), Dr. Stanley N. Gershoff (Harvard School of Public Health), and Dr. Jean F. Gamble (Miles Laboratories). From a comprehensive review of studies done from 1950 to 1968, these investigators conclude that "dietary habits of the American public have become worse, especially since 1960." Notably deficient, they report, are infant diets: "For all nutrients, intakes were poorest in the earliest period of infancy and improvement with age was progressive. Infant nutrition appeared to be least adequate in the higher socioeconomic groups."

But, in general, Dr. Davis and his colleagues conclude, the studies show that "to one degree or another, there are nutritional problems in the U.S. affecting virtually all age groups and segments of the population."

The statistical dimensions, and to some extent the causes, of American malnutrition are still debatable, but the existence of the problem is not. Application to particular patients, however, is difficult. As Vanderbilt University nutritionist William J. Darby observes: "Most of the studies are epidemiologic in approach. There exists a critical need for the evaluation of the nutritional status of an individual. At the moment, such useful methods as exist are not readily available to the physician—a fact which handicaps the practitioner in the total care of his patients."

Negroes, Indians, Appalachian whites, and the Spanish-speaking peoples of the Southwest are especially hard hit by malnutrition. But the once common assumption that the problem of hunger is largely confined to discrete pockets across the country has been demolished. One of the earliest studies to suggest that malnutrition was widely distributed geographically was a 1968 Department of Agriculture survey. Covering 7,500 families across the nation, it showed that diets of 20% of the populace were nutritionally poor, i.e., lacking recommended allowances of seven important nutrients. The dietary lack, the survey indicated, cut across economic lines. Leading nutritionists, including Dr. Shaefer, were critical of the study, however, on the grounds that the recommended amounts of certain nutrients should not be expected to serve as an adequate measurement of the true nutritional status of individuals.

Yet another survey attesting the wide distribution of malnutrition found that 73.2% of children in six Manhattan schools had poor diets, while only 6.6% had diets that could be classed as excellent. Moreover, the study found that many children missed at least two meals on the days they were queried. Children from families on welfare had a slightly higher incidence of poor diets than others, and a decidedly lower incidence of excellent diets.

A study by the Harvard School of Public Health found that 55% of children (mostly black) in three grades in a school having no lunch program failed to get nutritionally satisfactory breakfasts, while 60% did not receive satisfactory lunches and less than 40% had satisfactory evening meals. In Berkeley,

Calif., another study revealed that intake of all nutrients fell with socioeconomic status and that Negro children ate more poorly than did their counterparts in other ethnic groups.

All men may or may not be created equal. But every intern and resident who has malnourished obstetrical patients becomes aware that all gestations, and all births, are not equal. Poor maternal nutrition is clearly one of the factors that can contribute to toxemia of late pregnancy, abruptio placentae, severe maternal infections, severe anemia, and low birth weights—all of which give the newborn child a less-than-equal chance for survival and optimal growth.

Both animal studies and epidemiologic data strongly suggest that protein deficiencies before birth and in early childhood may impede the growth and functioning of the brain—a contribution to the long-standing heredity-vs-environment dispute that one writer has labeled "biological Freudianism." At birth, the human brain is normally gaining weight at the rate of 1 mg or 2 mg per minute, and it achieves 80% of its adult weight by age three, compared to 20% for the body as a whole. Animal studies going back to the 1920s have shown that rats, pigs, and other animals showed marked retardation in brain development if subjected to malnutrition during the critical period of rapid brain development.

In human epidemiologic studies, however, it is difficult to separate the influence of nutrition from cultural, social, psychological, and other factors affecting intelligence. A study done in South Africa, for example, showed that malnourished children scored consistently lower on intelligence tests than did better fed controls. But the study also indicated that poor housing and sanitary facilities, as well as other social and economic liabilities, were also widespread among those who tested poorly.

A number of more recent studies strongly imply a connection between nutrition and mental development in man even if they do not spell out the nature of the relationship. One shows the EEG patterns in protein-malnourished children are regularly abnormal in form, frequency, and amplitude, but return to a normal-like picture if the protein deficit is made good. Another bit of inferential evidence: Children treated for kwashiorkor or marasmus never catch up to the average for head circumference.

Drs. Heinz F. Eichenwald and Peggy Crooke Fry, both of the University of Texas Southwestern Medical School, Dallas, observe that such evidence "suggests that less severe but more chronic forms of malnutrition, which do not result in dramatic and life-threatening nutritional disease, may contribute to the small stature universally observed among economically poorer families and might be correlated with a decrease in intellectual development."

Dr. Charles Lowe, chairman of the Committee on Nutrition of the American Academy of Pediatrics, sums up what appears to be a widespread opinion concerning the relationship of nutrition to mental development: "When malnutrition is coupled with a constellation of adverse environmental factors that are characteristic of life in poverty, it is clear that intellectual growth will be jeopardized. There is no evidence that feeding people makes them smart, but it is indisputable that hunger makes them dull."

Drs. Eichenwald and Fry suggest that infection and malnutrition, themselves interrelated, may "act synergistically to produce a chronically and recurrently sick child less likely to react to sensory stimuli from his already inadequate social environment." Like many others, the two Texas investigators indicate that it matters little whether malnutrition can be unequivocally linked to impaired learning and behavior. "If adequate nutrition in early childhood diminishes the incidence of infection as well as the opportunity for sensory and cultural deprivation, the end results might be the same."

Unequivocal proof is thus scanty or impossible, and IQ tests, notoriously culture-bound, give scores that are difficult to carry meaningfully across boundaries of social, educational, and economic background. Nevertheless, it seems likely that in any society or group where mothers and small children are severely malnourished, at least a few children who would otherwise be considered unusually talented grow up merely average, and some who would be average are turned into mild retardates.

Programs that provide food assistance to the poor have proceeded from piecemeal to hodgepodge. The two main elements, the commodity distribution program and the food stamp law, critics aver, were designed primarily to support farm prices, rather than to feed the poor or correct undernutrition. The food stamp plan, enacted in 1964, enables the poor family to stretch its food dollar by surrendering the amount it would normally spend for food and receiving coupons worth more than that amount. A family that normally spends $40 a month for food, for example, might be entitled to purchase food stamps valued at $60 for the same amount.

Commodities available for distribution, once wholly limited to those the government had bought to support prices, have been extended to a list of 22 since the problem of hunger was "discovered" in 1967–1968. The expanded list includes higher amounts of such items as dried eggs, canned meats, and canned vegetables.

"All 22 items would furnish an adequate diet," says Dr. Schaefer, "but so far in the nutrition survey we have yet to find a family that receives more than 11. In fact, we have found that people on food stamps or commodities are no better off nutritionally than the poor who receive neither." Both programs together reach only about a third of the nation's poor.

The Senate has passed a measure that would allocate $1.25 billion for food stamps in this fiscal year instead of the $610 million proposed by President Nixon. The Senate bill provides that families below the official poverty line would receive stamps without charge and mandates national eligibility standards that would make them less costly to other families. In addition, it would authorize the federal government to establish plans in counties needing them but where local officials refuse to do so.

The fate of the measure in the House is in doubt. Rep. W. R. Poage (D-Tex.), chairman of the House Agriculture Committee which must report out the measure, said recently: "If you give them this food, the money they're now spending for food is going to go for beer and marijuana and worse." Further, Representative Poage has proposed that the current food stamp program and the Food and Agricultural Act of 1965, authorizing general farm aid, be combined and given permanent status. Dr. Mayer has commented that if Representative Poage does attach the food stamp plan to a general agriculture measure, it would amount to "blackmail." If any program for aiding the hungry is to succeed, Dr. Mayer believes, "it must be entirely divorced from considerations of agricultural policy and integrated into a national nutrition and distribution policy based on need."

Selling these basic premises to farm state congressmen long accustomed to consider aid to the poor only in connection with farm price supports and to Southern legislators resentful of suggestions that their area does not look after its own, will be difficult. The conference Dr. Mayer has organized will consider proposals submitted by 26 panels, each composed of from 12 to 15 physicians, nutritionists, food producers and processors, and spokesmen from consumer and social action groups, plus state and local officials.

Another problem facing the conference is the development of a more systematic means of gathering and utilizing nutrition data that will be of practical use to physicians and other health workers. "We need information not just for the nation as a whole," Dr. Mayer believes, "but county by county and neighborhood by neighborhood. Much of the raw data could come from annual school physicals and it should furnish a basis for action. If there are two cases of encephalitis in a school in Texas, it's front page news, but if an entire school is below average weight and height, no one cares or even knows about it."

Another task for the conference is to consider means of providing nutritional information not just to the poor, but also to the better-off. "Ignorance about nutrition is not limited to the poor," he says. "One of the most vulnerable groups in our affluent society is middle-aged people on high-cholesterol diets, overeating and under-exercising." Improved teaching at the college and professional school level is also on the agenda. "Most medical and nursing schools don't even teach nutrition. It was 'do-gooders,' not professionals, who turned up the problem of hunger."

The conference is also taking up problems relating to new foods, new food trends, so that nutritionally inferior foods are not foisted upon the public. Products that look and taste like meat, for example, are being developed, Dr. Mayer notes, but they may not have the nutritional value of the real thing.

Dr. Schaefer points out that some 3,000 new food products are introduced annually and that not all are adequately policed for nutrient value. "The use of enriched flour (thiamine, riboflavin, niacin, and iron) has declined since World War II," he notes, "when nearly all flour was enriched simply because the Armed Forces, the biggest single customer, specified it."

The whole question of what foods to fortify and with what, says Dr. Schaefer, must be carefully re-examined in the light of accumulating data on malnutrition. Some way must be found to ensure that pregnant women and very young children, in particular, receive adequate nutrition.

How much is a rounded, integrated program designed to banish hunger and malnutrition likely to cost? For the initial outlay, Dr. Mayer estimates, $1.5 billion would be needed; thereafter the program could be kept going for approximately $2.5 billion a year. Dr. Mayer believes that the outlay might save as much as $50 billion a year in medical-hospital expenses for the nation.

"Just as decades ago child labor became a public question, then was eventually outlawed, so now the question of malnutrition must be viewed as a public health problem," Dr. Mayer believes. "It is time to establish as national policy the right of every child—indeed, of every person—in this country to an adequate diet."

Some of the sharpest criticism of the upcoming conference, paradoxically, has come from the National Council on Hunger and Malnutrition in the U.S., which Dr. Mayer created and which he chaired until he resigned to organize the White House meeting. Says attorney John Kramer, executive director of the group: "The main criticism relates to the switch in the conference focus—veering sharply away from the problems of feeding the poor to the problems of the professionals. The recommendations we have seen seem aimed more at guaranteeing job protection for the nutritionist, the dietitian, and the doctors than they are toward guaranteeing an income for the poor. All panels save one, for instance, have been told to steer clear of discussion of a minimum income for

the poor on the grounds that it is outside their jurisdiction."

Also deplorable, Kramer believes, is the emphasis on nutritional education: "This is the last refuge of the nutritional conservative. There should really be no need for all the nutritional education that appears to be wanted—if hot dogs were properly labeled as to fat content, and other foods were labeled as to nutrients."

In what may prove to be quite an understatement, Dr. Mayer has observed: "The real challenges to the White House conference are economic, social, and political."

But if Dr. Mayer's hopes for the White House conference are fulfilled, it will mean that the nation will have moved from shocked discovery that hunger is widespread, through nagging concern and indecision, to commitment to end malnourishment—all in a little more than two years. Perhaps overnutrition, a more common, though less devastating, problem among most physicians' patients—and among physicians themselves—will come next.

THE TIME HAS COME TO REMEMBER OUR WORLD WAR I VETERANS; DALLAS NEWS ARTICLE POINTS OUT THEIR PLIGHT

Mr. YARBOROUGH. Mr. President, a tragic example of the problems that many of our World War I veterans face is dramatically presented in an article which appeared in the March 10 edition of the Dallas Morning News. This article describes the difficulty encountered by Mr. John Jenkins, of Whitewright, Tex. Mr. Jenkins served as orderly to Gen. John Pershing during World War I. During his service, Mr. Jenkins saw action on five fronts.

After the war, Mr. Jenkins returned to Grayson County, Tex., where he farmed for many years until his health forced him to stop. During recent years, Mr. Jenkins' only source of income has been his veterans pension. Recently his pension was reduced from $106 to $75 a month. Although Mr. Jenkins has no other income but his small pension, he is unable to receive welfare. At present Mr. Jenkins is living in a $10-a-month room with no plumbing.

Mr. Jenkins' case is not an exceptional situation. On the contrary, many World War I veterans and their widows are experiencing similar difficulties in making ends meet. The time has come for Congress to concern itself with these people's plight.

In order to provide some measure of relief to these neglected veterans and their widows, I have introduced S. 2658 which would grant to the veterans of World War I and their widows the same general pension as is presently paid to veterans of the Spanish-American War. Never has the need for this legislation been greater. The average age of the World War I veteran is 73 and most of these men are living on small fixed incomes. Consequently, they are the ones who are suffering the effects of runaway inflation the most.

Mr. President, the story of Mr. John Jenkins is one that every Member of this body should read. Therefore, I ask unanimous consent that this article entitled "Vet Makes It on $75 a Month" by Maryln Schwartz which appeared in the March 10 edition of the Dallas Morning News be printed in its entirety at this point in the RECORD.

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

MEMORIES ONLY LUXURY—VET MAKES IT ON $75 MONTH

(By Maryln Schwartz)

WHITEWRIGHT, TEX.—About the only luxuries in John Jenkins' $10-a-month room are his memories.

A World War I veteran, he once was orderly to Gen. John Pershing.

"I fought on five fronts, but I was a kid. I didn't know much about being scared. I figured the future would take care of itself," he reminisced Monday.

Jenkins was 21 when he joined the Army. He met Gen. Pershing in France.

"The General collected antiques. One night we were in Italy, and he discovered his bedroll was missing. He had put about $500 worth of antiques in it. My job was to find it."

Private Jenkins' search took him back to France.

I discovered an Italian soldier had stolen it and sold it to a French soldier. I was in Paris two hours when I spotted the bedroll. It went back to Gen. Pershing the next day. The antiques were still intact."

After the war, the general gave Jenkins an even bigger chore.

"I was supposed to look after his 15-year-old son, make sure no harm came to him. We were back in France. It was kind of nice and restful after all the fighting."

Then Jenkins returned home to Grayson County.

"I started farming and did OK until 24 years ago. That's when my wife died. I moved to Whitewright then and because of my health could do only odd jobs around town."

As Jenkins grew older, his health declined steadily.

"I discovered I couldn't get Social Security because I had been a farmer and didn't know anything about putting money in all along. I had an Army pension of $106 a month and hoped that would get me by with the odd jobs I was doing."

At the time Jenkins was living in a $24-a-month 4-room apartment.

"Then about two months ago, I was told my pension was being cut to $75 a month. I tried applying for welfare but they said my pension was enough to live on.

Jenkins was forced to move to a $10-a-month room with no plumbing facilities.

"If I want a bath, I go down to the Veterans of Foreign Wars building."

The bare room has a bed and a small heater. The windows are covered with cardboard.

"I been doing OK so far, I guess I will as long as I keep my health. If no more cold weather comes back this year, I'm not too afraid."

Jenkins spends much of his time drinking coffee in a drugstore in the middle of town, talking to old friends.

There's not too many of us World War I veterans left. I remember when we had at least 100. Today there're just two or three."

Jenkins is no longer sure the future will "take care of itself.

"I don't understand the welfare system. They told all us veterans we'd be taken care of. It doesn't look like we will. But Gen. Pershing once told us 'good soldiers never stop fighting!'

"And," he explained, "I very much consider myself a good soldier."

THE UNITED STATES AND CHINA IN THE 1970'S

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD an address which I delivered to a conference on International Affairs entitled: "China in Perspective" sponsored by the University of Illinois Extension in International Affairs, Bradley University, Illinois Central College and the World Affairs Council of Central Illinois at the Hotel Pere Marquette, Peoria, Ill., on March 14, 1970.

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

MARCH 14, 1970, AT A CONFERENCE ON THE UNITED STATES AND CHINA IN THE 1970'S

In his inaugural address last year President Nixon said his highest aspiration was to be known in history as a peacemaker. As a U.S. Senator I want to help him make good this pledge. And, if the President is to achieve that goal, particular attention must be devoted to the situation in Asia, where the U.S. has had to fight a major war in each of the past three decades—the Japanese war of the 1940's; the Korean war of the 1950's; and the Vietnam war of the 1960's.

U.S. policy in Asia in the 1950's and the 1960's was largely determined by our perception of Communist China as an implacably hostile state posing an immediate threat to the interests of the United States and its allies. The key to making progress in U.S.-China relations in the 1970's is to "cool it."

The time has come for a major reassessment of existing policies, based on the fundamentally changing situation of the 1970's.

One element of the reappraisal should be a recognition of what actually happened in Asia in the 1960's—as opposed to what U.S. policy assumptions expected would happen. Here, of course, the lessons of Vietnam will be paramount. Fortunately, in Vietnam our fear of possible massive Chinese intervention, and Peking's fear of an American military threat to its southern border, did not lead to a repetition of the bitter military struggle between U.S. and Chinese forces in Korea. Prophecies based on extreme mutual hostility and distrust often become self-fulfilling as the overreaction of each side feeds the worst suspicions of the other. But, with respect to China policy, the most important lesson of Vietnam was the caution and restraint showed by Peking in carefully avoiding a direct military role in that conflict, despite all of Peking's verbal intemperance and arms supply and other aid.

Even more importantly, a policy reassessment is necessitated by the major changes in the Asian situation which can be expected in the 1970's.

In my judgment, there will be four major developments in Asia in the 1970's—all of which could help to ease tensions between the United States and China. Cumulatively, these changes could provide an opportunity for the United States to normalize its relations with Communist China and help lay the foundations for a peaceful Asia and a more prosperous Asia. There will, of course, continue to be great ferment and even turmoil in Asia and the prospects for peace there are by no means assured. But skillful U.S. diplomacy throughout the transitional years of the 1970's could produce major results.

These are the four major developments which I foresee in Asia in the 1970's which will fundamentally change the policy situation there for the United States.

First, in the 1970's the strategic situation in Asia will be essentially a four-power or quadrilateral equation—involving the Soviet Union and Japan, as well as the United States and the Chinese People's Republic (CPR). This situation, as well as our perception of it, could be inherently much more stable than the "power vacuum" situation of the 1950's in which U.S. policy was based on the belief that post-colonial Asia lay helplessly at the doorstep of an aggressive Communist

China. The introduction of "countervailing" U.S. military strength along China's periphery was the policy we followed based on our perception of the strategic equation in the 1950's. Specifically, the United States adopted a policy of "close-in" military containment of mainland China, augmented by a tactical nuclear capability as well as our global strategic nuclear capability.

However, Peking has shown caution and restraint militarily throughout the Vietnam war, and the view that Hanoi is Peking's puppet—a cat's paw on a string—is no longer accepted even in the Pentagon. Even the "domino theory" has come in for serious reevaluation after the failure of the Communist attempt to seize power in Indonesia in 1966.

The emergence of Japan as a major economic power—its GNP is expected to surpass that of all the rest of Asia by the 1980's—and Japan's increasingly active role in Asian regional arrangements should add an important new dimension to the overall strategic equation in Asia in the 1970's. Japan has the potential gradually to become an alternate focus of Asian leadership to Communist China. It provides a compelling example of purely Asian economic development success. Moreover, Japan may be able to play an important role in the gradual normalization of mainland China's relations with its Asian neighbors—and we should encourage Japan to play such a role.

The Soviet Union's inherent geographic role as an Asian great power has been dramatized by the severe border tensions and military skirmishes which have developed between Russia and China, but the Soviet Union has been an important diplomatic factor in Asia throughout the 1960's—and can be expected to play an increasing strategic role in Asia during the 1970's. Moscow's eyes have again been turned eastward and a major drive to develop the sparsely-populated regions of the USSR's "far east" provinces is underway. Popular Soviet literature is full of references these days to the threat of a new "Mongol horde," and the Peking Daily seldom misses an opportunity to attack the Kremlin leadership in lurid terms. Behind the emotion-laden propaganda, both sides seem to be deploying their forces for a long and harsh geopolitical confrontation.

A deepening of the Sino-Soviet strategic confrontation in north central Asia will be a major factor shaping the Asian scene in the 1970's. Some experts have even predicted nuclear war between Russia and China in the 1970's, but all of us must hope those two vast nations will avoid any such catastrophe.

The principal importance for the United States of the Sino-Soviet confrontation of the 1970's is that it should ease the security situation of our principal Asian allies and friends, providing a needed respite to the smaller non-Communist nations of southeast Asia, in particular, to develop their economies and political systems and a favorable atmosphere for greater regional development.

However, the United States must be very wary of any effort to seem to be trying to manipulate the course of the Sino-Soviet impasse for our advantage. Rather, over the long haul we should pursue a strategy of correctness and non-intervention while using the opportunities the situation will provide in our own relations with non-Communist Asia to make a success of the Guam Doctrine.

How profound a strategic change in Asia has been wrought by the tense Sino-Soviet strategic confrontation is apparent when we compare it to the situation prevailing at the time of the Korean war when there was at least a facade of a monolithic Stalinist Sino-Soviet bloc and when there was close military collaboration between Peking and Moscow in waging the Korean war.

Thus, the 1970's will see a quadrilateral strategic equation in Asia, in place of the two-dimensional U.S.-China confrontation in the "power Vacuum" situation of the 1950's and 1960's.

Second, the 1970's should bring an end to the Vietnam war and a reduced U.S. military role in Asia, in accordance with President Nixon's Guam Doctrine.

An end to the Vietnam war and a consequent lowering of the U.S. military profile in Asia could have a profound impact on the evolution of U.S.-China relations in the 1970's. In accordance with the Guam Doctrine and its disavowal of any more Vietnam-style interventions, those "close-in" deployments of U.S. military striking power positioned along China's periphery in the 1950's and 1960's—which Peking has considered so threatening and provocative—will be reduced. Moreover, recent developments in weapons technology will enable the U.S. to continue to provide a nuclear shield for our Asian allies which does not have to be based on existing U.S. military bases in southeast Asia, Okinawa or Taiwan.

A lowering of the U.S. military profile in Asia in accordance with the Guam Doctrine and a shifting of the center of focus of U.S. policy actions there to support of regional and multilateral development institutions is more likely, in my judgment, to induce a favorable Chinese response than any attempt to resolve by frontal assault the major diplomatic issues of recognition and UN admission. This will be helped, too, by what I consider to be the likely outcome of the Pentagon's "anti-China" ABM proposal. There is great skepticism in the Senate on this matter, and if there is any further expansion of the ABM—which is open to question—I believe it will be a general anti-missile defense system, not a specialized defense against a threat of nuclear attack from mainland China.

Third, a major leadership transition, perhaps involving a serious succession crisis, can be expected within Communist China in the 1970's. Chairman Mao is already 77 and his principal associates in power are all of comparable age. Thus, a generation of Chinese leadership is destined to pass from the scene in the 1970's—a "revolutionary" leadership tempered by the "long march" of the 1930's and the long internal struggle for power against a U.S.-supported regime.

Most experts anticipate that China's next generation of leadership will be drawn heavily from the ranks of the military and will be more pragmatic and managerial in its approach and less ideological and revolutionary. It would be natural for such leadership gradually to move toward more normalized relations with the outside world.

It is worth noting that a change of leadership in Taiwan can also be anticipated, for Generalissimo Chiang Kai-shek is about the same age as his old rival Mao Tse-tung. The passing of Chiang will provide an opportunity to review the status of Taiwan in world affairs. I have already made known my own view that the people of Taiwan are entitled at some stage to self-determination exercised through a plebiscite which would envisage an independent Taiwan as one of the options.

Fourth, the 1970's could witness an important strengthening of constructive regional growth in non-Communist Asia. Wise policies and adequate resources can bring important economic growth even in those areas of non-Communist Asia which have not shared the impressive growth rates achieved in the 1960's by Korea, Thailand, Taiwan, Malaysia and even the Philippines. These latter nations, along with an economically bounding Japan, are positioned to achieve a sustained high rate economic advance throughout the 1970's.

I do not believe that the United States can or should withdraw from an active role in Asia. Regional economic development can become a reality only with an important input of U.S. capital and know-how. Moreover, the vital contribution which Japan must make will be acceptable to other Asian nations only if it is administered multilaterally in cooperation with the United States. If the United States were to withdraw, and seek to push Japan into the kind of role we have played in the 1950's and 1960's, there would be a strong reaction of fear and mistrust—based on World War II memories—which could drive the non-Communist nations of southeast Asia toward Peking.

But it will be in the strengthening and development of regional institutions, both economic and political, that there will be the real opportunity. Regionalism alone can provide security and self-reliance for the small nations of Asia in the long run. U.S. policy in the 1970's should emphasize a regional and multilateral approach. President Nixon's Guam Doctrine and his Administration's pronouncements with respect to foreign assistance, including the Peterson Report, indicate that U.S. policy in the 1970's will have the kind of regional, multilateral development focus appropriate to the changed circumstances and new opportunities of this decade.

In the broadest sense, a continuing active U.S. role in Asia will be needed to maintain the new kind of progressive balance which will be possible as a result of the four major changes which I see developing over the 1970's. Mainland China, because of its size, location, demography and cultural heritage, will continue to be the hub of Asia. Mainland China must play an important role in the affairs of Asia, if there is to be any permanence and stability to the arrangements developed there.

I do not wish to convey an impression of false optimism about Asia in the 1970's, or to leave the impression that I believe that clear weather is an assured forecast for U.S.-Communist China relations in the decade ahead. Rather, I see ahead a decade of reassessment and readjustment on both sides which—given the momentum of the developments I foresee—will provide an environment for evolving a new kind of Sino-American relationship based on mutual respect, normal relations and an absence of military confrontation.

Many contingencies could upset the favorable prognosis I have offered. The Vietnam war has not yet been ended, and recent developments in Laos indicate the kind of difficulties which remain before a stable arrangement to end the long war in Indo-China can be achieved.

In conclusion, I would like to offer a few specific recommendations about improving relations between the United States and mainland China within the conditions I have outlined.

First, I do not think the U.S. should attempt to "solve" the problems of diplomatic recognition and United Nations representation for Communist China by early direct negotiations. Under present circumstances, these issues, as well as the question of the ultimate status of Taiwan, are not susceptible to direct solutions. Rather, we should concentrate on ameliorating the underlying situation and conditions which have caused the acute tensions between Washington and Pekings since 1949. These conditions are now uniquely amenable to improvement. When, and if, such improvement does take place, the issues of diplomatic recognition and UN representation will take care of themselves naturally.

Second, the United States should look for opportunities to assist the Chinese people to achieve a higher standard of living by exploitation of the technological breakthroughs underlying the "green revolution" now transforming many parts of non-Communist Asia. If mainland China is left to fester as a great central ghetto of poverty and discontent in the center of Asia, while the nations all along

its outer rim succeed in breaking the old Asian bonds of economic stagnation and fatalism, a dangerous new imbalance will develop jeopardizing all progress to achieve a progressive stability.

Again, this matter is not likely to yield results if tackled directly. Chinese suspicion and considerations of national pride would lead to an out-of-hand rebuff to any direct offers of assistance under present circumstances. However, a gradual normalization of trade, travel and informational exchange relations between the U.S. and Communist China will provide many opportunities to encourage and indirectly assist the kind of sound economic advance in mainland China which alone can prevent ultimate famine there, given the demographic projections. A China in turmoil means an Asia in turmoil.

Third, the United States must have the perception and sophistication to recognize that all the turmoil and disruptions which occur in Asia are not the result of Chinese instigations—however much Peking may at times seek to claim credit. There are many deep-seated, historically-based ethnic tensions and rivalries in Asia which have nothing to do with Peking and which will inevitably find expression during the 1970's. For example, the Malay-Chinese tensions which are present in Indonesia, Malaysia and the Philippines do not derive from the policies or the actions of Peking. Similarly, the animosities among the Thais, Khmers, Laotions and Vietnamese of southeast Asia exist quite independently of Chinese policy. And the struggle between the dominant plainsmen and the more primitive hill tribes in the whole submountainous arch stretching from India to Vietnam will continue throughout the 1970's, independently of Peking's will.

Fourth, the U.S. must pay close attention to the Chinese and broader Asian implications of any nuclear arms control agreement it reaches with the Soviet Union in the SALT negotiations. In particular, we must be careful not to create the impression that we are joining Moscow in a mutual "nuclear ganging-up" against China. We must also avoid creating the impression in either Moscow or Peking that we would look on with no concern should the USSR attempt a pre-emptive strike at China's infant nuclear facilities, or if either nation felt it could employ nuclear weapons against the other and that this would be of no concern to the interest of the U.S. and the free world. The pressure of world opinion is a potent force but it can be effective only if it makes itself felt in advance of the contingency it seeks to effect.

The end of the Vietnam war, the Guam Doctrine, the economic success of Japan and the aftermath of Communist China's domestic trauma offer us a unique opportunity to begin to normalize our relations with mainland China. It is an opportunity to be developed as an opening for peace in Asia and the world through wise U.S. statesmanship.

BIG THICKET RESOLUTION

Mr. YARBOROUGH. Mr. President, many concerned citizens and organizations have contacted me to urge passage of S. 4, to establish the Big Thicket National Park.

The Big Thicket is a heavily forested area in east Texas, recognized by the luxuriance of its vegitation, dominated in its climatic form by a splendid loblolly pine hardwood forest type. These hardwood species, with their associated understory species define the Big Thicket forest type. The location, size, and great natural beauty of this virgin forest area makes it one of the most interesting and attractive areas remaining in the State.

The members of the Sadler Study Club of Corpus Christi, Tex., are concerned about preservation of this beautiful area, and have forwarded a resolution to me expressing their concern for the preservation of at least 100,000 acres of the Big Thicket for a national park.

Mr. President, I ask unanimous consent that the resolution from the Sadler Study Club of Corpus Christi, Tex., be printed in the RECORD.

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

RESOLUTION

Whereas, the Big Thicket of Texas is a meeting place for eastern, western and northern ecological elements and

Whereas, this is the last stand in Texas of the nearly extinct Ivory-billed Woodpecker; and

Whereas, this beautiful and unique area is rapidly being destroyed by bulldozer and chain saw; therefore

Be it resolved that the Sadler Study Club of Corpus Christi, Texas, urges the preservation of at least 100,000 acres containing the most unique areas of the Big Thicket, these areas to be connected by environmental corridors; and

Be it further resolved that the Interior and Insular Affairs Committee of the Senate of the United States by requested to set immediate hearings on S4 which would create a Big Thicket National Area.

Mrs. VINSON MORRIS,
President.

ANNOUNCEMENT OF SUPPORT OF AMENDMENT 549 TO SUBSTITUTE AMENDMENT 544 OF THE VOTING RIGHTS ACT

Mr. YARBOROUGH. Mr. President, at the time that the vote on the Cooper amendment, No. 549, was taken on March 10, 1970, I was necessarily absent and I wish the RECORD to show that if I had been present, I would have voted "yea."

Mr. President, I ask unanimous consent that I be recorded as for amendment No. 549 in the CONGRESSIONAL RECORD of March 10, 1970.

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

MISLABELING OF DEFENSE RESEARCH PROJECTS

Mr. FULBRIGHT. Mr. President, last year the Senate, for the first time since I became a Member, carefully scrutinized the defense research program and took important steps to bring it under more effective control by the Congress. One of the most significant actions taken was the adoption of the proposal, originated by the distinguished Majority Leader, to require that all defense research projects have "a direct and apparent relationship to a specific military function or operation." Whether or not the Department of Defense plans to live up to the spirit of that restriction remains to be seen. I have asked the Department for budget information on this and other research areas in which I have a special interest.

There are signs, however, that the Department may attempt to evade the congressional mandate by some sleight-of-hand on project labels. The Providence Evening Bulletin of February 23 contains an article entitled "Pentagon-Science Alliance Under Mounting Attack," written by Douglas C. Wilson. The article reported the comments of a number of scientists performing research for the Defense Department. One, who had composed debatable statements of military relevancy to insure that his projects would continue, was quoted as saying:

I may be a prostitute, but at least I can tell myself I'm a million-dollar-a-year prostitute.

The article also reports that "projects have been given titles indicating a military aspect to nonmilitary research supported in the Defense budget," and goes on to quote a number of scientists who have questioned the accuracy of titles assigned to their projects by the Pentagon. One project by Prof. Guenter Lewy of the University of Massachusetts was entitled by the Pentagon: "Religion and Revolution: A Study in Comparative Politics" and was officially described as an effort to "provide empirically derived conclusions about ideological movements which support insurgency." One of the studies was "The Ataturk Revolution in Turkey," which I referred to last year during the debate on the defense authorization bill. Professor Lewy, when asked about the Defense Department's label for the project, was quoted as saying:

That's completely off. This description is misleading, to put it mildly. If this is Department of Defense language, I can say flatly, I don't like it.

A Canadian scientist, Dr. Harold I. Schiff, of York University, was quoted as saying that the title the Army gave his research project was "extremely farfetched," a "misrepresentation," and that it was "probably an artifice."

If the findings of this one reporter are a fair indication of the prevailing attitude within the defense research establishment, the Armed Services and Appropriations Committees will have to dig much deeper than merely examining titles and descriptions to determine whether or not the spirit of the Mansfield amendment is being followed. I hope that both committees will give careful study to the problem described in the article by Mr. Wilson.

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

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

[From the Evening Bulletin, Providence, Feb. 23, 1970]

PENTAGON-SCIENCE ALLIANCE UNDER MOUNTING ATTACK

(By Douglas C. Wilson)

WASHINGTON.—American science today is shaken by a national controversy that could alter the main thrust of technology in this country for many years.

The scientific community and one of its biggest allies, the U.S. Military Establishment, are being charged with too great a complicity in each others' affairs.

Each is accused of having feathered—and shared—the other's nest for so long that the Pentagon's influence is overextended and science is now distorted and misdirected.

Forces are at work that could reduce science's role as handmaiden to military tech-

nology and turn more of its attention to the country's domestic problems.

These forces are coming from two powerful groups—the anti-establishment young people at the universities and the liberal establishment in Congress, where the Pentagon's prevasive activities are under increasing attack.

Both groups regard today's "military-scientific complex" as an unholy alliance, either in whole or in part.

Congress is putting new limits on this consortium. Young activists are out to downgrade it, or even destroy it.

Both groups have made gains in the last year, cutting back the Pentagon's authority and forcing the universities to consider reforms in their scientific activities.

But the Defense Department has no intention of seriously reducing its basic ties to the scientific community. And the universities are anxious to avoid drastic change.

As a result, scientists, the government and the universities are now in a struggle of cross-purposes that is laced with uncertainty and at times with bitterness and hyprocisy. These may be inevitable, for the issues involve political pressures, questions of academic honor, and hundreds of millions of dollars.

The Defense Department has been one of the chief patrons of American science for a quarter of a century. It is now spending 500 to 600 million dollars a year for scientific research.

This exceeds the entire annual budget of the National Science Foundation.

It is twice as big as the budget of the Federal Water Pollution Control Agency, and three times that of the National Cancer Institute.

Pentagon money, in short, is a lifeblood element in American science. It helps to pay scientists' salaries, buy their equipment, and hire their research assistants.

This bond is an outgrowth of World War II and the subsequent Cold War era. Military leaders cultivated the science and technology they needed to develop sophisticated weapons in a tense and threatening world.

In the process, they also came to support science in more and more areas without direct connection to the Defense Department's immediate needs.

Scientists have been glad to get this extra support, but it has led to tenuous relationships and potential stresses in some areas, since the interests of science and those of the military are often dissimilar.

The Journal-Bulletin has learned, for example, that the Pentagon has put military titles on nonmilitary research projects, without the knowledge of the scientists involved. Informed of these titles, some scientists say they are misleading and potentially embarrassing, both here and abroad.

The wider, public debate over Pentagon spending has international aspects because the U.S. military spends several million dollars a year for research activities in foreign areas.

Interviews with scientists who engage in this activity showed that it carries political hazards. A biologist said that, because he went to Asia with Army support for his medical research, he got a poor reception there and was "automatically suspected of being an intelligence agent." Other defense supported projects abroad have sparked serious international incidents embarrassing to the United States.

In addition to supporting American research abroad, the Pentagon also gives support to many foreign scientists who share their knowledge freely with the rest of the world's scientists.

A Canadian scientist emphasized this point, saying that if his Army-supported work is "of any use to the (U.S.) military then it's equally available to the Viet Cong." He proposed this as an answer to any of his fellow countrymen who might charge him with "selling out for the war effort" of another country—the United States.

Meanwhile, at home, critics in Congress attack this Pentagon "foreign aid" to science as a dangerous form of U.S. military interference in other nations' institutions.

But the centers of greatest controversy are the troubled universities and colleges in the United States.

The military spends 250-million-dollars of its annual research money to support more than 5,000 scientific projects at 260 campuses—including more than four million dollars at Brown University of Rhode Island.

At leading universities, the Pentagon pays between a quarter and a third of all the federal money for scientific research. It outspent the National Science Foundation in this field by roughly 75-million-dollars last year.

Congress, on one side, has passed a new law to get the military out of the business of subsidizing nonmilitary research.

Campus activists, attacking the "military-scientific complex" from another side, have demanded that university scientists reduce or stop altogether their work for the military. Much of this dissent arises from their opposition to the war in Vietnam.

The law passed by Congress, called the Mansfield amendment, stipulates that the Pentagon cannot spend money for science unless the research has "a direct and apparent relationship to a specific military function or operation."

The law was enacted three months ago, and efforts to apply it already are agitating many university scientists.

In one recent interview, a scientist said the amendment could mean "anything from zero to catastrophe" to his own work and that of his colleagues.

Another scientist charged the leaders of Congress with "legislative blackmail."

Still another indicated that he had composed debatable statements of military "relevancy" to ensure that his projects will continue to receive Pentagon support:

"I may be a prostitute," he said, "but at least I can tell myself I'm a million-dollar-a-year prostitute."

Student activities have stirred the ire of other professors who defend their Pentagon subsidies openly and say the critics pose the greatest threat to their academic integrity.

"We fought long and hard in this country for academic freedom," said Prof. Guenter. Lewy, a political scientist at the University of Massachusetts, "and I deeply resent self-appointed vigilantes coming to tell me what I can and cannot do, I will fight it."

On-campus criticism has been destructive at some institutions and constructive at others.

At Stanford University, militants last year seized a building at the Stanford Research Institute, a major defense contractor, and so embittered relations there that the university and the institute finally agreed to end their affiliation.

The laboratory complex is now the university's loss and the Pentagon's gain, joining the ranks of many other independent research centers and "think tanks" controlled largely by the military—another research realm that also has come under the pruning shears of Congress.

The Independent Research Laboratories and think tanks now nourished chiefly by the Pentagon are another great source of scientific and technological know-how.

Sixteen of these centers alone received a total of 263-million dollars from the Defense Department in fiscal 1969, more than all the Pentagon research money spent at colleges and universities.

But in the independent laboratory area, too, Congress is imposing new controls on Pentagon spending. To cushion themselves against the increasing military budget constraints, some of these centers plan to diversify their activities.

An example of this is the Research Analysis Corp. (RAC) in McLean, Va., where all but 10 percent of the current research is devoted to military contracts.

"In another year," reports Frank A. Parker, the corporation's president, "we would like to see about 20 per cent of our effort applied in nonmilitary lines. People at RAC do have social motivation."

In Congress, even Sen. George Murphy, R-Calif., an outspoken defender of military contract centers, has suggested that these institutions "could, in fact, be our most important national resource when we turn them to the problems of pollution, waste disposal, communications, crime, delinquency, transportation, urban renewal, and the eradication of poverty, all of which are approaching crisis proportions."

Change appears likely to occur more rapidly at the Massachusetts Institute of Technology, now the center for more than 120-million-dollars a year in military research and development spending.

Unlike Stanford, M.I.T. intends to retain control over its prestigious military research laboratories. And there is growing talk, at the university's highest policy levels, of partially "converting" these centers into tools for attacking domestic problems.

Defense Department officials have put misleading titles on some of the Pentagon's costly scientific research projects in an effort to justify their support.

Certain titles supplied to Congress a year ago were found to be misleading in recent interviews with researchers at U.S. and foreign universities. Most scientists have not even heard of the Pentagon titles, and in some cases they call them potentially embarrassing.

Projects have been given titles indicating a military aspect to nonmilitary research support in the Defense budget. A scientist at York University in Toronto, for example, complains that an Army title linking his work to "missile reentry" is "a misrepresentation," and says his work does not have "any military applications that I know of."

A scientist at Brown University, surprised to hear that his Navy project was listed as a study related to "missile technology," said "if it has anything to do with missiles, I'm not aware of it." Similar cases were discovered at other universities.

While Defense officials acknowledged writing military titles for research studies, and say it is done to justify military funding, they maintain that the titles are not misleading.

A Navy research official said the special titles are "not intended to be descriptive of what the scientist is doing." Rather, they are supposed to be "descriptive of our interest in what he's doing," he said, "and that's quite another matter." No distinction of this kind has been made in title lists which the Pentagon sends to Congress, however.

Titles for projects supported by the Office of Naval Research, the official said, are written "to avoid scientific jargon and to express the Navy's interest in the particular work being supported."

He said he has to "justify these projects in terms of their potential relevance to the Navy," in order to make this relevance "clear to the people who are going to provide the dollars."

There is no clear pattern in the way the titles appear. The nonmilitary title for a project has sometimes appeared in Pentagon lists obtained by Sen. J. William Fulbright, D-Ark, who has put them in the Congressional Record, while a different, military title for the same project may appear in the separate catalogues that were sent to Congress a year ago. The reverse also has occurred—with a military title appearing in

lists used by Senator Fulbright and a nonmilitary title appearing in the catalogs.

But the military titles are there, and the effect of some can only be misleading.

A political scientist at the Massachusetts Institute of Technology, Prof. Frederick W. Frey, said he was "furious" when he learned that a major research effort he directed with Navy support totalling $700,000 had been labeled the "Impact of Modernization Upon Future Military Operations." His own title was "Human Factors in Modernization."

Because the project involved foreign countries, "we had to show no military applications, he said, "and preferably there were none."

More than 12,000 projects are supported by the Pentagon, and titles have been a principal guide used by Congress in debating the military relevance of these activities. Last Aug. 12, for instance, it was on the basis of picking out project titles in the social and behavioral sciences that Sen. Mike Mansfield, D-Mont., the majority leader, questioned the relevance of certain studies "to the military needs of the nation." This was during a lengthy floor debate on the involvement of the Pentagon in many research activities.

Pentagon officials have said the titles were intended for internal, government use only. Yet they are unclassified, and—as noted—some have been published in the Congressional Record, available to all.

Since the titles give a military cast to university studies, they can make school officials even more hard-pressed by those who want to sever campus ties with the Pentagon.

Since the titles also tie scientific work outside the U.S. to the Pentagon's "mission," they can make this work an easy target for anti-American feelings. They can even create such feelings.

And since the effect of the titles, here in Washington, is to misinform Congress, they hamper its ability to judge the nature and merits or research activities supported by the Pentagon, and reduce the likelihood that Congress will exercise intelligent control over such activities.

The Defense Department requested authority to spend more than $630 million in support of scientific studies in the current fiscal year, but Congress reduced this authority by $95 million, or 15 percent, two months ago. In an effort to restrict military involvement in science, it also passed a new law, the Mansfield amendment, saying that the Pentagon may not spend money for research unless the work has a "direct and apparent relationship to a specific military function or operation."

With this, David Packard, the deputy defense secretary, told Defense research officials in a memorandum Dec. 3 that "insufficient attention has been given to making clear to the Congress the basis for deciding to support work in the particular field, and particularly the connections between relatively basic research and the long-range Defense problems and missions which require such research."

To comply with the new law, he directed the officials to take another look at all Pentagon-supported projects and provide "a written statement which describes, as clearly and simply as possible, the project or study and its purpose, together with its direct and apparent relationship to one or more designated military functions or operations." The review will be completed this month. Projects which are not relevant to the military must be terminated, he said.

Past results in the Pentagon's practice of writing military titles for research projects show that a new, in-house effort to stress the military nature of projects may have dubious value.

Senator Mansfield, an outspoken critic of the Pentagon's nonmilitary research, hailed Mr. Packard's directive at the time and noted approvingly that the Defense Department also was asking an outside agency, the National Academy of Sciences, to make an independent review. But the Academy has decided to stand aside for the time being and let the Pentagon make the "first pass" at projects, according to Dr. Philip Handler, the academy's president.

The high-ranking Defense official, mentioned earlier, who allowed himself to be interviewed but did not want his name used, said Pentagon experts, rather than outside scientists, can best determine the military relevance of the projects. Pentagon research directors do not expect university scientists to be aware of military problem areas, he said.

Echoing this argument, the Navy research official said "it's assumed that we have better knowledge of the Navy's interest than he (the scientist) does."

The clear implication of these arguments is that the Pentagon officials are supporting the work for reasons best known to themselves, and not always fully understood by the scientists.

The York University professor tried to speculate about possible "missile reentry" applications of his work. Such a connection has "never occurred" to him he said, adding: "If I thought that was what it was being used for, I think I'd quit."

Another scientist said "it could be that somebody honestly thinks" his research has an application to missiles. "After all," he said, "the technical competence of military officers is not the same as the technical competence of fulltime scientists."

What these scientists are saying suggests that if Pentagon officials buy this research as a contribution to missilry, they are fooling either themselves—or scientist. And if they are not really supporting the work in the interest of missilry, then somebody else is being fooled.

The York University scientist is Dr. Harold I. Schiff, a Canadian chemist and dean of the sciences faculty, who has conducted a three-year study called "Kinetics of Atmosphere Constituents" with U.S. Army support totaling $33,480. The three year period ends this April.

He said his project is "absolutely fundamental research" into the daily and seasonal variations of "naturally-occurring chemical reactions" in the upper atmosphere—phenomena such as the aurora and "night airglow," he said.

He had never heard of the Army title for his project: "Study of Upper Atmosphere Reactions Involving Energy Transfer Between Species of Importance in Missile Reentry." This title appears in a catalog of Army projects prepared in January, 1969, and sent to Congress.

Dean Schiff called it "an extremely farfetched title" and "a misrepresentation," and said it was "probably an article."

He said it was "certainly not a title which I have given my approval to." The chemist added that he would never sign a contract if it carried that label. He also felt that the title was potentially embarrassing. If a student editor discovered it and asked him about it, "I'd have to do some fast talking," he said.

The scientist at Brown is Dr. Joseph H. Clarke of the engineering department, who has received Navy support for a study of "Radiating and Reacting Gas Dynamics for Entry of Bodies Into Atmospheres."

The work has to do with Mars and the planets," Dr. Clarke explained. The research would apply to "meteors and spacecraft," but not to missiles, he said, "because the temperatures and velocities I use are too high."

He had never heard the Navy title, "Thermally Induced Radiation Fields in Missile Technology."

Professor Frey, the political scientist at MIT's Center for International Studies, said he discovered inadvertently that the Navy was calling his ambitious, long-term research project a study of the "Impact of Modernization upon Future Military Operations."

We were furious when, on their own hook, they came up with that title, he said. The project, originally called "Human Factors in Modernization," was supposed to be a study of "the dynamics of developing societies," using comparative data from seven countries: the United States, India, Brazil, Italy, Sweden, the Philippines, and Tanzania.

Professor Frey had hoped to enlist teams of specialists, both American and foreign, to work on the project in each of these countries. They would gather, interpret and compare information about attitudes and behavior relating to such matters as illiteracy, urban migration, the mass media and government. In view of these plans, a title linking the work to "future military operations" of the United States "would have killed us abroad," he said.

Detailed information of this kind is "urgently required," he believes, "if many vital development policies are to succeed."

Professor Frey said the project was touchy enough without the money coming from the Defense Department. The estimated cost of the five-year project was $4.2 million, and the only source for that kind of research money was the Pentagon, he found. To get foreign participation, however, "we had to show no military applications," he said, "and preferably there were none."

Professor Frey supposes that the Pentagon simply "wanted an in-house title that looked more relevant to military operations. I think it's the kind of thing they do fairly routinely," he said.

The project is ending prematurely, after an expenditure of $700,000, because the Defense Department has reduced its support of foreign studies in recent years.

"I don't know that what we've produced is worth $700,000," the political scientist said frankly. The cut-off means "a lot of waste" because "there are other things we were tooling up to do," he explained, "and they've fallen by the wayside." This included a large investment in training people to use computers for the project.

Another political scientist, Professor Guenter Lewy of the University of Massachusetts, was surprised to hear that his project, entitled "Religion and Revolution: A Study in Comparative Politics," was officially described as an effort to "provide empirically derived conclusions about ideolgical movements which support insurgency."

"That's completely off," he said when he saw this description in the Congressional Record. "This description is misleading, to put it mildly. If this is Department of Defense language, I can say flatly, I don't like it."

Professor Lewy said he did not believe the Advanced Research Projects Agency (ARPA) which sponsors his work, "could think or hope that this kind of research could help solve any kind of current problems," and he added that "counterinsurgency is not my cup of tea—not that I have anything against it."

Later he stressed that he did not want to make a major issue of the Pentagon's language; the description might be justified if the word "revolution" had been used in place of "insurgency," he said.

Professor Lewy, a scholar and author whose special interest is in the field of religiously motivated political behavior, is in the fourth year of the project—a four-year, $69,800 research effort involving several studies financed by ARPA. The studies are historical analyses of "revolutionary situations in which religion has played a central role."

Much of the funding in this project, as in others supported by the Defense Department,

is divided between the university, the principal researcher, graduate assistants, overhead costs, and other expenses.

One of Professor Lewy's studies, "The Ataturk Revolution in Turkey," has been a favorite target in Senator Fulbright's criticism of defense-sponsored research. He has cited the study frequently as an example of projects having little connection to the Pentagon's needs.

Other scientists were less disturbed by the Pentagon titles on their projects.

Both "interaction of Drugs with Other Factors Determining Human Performance," and "Assessment of Military Performance Enhancement by Drugs" are titles given to a completed, $139,000 Navy study directed by a McGill University psychologist in Montreal. The investigator, Dr. Dalbir Bindra, knew of the second title.

Since he was studying human faculties of attention, memory and decision-making, he considered that "enhancement" of military performance was "one possible application" of his research. He said the work was "not related to the military in any immediate sense," however. As for the title—"I think it doesn't represent the facts," he said, "but I don't think it is an embarrassment to me."

The Navy title for a political science study by Prof. George Guthrie of Pennsylvania State University is "Military Implications of Modernization in the Far East." A telephone call to Professor Guthrie disclosed that he had never heard of this title for his $330,000 study, which covered a three-year period ending last June.

His own title was "Impact of Modernization in the Philippines." The part about "military implications" was "not part of the title," he said. "It never was. I don't know where that title came from."

He called his study "the kind of thing that people in all phases of government, including the military, should look at. And I think it has implications for the Defense Department," he said, "otherwise, they wouldn't support it." But he added: "I haven't written a report that would bear that title."

Professor Guthrie said he had done much of his research in the Philippines. Asked if the Pentagon's military title for the project would have been an embarrassment there, he said, "Yes, it would have been. Some of my Philippine colleagues would have been reluctant to participate."

These examples came in light in a check of relatively few projects, based mostly in New England and Canada. The Defense Department supports hundreds upon hundreds of projects at universities in all parts of the United States, and in 44 other countries. There is no telling how many more titles are at variance with the scientists' own definition of their research—or how much the variance would be a source of their embarrassment and dismay.

SENATOR TYDINGS SPEAKS OUT FOR THE CONSUMER

Mr. YARBOROUGH. Mr. President, the February/March issue of Trial magazine, the national legal news magazine of the American Trial Lawyers Association, contains an excellent article entitled "Fair Play for Consumers," written by the distinguished senior Senator from Maryland (Mr. TYDINGS). In this timely and penetrating article, Senator TYDINGS outlines the difficulties that the average consumer faces in trying to enforce his legal rights against those unprincipled companies and individuals who engage in unfair and deceptive practices at the expense of the innocent consumer. Senator TYDINGS stresses the need for legislation which would authorize large groups of consumers who have been victimized by unscrupulous dealers to bring class actions to obtain legal relief. As a remedy to this problem, Senator TYDINGS discusses the bill that he introduced, S. 3092, and the one Congressman BOB ECKHARDT of Houston, Tex., introduced, H.R. 14585, which would authorize such consumer class actions. The American consumer is fortunate to have two such strong and dedicated advocates of consumer legislation as Senator TYDINGS and Congressman ECKHARDT.

Mr. President, because of the importance of this subject, I ask unanimous consent that the article be printed in the RECORD.

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

FAIR PLAY FOR CONSUMERS

(By U.S. Senator JOSEPH D. TYDINGS)

For most of Anglo-American legal history, the law has uncompassionately insisted: "Caveat emptor—the buyer beware!" [1]

Whatever justification there may have been for such a policy in the early stages of our economic development, its chief effect in today's complex market is to place an undue burden on the contractual party least capable of carrying it. Too often the modern consumer is unable to assess the technical qualities of the product he purchases, to resist sophisticated sales campaigns, or to comprehend the multitude of credit plans and financial "deals" that he may be offered. Every year billions of dollars are wasted by consumers through the purchase of misrepresented goods.

Although the least educated and the more impoverished segments of society—those who can least afford it—suffer the most, all levels of society are affected. Commissioner Mary Gardiner Jones of the Federal Trade Commission characterized the situation this way:

"No matter how informed and sophisticated the consumer, deception will take its toll and the very morality of the community is at stake when there is no effective legal action to be taken against such dishonest merchants." [2]

Fortunately, in the last few years private groups, legislatures and law enforcement officers have begun to recognize the importance of protecting consumer interests.

Campaigns against those who defraud and deceive consumers have intensified. Consumer councils have developed on state and local levels across the country, and the voice of the consumer has begun to receive a hearing in legislative halls.[3]

Public awareness of the need for consumer-protection programs has had some salutory effects, but has not significantly reduced the incidence of fraud. False advertisers, loan sharks and others of their ilk are still making exorbitant profits at the expense of the unwary consumer.

In sum, despite good intentions and the proliferation of consumer protection laws and agencies, our society continues to require that the "buyer beware."

Ralph Nader estimates that "at least 95% of illegal consumer abuses are never adjudged to be such by our legal system. The arm of the law . . . never reaches, these abuses, thereby permitting an 'overworld' of corporate crime which reaps billions yearly from the defenseless consumer." [4]

The activities of the Federal Trade Commission indicate the weaknesses of the "agency" approach to the prevention of consumer frauds. Commissioner Ralph Elman, of the Federal Trade Commission, recently charged that his agency is marked by "waste, inefficiency and indifference to public interest." [5]

The 29 years it took the FTC to bring the Holland Furnace Company to task demonstrates clearly the ineffectiveness of administrative agencies in providing consumer remedies.

Complaints about high pressure tactics were made against the company as long ago as the early 1930's.[6] In December 1936, the company agreed to an FTC consent order against certain misleading advertising claims.[7] Although complaints against the company continued,[8] a second proceeding was not initiated by the FTC until 1954.[9]

Four years later, a cease and desist order was issued prohibiting Holland "from engaging in a sales scheme . . . whereby its salesmen gain access to homes by misrepresenting themselves as official 'inspectors' and 'heating engineers' and thereafter dismantling furnaces on the pretext that this is necessary to determine the extent of necessary repairs." [10] For seven years, Holland Furnace Company ignored the court decree enforcing the cease and desist order. Finally in 1965, the company was heavily fined for contempt of court.[11]

The danger of overdependence on public enforcement agencies is obvious:

Delay is inherent in a bureaucracy.

Administrative budgets and personnel are limited and in some cases the statutory structure or powers of an agency may inhibit its effectiveness.

More often than not, such agencies lack effective sanctions to enforce their decrees.[12]

The consumer may, of course, initiate a private action for fraud or for rescission of a sales contract on the basis of misrepresentation. In most cases, however, this ability is more theoretical than real. Law suits are costly. The financial loss to a single consumer is not usually large enough to make individual litigation practicable. His court costs and attorney's fees may far exceed the restitution he is likely to receive even if he prevails in his suit.

But while administrative agencies may be ineffective and the cost of an individual suit may be prohibitive, many persons acting together as a defrauded class could afford to enforce their individual rights.[13] A consumer class action compensates for the inability of individual consumers to litigate small individual losses by enabling one or more representatives of a group of consumers with similar injuries to place group injury in issue.

The aggregate group claim is generally large enough to warrant the outlay of the necessary expenses and, more significantly, to make it possible to obtain private counsel on reasonable terms.

In addition to being economically infeasible, individual suits, even if their success is assumed, are unlikely to prove an effective deterrent to the dishonest company. In fact, many irresponsible companies probably treat the loss of an occasional small judgment as one of the risks of the trade; a risk made worthwhile by their continued high profits through misrepresentation or other deceit.

It is noteworthy that Holland Furnace Company continued its depredations notwithstanding a number of instances in which it was successfully sued for common law fraud by individual home owners [14] and a number of other instances in which individual home owners successfully defended contract actions by Holland Furnace Company on the grounds that their contracts had been induced by fraud.[15]

The consumer class action, on the other hand, has beneficial effects that extend beyond the restitution of individual damages to the injured consumers. The mere existence of an effective class action remedy will deter improper conduct. The potential defendant is forced to consider not only the

Footnotes at end of article.

possible direct economic loss from a class action, but also the potential visibility, publicity, and public reaction and the resulting loss of good will.[16]

Although the dishonest merchant may be able to safely ignore the separate complaints of many individuals, he cannot afford to disregard the public criticism of many voices in unison.

Experience in states whose courts are amenable to consumer class actions reveals the potential protection for consumer rights that this procedural device can provide.

In California, for example, the courts permitted an action to be brought by a taxicab customer on behalf of himself and others similarly situated to recover allegedly excessive charges by a taxicab company accumulating over a four-year period.[17] The court ruled that the action could properly be brought as a class action since the complaint showed the existence of an ascertainable class as well as a defined community of interest in the questions of law and fact affecting the parties to be represented.

Although the plaintiffs' individual claims were relatively negligible, the aggregate claim of over $100,000 made litigation feasible. The court, recognizing that fact, stated:

"[A]bsent a class suit, recovery by any of the individual taxicab users is unlikely. The complaint alleges that there is a relatively small loss to each individual class member. In such a case separate actions would be economically infeasible. Joinder of plaintiffs would be virtually impossible in this case. It is more likely that, absent a class suit, defendant will retain the benefits from its alleged wrongs. A procedure that would permit the alleged injured parties to recover the amount of their overpayments is to be preferred over the foregoing alternative.[18]

An Illinois court nas similarly ruled proper a class action brought on behalf of an estimated six million Montgomery Ward charge-account holders who claim to have unwittingly subscribed to a credit life, disability and dismembership insurance plan on their accounts with Ward.[19]

A class action brought on behalf of the charge account holders was held to be a proper form of action by the court on the ground that the plaintiff had stated a good cause of action, that he adequately represented the class involved and that the class action was "singularly appropriate to the controversy presented by the complaint." [20] The class action was the only practicable way to litigate the claims, as the Illinois court saw.

Class actions would appear to be an invaluable weapon in the consumer's arsenal, but the class action procedure of many of the states is outmoded and archaic. All states provide some form of class actions, but the manner in which they define the procedure often makes it unavailable in the usual consumer-fraud situation.

The New York cases, for example, require a unity of interest among the members of a class that approximates the test for compulsory joinder of parties.[21] They also require that class members desire identical remedies.[22] The result of this view is that to date consumer class actions are summarily dismissed in New York.[23]

Similarly, in *Spear v. H. V. Greene Co.*,[24] a Massachusetts court refused to allow 40 plaintiffs to bring a suit on behalf of 60,000 others although the alleged facts indicated that the defendant company had employed similar fraudulent methods to swindle many individuals out of sums aggregating to a substantial amount.

The court recognized that "the frauds charged in the bill are great in magnitude and peculiarly vicious in their nature in that they were designed chiefly to victimize the ignorant and frugal poor." [25] Nevertheless, the court dismissed the class action, the only feasible means of suit, on the ground that the common interest required for a common-law class action was not satisfied. The court interpreted that requirement to mean that the plaintiffs must have suffered virtually identical wrongs. Fortunately for the citizens of Massachusetts, that state has recently enacted strong consumer class action legislation,[26] but the climate for such actions remains inhospitable in most other states.

Moreover, as a result of a recent U.S. Supreme Court decision, *Snyder v. Harris*,[27] the federal courts appear to be even less hospitable to consumer class actions than state courts. Prior to *Snyder v. Harris* the provisions of Rule 23 of the Federal Rules of Civil Procedure, as amended in 1966,[28] appeared to establish a procedural basis for the maintenance of consumer class actions in those cases where a basis for federal jurisdiction existed.[29] But in that decision the Supreme Court ruled that separate and distinct claims cannot be aggregated to meet the required $10,000 jurisdictional amount.

This ruling in effect makes the Rule 23 action, in itself the most modern class action procedure in the United States, unavailable to the defrauded consumer who has a claim of less than $10,000, even if he can satisfy the necessary diversity of citizenship or federal question requirements for federal jurisdiction.

It has been suggested that, except for the effects of *Snyder* v. *Harris*, diversity forms a sufficient basis for bringing most instances of mass fraud into federal court.

I cannot agree that a reversal of *Snyder* v. *Harris* would in itself be sufficient.

First, much mass fraud is perpetrated in localized urban areas and may not involve any diversity of citizenship. A usurious finance company operating in Cleveland may never loan money to anyone who is not domiciled in Ohio. Moreover, even if a borrower from another state could conceivably be located, a lawyer both practically and ethically must work with the client who enters his office. He cannot finance a search for such a borrower or solicit his business.

In the spring of 1969, I introduced legislation to establish a meaningful private consumer remedy. S. 1980 provided for consumer class actions in federal courts in cases where state consumer protection laws have been violated. Similar legislation was introduced in the House by Congressman Bob Eckhardt of Texas with whom I have worked closely.

The bill was designed to reverse the effects of *Snyder* v. *Harris* and, in addition, to broaden the basis for federal jurisdiction over consumer fraud. By doing so, it would afford the liberal machinery of federal Rule 23 for joinder of all persons in like situations involving deception, fraud or other illegal overreaching of consumers.

In July, the Senate Subcommittee on Improvements in Judicial Machinery, of which I am chairman, held hearings to consider the merits of this legislation. Each of the witnesses—including Virginia Knauer, Special Assistant to the President for Consumer Affairs; Ralph Nader, the "consumer watchdog;" and Bess Myerson Grant, Commissioner of the Department of Consumer Affairs for the City of New York—called for increased consumer access to the broad class action rule available in the federal courts.

In her testimony, Mrs. Knauer presented a somewhat different approach than S. 1980, suggesting legislation to permit consumer class action suits for the broad range of practices condemned as "unfair or deceptive" under the Federal Trade Commission Act. After close study of Mrs. Knauer's testimony and in depth discussion between Mrs. Knauer's staff and our own, I introduced S. 3092 combining Mrs. Knauer's complimentary proposal with that contained in S. 1980; Congressman Eckhardt introduced the same bill in the House of Representatives.

Basically, S. 3092 makes unlawful and subject to class suits, acts in defraud of consumers that affect commerce, without regard to the amount in controversy.

An act in defraud of consumers is defined as including two distinct things: (1) an unfair or deceptive act or practice as condemned in section 5(a) Federal Trade Commission Act, and (2) an act that gives rise to a civil action by a consumer or consumers under state, statutory or decisional law for the benefit of consumers. Diversity of citizenship is not required. Federal jurisdiction is premised upon the commerce power.

Such a suit in federal court would apply the laws of the state in exactly the same manner that the federal courts apply such law in a diversity of citizenship cases. Thus, the court in any suit would be dealing with a definite body of law in a manner in which it is accustomed to deal with such law.

Perhaps the most significant provision of S. 3092 is section 4(d) which governs the award of attorneys fees. If an action has been successful, the attorney will receive an award of a reasonable fee, based on the value of his services to the class. A 10% guideline is set, subject to adjustment. The guideline has received some criticism and will certainly be subjected to further study.

I have become increasingly convinced that the private bar is the untapped reservoir of consumer power. S. 3092 is designed to insure the ready availability of competent well-compensated counsel. By doing so, it guarantees a major increase in legal muscle for the consumer.

Significantly, that muscle will be in the form of private legal actions, the traditional method of effectively redressing grievances in this country. The bill does not require the creation of any new agencies with the accompanying bureaucratic expenses. It depends only on existing legal processes.

The bill has therefore been attacked as "an ambulance chasing" bill, which, in my opinion, is slandering the bar, casting disrepute on our legal system, and bringing no credit upon the critics.

Unfortunately that attack and other pressures have induced the Administration to retreat from the strong proposal originally advocated by Mrs. Knauer. The bill that the President finally sent to Congress on October 30 offered a sorry substitute for meaningful consumer class action protection: a private remedy that is not self-starting but must be triggered by successful determination of a government suit.

Not only will this make for excessive delay, but it leaves to a government agency rather than an injured party the power to determine which consumers are to be protected. Moreover, even the government suits would be limited to a series of defined forms of fraud, forms that unscrupulous merchants can change as rapidly as the legislation can be enacted. The Administration's proposal will not provide the American public with meaningful protection. S. 3092 will.

It is my hope that a perfected version of the Consumer Class Action Protection Act will be enacted and will operate to provide the consumer with the meaningful remedy that has too long been denied him. The time has come to redress the imbalance of commerical power that puts the consumer at the mercy of the over-reaching merchant.

FOOTNOTES

[1] See *Kellogg Bridge Co. v. Hamilton*, 110 U.S. 108, 116 (1884).

[2] Quoted in Magnuson, *The Dark Side of the Market Place*, 59 (1968).

[3] For example the Uniform Consumer Credit Code (Rev. Final Draft, 1968), a comprehensive effort to revise state regulation of loans, credit sales, and leases was introduced in a number of state legislatures in 1969 and enacted in Utah.

[4] *Hearings on S. 1980 Before the Subcom. on Improvements in Judicial Machinery of*

the Senate Com. on the Judiciary, 91st Cong., 1st Sess.

[5] *The Washington Post*, September 11, 1969, at A2, Col. 1–2.

[6] *Consumer Bulletin* at 26 (April 1965).

[7] 24 F.T.C. 1413–14 (1936).

[8] *Consumer Bulletin* at 25–26 (April 1965).

[9] See 55 F.T.C. 55 (1958).

[10] *Id.* at 91, *aff'd*, 295 F. 2d. 302 (7th Cir. 1961).

[11] In Re Holland Furnace Co., 241 F. 2d. 548 (7th Cir.), *cert. den*, 381 U.S. 924 (1965).

[12] See Dixon, *Federal State Cooperatives to Combat Unfair Trade Practices*, 30 State Gov't 37 (1966); Mendell, *N.Y. Bureau of Consumer Frauds and Protection*, 11 N.Y.L.J. 603 (1965); O'Connell, *Consumer Protection in the State of Washington*, 39 State Gov't 230 (1966); Rice, *Remedies, Enforcement Procedures and the Quality of Consumer Transaction Problems*, 48 B.U.L. Rev. 559 (1968).

[13] See Dole, *Consumer Class Actions under Recent Consumer Credit Legislation*, 44 N.Y.U.L. Rev. 80 (1969); Staars, *The Consumer Class Action*, 49 B.U.L. Rev. 211 (1969).

[14] E.g., *Holland Furnace Co.* v. *Robson*, 157 Colo. 378, 402 P. 2d. 628 (1965).

[15] E.g., *Holland Furnace Co.* v. *Korth*, 43 Wash. 2d. 618, 262 P. 2d. 772 (1953).

[16] See *Dolgow* v. *Anderson*, 43 F.R.D. 472, 485–88 (E.D.N.Y. 1968); Dole, *Consumer Class Actions Under the Uniform Deceptive Trade Practices Act*, 1968, Duke L.J. 1101, 1103.

[17] Daar v. Yellow Cab Co., 63 Cal Rptr. 724, 433 P. 2d. 732 (1967).

[18] *Id.* at 746; accord, *Eisen* v. *Carlisle & Jacquelin*, 391 F. 2d. 555, 563 (2d Cir. 1968).

[19] *Holstein* v. *Montgomery Ward & Co.*, No. 68, CH 275 (Ill. Cir. Ct., Cook County, 1969).

[20] *Holstein* v. *Montgomery Ward & Co.* at 27.

[21] E.g., *Society Milion Athena, Inc.* v. *National Bank of Greece*, 281 N.Y. 282, 22 N.E. 2d. 374 (1939); *Brenner* v. *Title Guarantee & Trust Co.*, 276 N.Y. 230, 11 N.E. 2d. 890 (1937).

[22] E.g., *Gaynor* v. *Rockefeller*, 15 N.Y. 2d. 120, 204 N.E. 2d. 627, 256 N.Y.S. 2d. 584 (1965).

[23] *Hall* v. *Coburn Corp.*, 160 N.Y.L.J., No. 28, at 2 (Sup. Ct. Bronx County, 1968), *aff'd mem.* (1st Dept. 1969), appeal pending.

[24] 246 Mass. 259, 140 N.E. 795 (1923).

[25] *Id.* at 797.

[26] Ch. 690, 814, 1969 Acts, Commonwealth of Massachusetts, amending Ch 93A, General Laws of Massachusetts.

[27] 394 U.S. 332 (1969).

[28] See Donelan, *Prerequisites to a Class Action Under New Rule 23*, 10 B.C.L. Rev. 527 (1969); Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure I*, 81 Harv. L. Rev. 356, 375–400, 414–16 (1967).

[29] *The Class Action—A Symposium*, 10 B.C. Ind. & Com. L. Rev., Spring (1969).

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The Chair lays before the Senate the pending question, in executive session, 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. JAVITS. 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. JAVITS. Mr. President, as we enter the continuance of the debate on the Carswell nomination, I would like to refer the Senate, especially because of the discussion that took place here late yesterday on the question of who is for and who is against the confirmation—which I think is an important point—to a rather extensive statement on the confirmation of Judge Carswell, the distribution of which was initiated by four members of the bar of New York, among its most eminent, and which has such unique qualification in terms of this particular line of inquiry, that I think it bears very important scrutiny by the Senate.

This statement was subscribed to and initiated by three former presidents of that association and one present president of the Association of the Bar of the City of New York, probably as well known and highly reputed a bar association as we have in this country. I do not claim it to be superior, but I think it certainly is the equal in quality of any bar association.

The list is headed by:

Bruce Bromley, former judge of the Court of Appeals of the State of New York, a man of most unusual reputation, and I do not think he would mind my saying that he is generally regarded as a conservative in his political orientation and in his attitude toward the law and jurisprudence generally.

Samuel I. Rosenman, adviser to President Franklin D. Roosevelt and a very distinguished lawyer in his own right.

Francis T. P. Plimpton, who is president of the Association of the Bar of the City of New York. I emphasize, naturally, that he speaks for himself, and not the association, though that is not a factor either way, as the association has not acted, but many of its members have expressed themselves, generally speaking, on this subject, and many have signed this declaration.

And Bethuel M. Webster, a most distinguished New York lawyer, a former president of the Association of the Bar of the City of New York.

I will go into this in more detail later, but I would like now to briefly discuss the significance of this statement, which was joined in by over 400 lawyers, and other statements which have been made upon this subject, including the statements which are recited in some detail in the committee report upon this nomination, which were referred to in the debate here yesterday, including the very eloquent statements of both the senior Senator from Florida (Mr. HOLLAND) and the junior Senator from Florida (Mr. GURNEY) relating directly to this subject.

First, we must consider the general issue of ability, which is pertinent and important to the point of view of lawyers and judges with respect to a judge and his qualification to be a Justice of the Supreme Court of the United States. I think this goes to an interesting point which has been made on the floor of the Senate time and again, and that is the quality and character of the decision-making process in Senate confirmation of the nomination of a high official of Government of this kind to the judiciary. The question really posed, on the part of at least some of the proponents of confirmation, is that the President having made the appointment of Judge Carswell, he bears the responsibility for Judge Carswell's capability as a judge to perform the office, and that the Senate is restricted only to questions of really personal disqualification, disqualification on the grounds of ethical conduct—something of that kind is an echo of the struggle over the nomination of Judge Haynsworth; questions of impropriety, which a man might have been guilty of as a judge, if any were discovered; the fact that he is a member in good standing of a bar; or anything which may have occurred in his personal life which would not be suitable and fitting for a Justice of the Supreme Court of the United States.

On the other hand, there is a body of opinion, with which I identify myself, that says that this is not the only function of the Senate. Certainly it is to be included, but it is not to be the only function of the Senate. The Senate's function is always to appraise whether or not a nominee can carry out the responsibilities of being a Justice of the Supreme Court of the United States on the basis of his professional attainments as well as the other facts, and the question is not to be decided solely, to use an aphorism to express it, on the ground of name, rank, and serial number. I identify myself with that group. It seems to me that the debate, as it goes pro and con on who is for and who is against Judge Carswell, reflects, certainly by clear implication, the acceptance of that view.

It seems to me that a Senator of the United States has broadly the same function as the President at the given moment of confirmation; to wit, in his conscience he must feel and vote that this is the man to be a justice of the Supreme Court of the United States. The President has the right to nominate him; we have the right to confirm or reject the nomination. Ours is a composite judgment; the President's is a single judgment. But I do not consider the elements of that judgment to be any different for the President than it is for us. I think that is the way in which this particular nomination, or any such nomination to very high office, must be regarded.

If it is not so regarded, what is our purpose? Are we merely a reviewing agency, or do we have a substantive right to consent and confirm or to deny confirmation? I believe that the history of confirmations of nominations by the Senate bears out my view and the view

taken by the large group of lawyers, law school deans, and others who have subscribed to the statement I referred to when I opened, rather than to the name, rank, and serial number view, which I do not think is constitutionally consistent with the role allocated to the Senate in respect to this appointment. That is very important in this matter, because I respect, and I think every Member of the Senate would respect, not alone the statements to which I am referring—and there are many of them in opposition to Judge Carswell—but also the representation, which we certainly have a right to accept completely, made by the Senators from Florida (Mr. HOLLAND and Mr. GURNEY) with respect to the attitude toward the nominee, both as a citizen and as a judge, by the bench and bar of that State, and the various situations, set forth in the committee report, of others, including a distinguished professor of law at Yale University, concerning Judge Carswell's capability as a judge.

Also, I think it bears on the evaluation of legal distinction which is shown by his opinions. This, too, has been called into question by the general allegations that have been made that if we confirm a nomination that is before us, we follow, in a sense, our own ideology or philosophy, which then makes it a partisan operation.

But I do not think that that extends to the question of professional capacity. There I think we have a right to say, "This is an able judge. I do not agree with him, but certainly he is an able man, well able to analyze a legal problem and to write a good opinion on it."

Mr. President, I think that represents something of the ambit of the considerations which represent the principle upon which this matter must be judged.

I know that the Senator from Maryland last night made certain references to the position of Judge Elbert B. Tuttle of the Circuit Court of Appeals in which Judge Carswell serves. There, too, the pertinence of Judge Tuttle's attitude, however Members may analyze that attitude in terms of confirmation or denial of confirmation, is important also from the point of view of whatever it reflects in terms of Judge Tuttle's views as to competence and professional attainment.

So that I believe that both on the part of the proponents and the opponents, this kind of evidence is very germane to the issue; and I believe that Members have a duty to weigh it as an important aspect on the issue of confirmation.

For myself, I feel that the conclusion I have reached—and again I wish to repeat every moment I make that statement that it is without any reflection on the particular nominee as a man and as a citizen—that I cannot vote to confirm, is based upon the ground that it is my honest judgment that the nominee is not equipped, based upon all the evidence I have mentioned, to perform this very high role in our national life in the way that one needs to be equipped to be a Justice of the U.S. Supreme Court.

I reject the idea that this is to be decided on the basis solely of the technical qualifications of the nominee, but believe that at this particular juncture the Members of the Senate have a right—indeed, a duty—to evaluate the quality of the ability of the nominee to be a Justice of the Highest Court, where the decision is final and nonappealable. I rest that argument also very heavily upon the fact that we are confirming a Justice of the U.S. Supreme Court for life. To me, this is a very important consideration. This is the only time we have a chance to do anything about it. From this point on, we are ruled by the man whose nomination we have confirmed. Especially is this true in the case of Judge Carswell, who has the opportunity to sit on the bench for many, many years, long after we have had this opportunity to confirm, probably long after I and many other Members will be in the Senate.

So, it adds a particular poignancy to our role in exercising the authority we shall exercise in the near future with respect to this matter.

From that point of view, Mr. President, I would now like to undertake some analysis of this statement, as well as those who subscribed to it, because I believe that it represents great pertinence to the issue, just—I repeat—as the deeply held views of the Senators from Florida and the members of the bench and bar, whom they have an absolute duty to quote, have a real pertinence and real importance to the decision. They, for example, argued that many of the members of the bar who have subscribed to this statement have not appeared personally before Judge Carswell or are not personally acquainted with him.

I think that is a point properly made. I wish to point out, however, that there have been lawyers who personally appeared before him and came away with an adverse reaction, who have appeared before the committee and testified in opposition to confirmation. At the same time, I do not feel that we can dismiss the opposition to confirmation by the outstandingly fine lawyers who base their opinion upon the opinions of Judge Carswell and the legal distinction and scholarship which he has shown in his decision-making as a judge.

I think that is also an important evidentiary factor which should be weighed affirmatively in the case against confirmation, just as I feel that the fact that they have not appeared before Judge Carswell personally and do not know him personally is an evidentiary factor that should be considered in evaluating their views. I do not believe that we have to appear before a judge to know his views or to have an opinion of his ability, but that we can study his record carefully and come to a conclusion as to his professional attainments based upon his record. Indeed, because of the size of our country and the complexity of our life, that is the way in which the reputation of most judges is established. Relatively few members of the bar or of the public or of the press have actual exposure to the man as a person, but the whole country can certainly learn and read exactly what he stands for as a judge.

It is in that respect that I think the statement made in the letter of transmittal by former Judges Bromley and Rosenman and Mr. Plimpton, and Mr. Webster is very important. They say:

> 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.

This refers to an independent appointment. It is not the appointment of an aid to the President, with whom the President would have to work, and on whom Congress would have all kinds of handles other than impeachment if he turns out to be unsatisfactory. Congress can deny him money and make life pretty miserable for an administration if they do not like the Secretary or some other high official of a department or feel he is not performing. But Congress can do no such thing concerning a Justice of the Supreme Court. We want him to be independent. On the contrary, we would not want to put strings on him and would not want him subject to being overweened by whatever we may think, even if we expressed it in a formal resolution. That is his courage and capacity as a judge. This is a one-shot operation, decisive in its application.

These eminent lawyers go on to say:

> 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.

They also cite in that regard Charles Warren, leading authority on the subject:

> The Senate has recognized this obligation in repeated instances. For example, of the 71 Supreme Court nominations sent to the Senate during the 19th century by the Presidents, more than one-fourth were denied Senate approval.

I think this is a very important point, because I do not think anyone would wish to hurt Judge Carswell as an American and as a citizen. I point out that Judge Haynsworth, whose nomination was rejected in the very recent past, serves in an entirely honorable way on the Circuit Court of Appeals, on which he served before.

Let me point out again, in terms of reasonably modern history, not contemporary but modern, that one of the most distinguished chief judges of any circuit court of appeals, Judge Parker, was also rejected as a Supreme Court Justice nominee and went on to build a reputation of great distinction in our country because he served so nobly and well as a chief judge. Indeed, maybe, one can only speculate that the adverse turn of events which he encountered as an individual had a good deal to do with broadening, maturing, and deepening his insights which had an effect upon the quality with which he served from that point on.

Now, the other aspect of the case respecting Judge Carswell, which is dealt with in this statement to which I refer again, is the question of the mental outlook of the nominee respecting the basic racial issues which have faced us with grave problems in our Nation with respect to justice, enforcement, and the

assurances and guarantees of the Constitution, and of public order.

On this subject, the statement says:

> The testimony indicates quite clearly that the nominee possesses a mental attitude which would deny to the black citizens of t) e United States and to their lawyers, black and white, the privileges and immunities which the Constitution guarantees.

Now, that is a very serious finding, Mr. President, considering the high character and quality of the lawyers who are making this statement, which I think is entitled to a considerable amount of interest and concern by the Senate; for although I do not expect that any judge who is going to be named to this slot will be an ardent advocate of the most advanced concepts of civil rights as they are developed by judicial decision, I do not believe, on the other hand, that such a person is very likely to be, whether Judge Carswell or someone else the President names, other than a strict constructionist, as the saying goes, taking a conservative view of the powers of the Supreme Court to interpret the Constitution, being far more bound by precedents than other members of the court may be, both precedents in body of law and tradition, and precedents in specific cases. We cannot expect anything else, considering the position which President Nixon has taken with respect to this appointment.

But, I do not believe that that includes a nominee who possesses a mental attitude, as this statement concludes, which would deny to our black citizens in the United States the privileges and immunities which the Constitution guarantees.

I think it is not a question of being liberal or conservative, a strict or a liberal constructionist of the Constitution. That is a matter of obeying the law and adjudicating according to the law of the land which has now been clearly delineated not only by the Judiciary but by Congress in the landmark civil rights acts it has passed, and by the President, as seeking to serve, protect, and grant the privileges and immunities which the Constitution guarantees to the black citizens of the United States.

Now, Mr. President, in analyzing this latter point, the statement traces it from an admitted beginning. There is no question about the fact that in 1948 the nominee declared the most explicit conviction in favor of segregation of the races, which is directly contrary to the Constitution when it deals with the enormous range of human activity, from attending school to buying a hamburger in a restaurant and "he expressed his belief that segregation of the races is proper and the only correct way of life in our State."

That is a long time ago, 22 years. Judge Carswell, when he testified within the last few weeks, deplored that statement and said he did no longer subscribe to it and had not for years. We can understand that and, indeed, I would almost say that the presumption is in favor of accepting that statement. Normally, it would have been accepted, being within his frame of reference, where he was born, his education, where he lived, and the so-called social order of the South for so long, at least that part of the South. It is entirely understandable that a man would grow, would mature, and from his learning accept those tenets and be completely indoctrinated by them.

The only difficulty is that the pattern did not stop there but the pattern continued. This is where the very hot controversy comes in. It is understandable that Judge Carswell would make the statement he did in 1970 as contrasted with the experience of 1948.

But this is a moment of tremendous importance to the nominee himself. Indeed, I do not challenge the sincerity of his statement, but I think we still have to realize that we have a duty beyond the person and go to what he will be as a judge, as a vessel, so to speak, through which the United States expresses its power and, in the case of the U.S. Supreme Court, a very decisive power.

We still have to examine his conduct following 1948 in order to determine whether this is or is not his sentiment today and is at the root of his personality and the basis of his thinking.

Of course, there we have pieces of evidence which are extremely worrying. Again, one cannot say that they are conclusive, or that they are proved beyond a reasonable doubt, but they are extremely worrying, and it would seem to me to indicate a continuing pattern which, considering the unbelievable size of the responsibility, I do not wish to take a chance on. That is what it comes down to.

If a man wants to be a Supreme Court Justice, we have a right to feel that we have to be satisfied that there is in him no vestige of this kind of thinking and no reservation of this kind respecting the segregation of the races, or that "segregation of the races is proper and the only correct way of life in our State" in the thinking of a man whom we are going to vest with all this power.

The evidence to support these concerns and these questions arises in the so-called golf club incident where, at best, the testimony is hazy, having occurred in 1956. At that time the nominee was already a U.S. attorney and certainly must be presumed to be following the state of the law as decided by the U.S. Supreme Court; this occurring a year after the Supreme Court expressly declared that it was unconstitutional for a State or a city, directly or indirectly, and was a denial of governmental power, to segregate, specifically, a golf course. Nothing could be more precise than that. Yet 1 year later we find the nominee engaged in that kind of activity; and, for a lawyer, we cannot assume that he was engaged in that kind of activity without knowing the decision of the courts and what was the current state of the law, and without knowing the legal effect of what he was doing himself as being a party to the organization of what is called a "lily white" golf course and converting what was a municipal golf course into that kind of golf course. In addition, we have the affidavit submitted in February 1970 by local citizens, both black and white who were residents of the area, showing that they understood what the purpose of this transfer was to, as the statement says, "keep the black citizens off the course."

It is almost inconceivable—and I emphasize this because it shows evidence of a continuing course of conduct—that 8 years after the 1948 segregationist speech of the nominee, this attempt took place. It certainly is entitled to be received as evidence that there was really no basic change of mind in the nominee. And let us remember that at that time we had a right to believe that there was already a change of mind.

Mr. President, I have little doubt if these facts had been known the confirmation of Judge Carswell to be U.S. attorney in Florida in 1953 would have been very sharply challenged at the time of confirmation in the Senate by some Senators. I was not a Member of the Senate then; however, there were plenty of other Senators who were very sensitive to this issue. And I cannot conceive of that nomination not having been challenged then and there by some Senator if the 1948 speech had been revealed at that time.

I think that is just as true also of the 1956 incident, when Judge Carswell was confirmed as a district judge a few years later and when he was confirmed very recently as a judge of the circuit court of appeals.

So, I do not believe there is any sleeping on rights, or laches as we say in the law, on the part of Members of the Senate raising these issues now as fundamental reasons for inhibiting a negative vote on confirmation.

I will not go into the details which are spelled out in the statement elaborately in terms of the explanation given by Judge Carswell for this golf course deal. They are spelled out in the record that has been debated time and time again by the very Senators who participated in the debate and in the questioning. I refer to the Senator from Massachusetts (Mr. KENNEDY), the Senator from Indiana (Mr. BAYH), and others.

It seems to me that at the very least it leaves a question inconclusive—certainly, as it does in 1956—on an issue on which we cannot be inconclusive, in the granting of such power and authority as we give to a Judge of the Supreme Court.

The statement makes further reference, and I again refer to the statement of the four leading members of the New York bar, subscribed to by more than 400 other very distinguished lawyers:

> 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.

The statement then proceeds to analyze the state of mind of the judge as represented by his decisions. And I think, having laid the basis in the way that these two events have done—the 1948

highly segregationist speech and the 1956 golf club incident—having laid the basis by those facts up to 1956, I think it is then just to continue, based upon that statement of facts, an analysis of the judge's outlook upon this question in his subsequent decisions, which takes us right through step by step, from 1958, when he became a district judge, right up to roughly the present time.

Mr. President, the base which has been laid certainly raises a serious question about the outlook of the nominee on this crucial question concerning which the Supreme Court will be deciding cases vitally affecting the Constitution and justice in our country and public order and tranquillity for years to come. And if we have any doubt about it, Chief Justice Burger has already laid on the table the area of decisions involved. For instance, Judge Burger said they will have to be deciding cases in the Supreme Court on what has been called here de facto segregation, with its enormous complications of materially direct control of education within the States.

It is hard to think of a domestic issue which is more emotionally laden and which could confer more benefit or cause more trouble to our country than that kind of decision.

And if we confirm Judge Carswell, since President Nixon has indicated his appointments will make the Court more of a strict constructionist one, within a very few years Judge Carswell's vote could easily be the decisive vote on such very deeply pressing and very consequential issues, issues such as the one I have described respecting de facto segregation in the public schools and the effect of such a decision upon public control of Federal education.

So, I think it is fair, considering the exigencies which will face the newly confirmed Judge, if he is confirmed, that we consider the matter.

Mr. President, I think therefore that it is fair under those circumstances, and with a factual basis having been laid, to go into what the decisions reveal about his state of mind on this very vital issue.

I have described why it is so vital.

That is what this statement does.

I would like to deal with another matter before I pass on to the cases. And I emphasize that it seems to me that, having laid a factual basis up to 1956 on the outlook on the part of this individual which at least leaves a troubling question in the minds of many Senators—at least, it does in mine, and also in the minds of many other Senators who oppose the nomination—having given that basis in fact, we then have a right to look at the decisions from that point of view, quite apart from the other question which relates to the fitness of the nominee in professional terms to occupy the highest of all judicial offices.

And the incident to which I refer occurred in 1966, which is quite contemporaneous. It dealt with a restrictive covenant in a deed, which type of covenant long prior thereto, in 1948 to be precise, had been decided to be nonenforceable by the U.S. Supreme Court.

Certainly, the case of Shelley against Kramer is familiar to any law school student, let alone a former U.S. attorney and judge.

Again we are asked to say that it was unthinking and unwitting. Nevertheless, the judge himself signed the deed which reincorporated this unconstitutional covenant from a deed first written in 1963. I only mention that not because it is, in my judgment, entitled to the same probative force as the 1948 speech on segregation and the 1956 golf club incident where there was active participation, but as indicating perhaps what the statement of the New York attorneys and other attorneys throughout the country concludes: "would have to be rather dull not to recognize this evasion at once."

They apply that to the 1956 incident. I think it applies, as well, to the very recent incident after the nominee was for quite a few years a judge and sat quite a few times en banc on the circuit court of appeals by appointment. I think the same thing applies not to have recognized that in respect to a covenant in a deed which he signed.

Now, to go to the case proper, and I wish to emphasize this because I think it is an important element in the structure of the opposition to this confirmation. Having laid the basis, in fact, for a condition of mind which is open to challenge, I believe that those who oppose the confirmation have a right to go on to see if that same outlook and that same state of mind, which is closed to the existing state of the law, is continued. The only evidence we can possibly get is in the decisions and the course of conduct which the nominee then followed in cases in this particular field. Fifteen cases have been taken as the standard by which this question may be judged, as these cases were decided by Judge Carswell. Obviously, the 15 cases were only a few, relatively speaking, of the total decisions by the nominee, but a study of a much fuller record of his opinions would not help him any more because there was actual testimony by outstanding legal scholars before the Senate committee with respect to the body of these other opinions as not showing the legal capacity and scholarship which these particular authorities felt was appropriate for a U.S. Supreme Court judge.

The statement which I am referring to and analyzing goes on to deal with the 15 cases to which I have referred:

> These specific 15 cases are all of similar pattern: They involve 8 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 7 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 15 occurred in one year—1968.

Certainly, it would be hard to allege that this is not pertinent here both to the state of mind of the judge respecting a constitutional inhibition against segregation of the races and the various fields in which that inhibition exists, and in respect of legal ability and scholarship.

> These 15 cases indicate to us a closed mind on the subject—a mind impervious to repeated appellate rebuke. In some of the 15 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.

I would like to insert at that point something I felt in respect of the other nominee we rejected, Judge Haynsworth. I said there my opposition was based primarily on Judge Haynsworth's insensitivity to the real meaning of equal protection when it comes to racial segregation and also to Judge Haynsworth's persistence in error. I find the same thing in Judge Carswell. Judge Carswell is insensitive and has shown persistence in error.

It is the latter to which I would like to devote a few moments. The genius of the judicial system of the United States is its decisiveness. It has many protections, it has many delays; but at the end there is a final decision, something is done or not done after all the action of the courts.

This is an enormous power. It is a greater power even than we exercise in Congress because theoretically anything we do might be upset by the courts. The courts throw out an enormous number of cases in which they feel no constitutional question is involved and they decide a great preponderance of cases on the ground we do have constitutional authority to do what we do. But a runaway Court—indeed, President Franklin D. Roosevelt felt he had found one—could wreak havoc with the Constitution and with our capability to run the country. It is early in American history. We are but a little under 200 years old and related to the history of other great countries and nations we are children at this stage of our national development.

We may find in some distant day—although I hope and I pray it does not occur—some grave constitutional confrontation between the power of the Supreme Court to strike down our enactments and our power to enact.

The validity, therefore, of the system and the way in which it works best is that it hangs together and that it at least speaks with a relatively common voice after all the dissidence and contradictions have been resolved; and they are resolvable by the Supreme Court which is truly as decisive a voice as we have in our land and probably as exists in the world.

Now, Mr. President, this means that judges—lower court judges, intermediate judges, and appellate judges—whatever may be their personal views, and many judges, I am sure, have personal views diametrically opposed to what they consider to be the law that must be reflected in the judicial decisions, must have a sense of accord with the system and the state of the law.

Therefore, the question of persistence in error becomes, in my judgment, a very important aspect of the development of a judge. I think that this statement alone, this conclusion by such an eminent section of the bar that "These 15 cases indicate to us a closed mind on the subject—a mind impervious to repeated appellate rebuke" would be a decisive

reason for me to vote "no" on confirmation.

Mr. President, they go on to analyze this whole subject to which I have been referring in some detail, but I think that for an analysis of the cases with respect to Judge Carswell's decisions and the dynamics of how they work, I would like to refer to a very detailed, and what I consider to be thorough, analysis of the line of these decisions made under the auspices of the Washington Research Action Council of Washington, D.C. I will not increase the size of the RECORD by including it—indeed, it may have been included heretofore—but I refer to it by title. The author is Richard T. Seymour. It is available in my office, and I am sure in many other offices, for any Senator to consult.

That is what is shown by these cases, as I see it, and I shall deal primarily with the leading cases, and in this field, in over ten years preceding the issue which we now face.

The first of these cases is Augustus against the Board of Public Instruction of Escambia County, which is the well-known Escambia case. Judge Carswell first dismissed that case for lack of standing of the plaintiff. He dismissed it on the ground that Negro pupils had no right to sue to desegregate faculties, which was the issue there.

He was unanimously reversed by the fifth circuit, which held that whether or not the pupils could be hurt by being taught by a segregated faculty was a question of such importance as should not be settled on a motion to strike, without a hearing.

Although the suit was originally filed in the spring of 1960, it was not until January of the following year that a hearing was held. Two months later—that is, a year after the suit was filed—an order was issued requiring the school board to formulate a desegregation plan, a task for which they were given another 3 months.

A hearing on the plan was not held until August 1961, and it was not accepted until September 1961, incidentally too late to be implemented during that new school year.

The following July—to wit, July of 1962—the court of appeals again reversed Judge Carswell, finding the plan that he had accepted after such a long delay to be ineffective, and remanded the case to the district court, to wit, Judge Carswell's court, with instructions to devise and implement a new plan before September—that September would have been 3 years after the suit was filed—if possible. Apparently ignoring the concern expressed by the circuit court of appeals, Judge Carswell did not even set a hearing on the new plan until November of that year, and thereby postponed the possibility of its taking effect until the 1963–64 school year.

That is the history in Augustus against Escambia County.

Soon thereafter, when a suit was filed in Leon County, which contains Judge Carswell's home city of Tallahassee, the judge accepted a school desegregation plan almost identical to the one in which he had just been reversed by the Fifth Circuit Court of Appeals in Escambia.

Indeed, in Steele against the Board of Public Instruction of Leon County, he employed a weak plan, allowing the automatic reassignment of all pupils to previously segregated schools and putting the burden on black students to apply for transfers. Affirmative desegregation, according to this plan, was to be accomplished on a grade-a-year basis, and this notwithstanding the Circuit Court of Appeals' direction in the Escambia case that unless complete desegregation could be accomplished by 1963 in a given public school system in a given district, plans should provide for at least two grades per year of desegregation. And inevitably, as Judge Carswell certainly should have known, once again he was reversed by the Fifth Circuit Court of Appeals.

Here were two reversals on the same grounds, which were made within a space of 3 years. Certainly, one would think that a district court judge would be impressed with what was the existing State of law—or perhaps a district court judge would have been impressed, but not Judge Carswell, because he accepted an identical plan from yet a third school district a year later, to wit, in 1964, in the case of Youngblood against the Board of Public Instruction of Dade County.

In that case he accepted a plan which would not have brought about complete desegregation of the district until the fall of 1976. That was 12 years. And it was not until an exasperated—and I use that word advisedly—Fifth Circuit Court of Appeals set a deadline of 1967—only 3 years after 1964—for complete desegregation throughout the circuit—and that they did in Stout against the Jefferson County Board of Education; it was only after they had set an iron rule for the whole circuit—that Judge Carswell amended the Dade County plan and other weak plans which he had theretofore accepted notwithstanding two previous reversals on precisely the same grounds within the 2-year period before 1964 by the circuit court of appeals.

It is exactly that kind of persistence in error, more than the failure to initiate changes in law, which had characterized Judge Haynsworth's decisions and which I also find unacceptable in this nominee.

It seems to me that the judge would have read the fifth circuit's remand in the Escambia case, which was long before, 2 to 3 years before, 1964, as requiring more than a token freedom-of-choice plan, which he accepted as late as 1964, which would take 12 years to implement; but Judge Carswell chose to ignore that aspect of the decision of the circuit court of appeals and continued to accept plans in violation of the remand in the Escambia case.

It seems to me that is an item of importance for indicating his insensitivity to race problems which I find scattered throughout his decisions.

Another one, for example, that bears on the same question, decided in 1961, is that he held, in the case of Brookes against City of Tallahassee, that a restaurant in a municipal airport could not maintain segregated facilities for blacks and whites.

But in making that decision, he added a final paragraph which, I submit, subtly suggested an evasion of the decision which he was himself making. That final paragraph read as follows:

> Nothing contained in this order shall be construed as requiring the City of Tallahassee to operate, under lease or otherwise, restaurant facilities at the Tallahassee Municipal Airport.

It is very interesting that this sentence, which appears in the opinion as it is reprinted in a specialized publication seeking to ferret out just such attitudes on the part of judges—6 Race Relations Reporter 1099—was deleted from the same opinion as later published in the Federal Supplement.

Another item of evidence. In the case of Due against Tallahassee Theater, decided in 1963, Judge Carswell was quick to dismiss without any hearing a very serious constitutional question. He dismissed for failure to state a cause of action a suit filed by black citizens alleging a conspiracy on the part of private business and public officials to maintain segregated facilities.

Nonetheless, Mr. President, 5 months before that, before he made this decision without a hearing, the Supreme Court had decided the identical question of law in reversing convictions of black citizens seeking desegregated public facilities. The U.S. Supreme Court case which I refer to is *Lombard* v. *Louisiana*, reported in 374 U.S.

So naturally, Mr. President, the Supreme Court found Judge Carswell's decision in the Due case clearly erroneous, and reversed it.

Mr. President, I again refer back to the statement made by the distinguished lawyers to whose statement I have been referring rather consistently in this discussion of Judge Carswell's record, citing these 15 specific cases, in which they said:

> 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.

We continue to trace this record, Mr. President. In 1964, Judge Carswell dismissed for lack of standing a suit to desegregate the State reform schools in Florida which had been filed by former inmates who were, at the time of filing, on probation. The case is Singleton against the Board of Commissioners of State Institutions. There again, and very predictably, Judge Carswell was reversed by the circuit court.

Finally, as recently as 1968, Judge Carswell granted summary judgment in favor of defendants in a suit alleging bad faith in the initiation of prosecutions of civil rights workers. That case is Dawkins against Green. Again predictably, in 1968, there was still the persistence in error, still the same outlook; and Judge

Carswell was reversed by the Circuit Court of Appeals.

In addition, Mr. President, there is this record showing a continuing outlook for 20 years, from 1948 to 1968, on this critically important issue to our country and probably most important single constitutional question, which will come before the U.S. Supreme Court again and again and again if Judge Carswell sits on that Court as a Justice. We have shown what I believe is a continuing outlook which is precisely contradictory to the constitutional guarantees of equal rights and equal opportunity.

In addition to that, Mr. President, the hearing record on this nominee includes even charges and countercharges as to the Judge's attitude toward civil rights litigants and their attorneys—including some very serious charges respecting people who were arraigned, dismissed, and then rearrested, though they had previously been freed by Judge Carswell's own order.

I wish to point out that in the report on this nomination, the committee takes cognizance of those charges, and seeks to rebut them with the testimony of Judge Carswell's court clerks and court bailiffs, other judges, and other practicing attorneys; but, Mr. President, the evidence in a matter of this character—because we are trying to ascertain a man's state of mind in the face of probably the greatest inducement in his life to give himself the benefit of the doubt in explaining his own attitude and his own course of conduct—must be cumulative. I believe we must add together the many items of evidence which I have described, which have their origin, admittedly—Judge Carswell himself admits it—in a position which, within the context of the law which he will be passing upon as a judge, is absolutely inadmissible and absolutely contrary to everything which our country now stands for in terms of segregation of the races and the various fields to which it applies.

Now, Mr. President, I come finally to an analysis of the list of very distinguished judges and lawyers who have subscribed to this statement which I have described, interpreted, and developed for the Senate today.

I think, Mr. President, we have to understand that lawyers must appear before the U.S. Supreme Court, and this applies with a special impact to very distinguished lawyers. They are far more likely to argue before the Supreme Court than lawyers of less experience at the bar and less distinction; and therefore, such lawyers are not likely, unless they are really impressed in the most profound sense by the situation, to come out against the confirmation of a justice for the U.S. Supreme Court, especially—and all of us understand that, we are not children—in the face of the widespread predictions which we hear all over, including in the press, that Judge Carswell's nomination will in fact be confirmed. I think that lends all the more point to the impact of the position which has been taken by these very distinguished lawyers.

Therefore, Mr. President, I believe that the detailing of who they are is very important, as it is very unlikely that they would be volunteers except for the deepest cause of conscience in a matter of this kind.

I point out that among them are some of the most distinguished lawyers in our country, including Cyrus Vance, a former Under Secretary of Defense whom many of us know, of the very distinguished New York firm of Simpson, Thacher & Bartlett.

It includes Simon Rifkind, again one of New York's most distinguished lawyers, a former judge of the U.S. district court.

It includes Chauncey Belknap, former president of the New York State Bar Association.

Haskel Cohn, president of the Boston Bar Association, Boston, Mass.

A partner in one of the most important law firms in California, O'Melveny & Meyers, of Los Angeles, Mr. Warren Christopher, former Deputy Attorney General of the United States.

It includes Robert Morgenthau, who just resigned as U.S. attorney for the southern district of New York, and was immediately snapped up by Mayor Lindsay, and is presently deputy mayor of New York.

It includes Sumner Bernstein, past president of the Maine State Bar Association.

Samuel Hofstadter, former justice of the Supreme Court of New York.

Ramsey Clark, former Attorney General of the United States, who is now in practice here in Washington.

Eli Frank, president of the Maryland State Bar Association. Theodore Chase, former president of the Bar Association of Boston. Clifford Alexander, a partner in the Washington firm of Arnold & Porter, former chairman of the Equal Employment Opportunities Commission.

They include Addison Parker, a partner in one of the leading firms in Des Moines, Iowa—Dickenson, Throcknorton, Parker, Mannheimer and Raise.

They include G. D'Anaelot Belin, a partner in the very distinguished Boston law firm of Choate, Hall & Stewart, which is well known to many of us here.

They include a partner in one of the leading firms in San Francisco, Graham Moody, a partner in the firm of McCutchen, Doyle, Brown & Enersen, which is very well known to many of us here. They include Sadie T. M. Alexander, the secretary of the Philadelphia Bar Association.

They include, also, again to range around the country, because that is a very important consideration in matters of this kind, Noel F. George, a partner in the very distinguished firm of George, Greek, King, McMahon & McConnaughey of Columbus, Ohio.

Manly Fleishman, a very well known lawyer, a partner in the firm of Jaeckle, Fleischmann, Kelly, Swart & Augspurger Buffalo, New York. Eli Aaron, a partner in the firm of Aaron, Aaron, Schimberg & Hess of Chicago.

Mr. President, it is very important to understand that this is not some establishment opposition, but is very widely dispersed, by very distinguished lawyers throughout every part of the United States.

I come across the name of Norman Harris, a partner in the distinguished firm of Nogi, O'Malley & Harris of Scranton, Pa. George R. Davis, of Lowville, N.Y., in upstate New York.

I will mention a very few more which illustrate a trend of judgment that I think is critically important.

Here is Robert F. Henson, President of Hennepin County Bar Association, of Minneapolis.

William L. Marbury, former president of the Maryland State Bar Association, of Baltimore, Md. A partner in a firm in Cleveland, Ohio, Alfred A. Benesch, of Benesch, Friedlander, Mendelson & Coplan.

A partner in a firm in Denver, Colorado, Hugh A. Burns, a partner in Dawson, Nagel, Sherman & Howard.

Wayne B. Wright, former president of the Bar Association of Metropolitan St. Louis.

All 11 partners of Roth, Stevens, Pick & Spohn of Madison, Wis. Leonard M. Nelson, chairman of the judiciary committee of the Maine State Bar Association.

In addition, there are some very outstanding law school professors and deans and faculties of law schools throughout the United States. These are some:

The dean and faculty of Yale University Law School, at New Haven, led by Louis H. Pollack, its dean, with a list of those who teach there, including such eminent professors of law as Eugene B. Rostow, who served here for a long time and whom we know very well.

The dean and faculty of Notre Dame Law School, led by its dean, William B. Lawless.

The faculty of the Ohio State University School of Law.

The dean and faculty of Columbia University Law School, led by William C. Warren, its dean, with a list of some of the most eminent professors in the United States. I will not name any, for fear of omitting some who are equally important, as this is such a distinguished list.

The dean and faculty of Columbus School of Law of Catholic University, in Washington, led by E. Clinton Bamberger, its dean.

A large number of members of the faculty of the School of Law at the University of California in Los Angeles.

The dean and faculty of the Val Paraiso, University School of Law, Val Paraiso, led by Louis F. Bartlet, its dean.

The dean and faculty of Georgetown University, Washington, led by Adrian S. Fisher, its dean.

The dean and faculty of the Indiana University School of Law at Bloomington, Indiana, led by William Burnett Harvey, its dean.

The dean and faculty of Rutgers University School of Law, Newark, New Jersey, led by Willard Heckel, its dean.

The dean and faculty of the University of Illinois College of Law, led by John E. Cribbet, its dean.

The dean and faculty of the New York University School of Law, led by Robert McKay, its dean.

The dean and faculty of the Univer-

sity of Connecticut School of Law, led by Howard Sacks, its dean.

The dean and faculty of the University of Toledo College of Law, Toledo, Ohio, led by Karl Krastin, its dean.

In addition to the law schools whose deans join in this statement of opposition, we have members of the faculty. From Loyola University School of Law, Los Angeles; the University of Maine School of Law, Portland, Maine; State University of New York at Buffalo—a very large number of faculty members of the School of Law; the University of Chicago Law School, Chicago, Ill.; the University of Arizona College of Law, Tucson, Ariz.; the faculty of the Syracuse University College of Law, Syracuse, N.Y.; also quite a few members of the faculty of the College of Law at Willamette University, Salem, Oreg.

Mr. President, such an outpouring of opposition and of protest is not lightly to come by in a given situation, especially supporting as strong a statement as I have just described.

I hope very much that the Senate will evaluate, as it deserves to be evaluated, so weighty a case as this one and so heavily premised upon fact and a continuous history—I respectfully submit that the evidence beginning with 1948, the speech, and going right on through to almost the latest decided cases bears that out—which demonstrate an insensitivity at the very least, if not a mental attitude, which denies the rights under the Constitution to which black citizens in the United States are now conclusively demonstrated to be entitled as a matter of law, plus an inadequacy of scholarship and professional attainment which it seems to me are both bars to our confirmation of Judge Carswell to be a Justice of the U.S. Supreme Court.

Again I repeat, without any reflection on him as a man, and I think that he would be a loyal enough American himself to feel, were he a Senator of the United States, that people like myself and others in this Chamber can have no alternative but to vote "no," based upon what we consider to be so strong a case and when we are dealing with so critical an office, an office for life, in which this is our one and only opportunity to pass judgment on a nominee to be a Justice of the U.S. Supreme Court.

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. HUGHES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

VISIT TO THE SENATE BY DR. FRANZ JOSEF RÖDER, PRESIDENT OF THE FEDERAL COUNCIL OF THE FEDERAL REPUBLIC OF GERMANY, AND DR. ALBERT PFITZER, DIRECTOR OF THE FEDERAL COUNCIL OF FEDERAL REPUBLIC OF GERMANY

Mr. SYMINGTON. Mr. President, I have the honor of introducing to the Senate Dr. Franz Josef Röder, president of the Federal Council of the Federal Republic of Germany.

[Applause, Senators rising.]

Mr. President, I ask unanimous consent that a biography of Dr. Röder be printed in the RECORD.

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

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

DR FRANZ JOSEPF RÖDER, PRESIDENT OF THE FEDERAL COUNCIL

Dr. Franz Josef Röder was born in Merzig (Saar) on 22 July 1909. He is married and has five children. He obtained his senior leaving certificate in 1928 and studied philology. After his studies he entered the teaching profession, his last appointment having been that of headmasteer of the Dillingen Realgymnasium. Since 18 December 1955 he has been a member of the Saarland Diet (Landtag). Until the political integration of the Saar into the Federal Republic of Germany he was a deputy member of the Consultative Assembly of the Council of Europe. From 4 January 1957 to 6 October 1957 he was a member of the German Bundestag; from 4 June 1957 till 19 July 1965 he was the Saarland Minister of Education and since 30 April 1959 has been the Premier of that Land. On 18 October 1959 he was elected chairman of the Saar CDU Land association. He has been decorated with the Grand Cross of the Order of Merit of the Federal Republic of Germany. Since 4 June 1957 he has been a member of the Federal Council (Bundesrat) and on 24 October 1969 was elected for his second term (1 November 1969 to 31 October 1970) as President of that Council, his first term having been from 1 November 1959 to 31 October 1960.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that a biographical sketch of Dr. Albert Pfitzer, Director of the German Bundesrat, who is accompanying Dr. Franz Josef Röder, be printed in the RECORD.

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

DR. ALBERT PFITZER, DIRECTOR OF THE FEDERAL COUNCIL

Born at Kirchen on 22 August 1912, district of Ehingen (Donau); is married and has two children. Obtained senior leaving certificate and studied law and political science at the universities of Tübingen, Munich and Berlin from 1931 to 1934. Passed the second State examination at law in 1938 at Stuttgart.

Has held appointments in the administration (executive service) since 1939. From 1946 to 1949, deputy president of the district of Wangen (Allgäu). 1950 to 1951, plenipotentiary of Land Württemberg-Hohenzollern in Bonn.

In the summer of 1951, appointed Director of the Federal Council by the Plenary Assembly of the Federal Council.

1953, visited the United States at the invitation of the U.S. Government to study U.S. parliamentary institutions.

1961, attended a conference of Governors of U.S. states in Salt Lake City and visited the legislative bodies of several states.

1966, visited Brazil at the invitation of the Brazilian Congress; delivered lectures on the federative system of the Federal Republic and the work of the Federal Council (Bundesrat).

Member of the Association of Secretaries-General of the Interparliamentary Union.

Publications: "Der Bundesrat" (The Federal Council), Series of Publications by the Federal Centre for Political Education, No. 11, 17th ed. 1969; "Organisation und Arbeit des Bundesrates" (Organization and Work of the Federal Council), in "10 Jahre Bundesrat" published by the Federal Council; essays and speeches on constitutional and parliamentary subjects.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 858) to amend the Agricultural Adjustment Act of 1938 with respect to wheat.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the amendments of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance and special training allowance paid to eligible veterans and persons under such chapters.

The message further announced that the House had passed a bill (H.R. 15694) to authorize appropriations for procurement of vessels and aircraft and construction of shore and offshore establishments for the Coast Guard, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 858) to amend the Agricultural Adjustment Act of 1938 with respect to wheat.

HOUSE BILL REFERRED

The bill (H.R. 15694) to authorize appropriations for procurement of vessels and aircraft and construction of shore and offshore establishments for the Coast Guard, was read twice by its title and referred to the Committee on Commerce.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

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

On March 12, 1970:

S. 2809. An act to amend the Public Health Service Act so as to extend for an additional period the authority to make formula grants to schools of public health, project grants for graduate training in public health and traineeships for professional public health personnel.

On March 13, 1970:

S. 2523. An act to amend the Community Mental Health Centers Act to extend and improve the program of assistance under that act for community mental health centers and facilities for the treatment of alcoholics and narcotic addicts, to establish programs for mental health of children, and for other purposes.

On March 17, 1970:

S. 2701. An act to establish a Commission

on Population Growth and the American Future; and

S. 2910. An act to amend Public Law 89–260 to authorize additional funds for the Library of Congress James Madison Memorial Building.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. CHURCH) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Commerce.

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

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. HUGHES. Mr. President, the case against confirmation of Judge Carswell rests on two arguments so compelling to me that I am astonished at the necessity for our standing here in debate.

I cannot understand how the President has allowed himself to be so ill-advised as to nominate this man, or why, once made aware of the facts, he has not seen fit to withdraw the nomination.

In his search for a man from the South and for a "strict constructionist," whatever that term may mean, the President has found a man who has, on too many occasions, chosen to disregard the rights of individuals coming before his court, and who has repeatedly demonstrated blindness toward, if not outright disapproval of, the major developments in American society and in constitutional law over the past 22 years.

It cannot even be urged that he has distinguished himself in those areas of the law that are not so directly and urgently related to contemporary social pressures. The fact is that he has not distinguished himself as a judge in any way as yet illuminated.

As a result we find ourselves here today, Mr. President, debating whether a man has adequate intellectual qualifications for the job. His supporters cannot claim seriously that he is "outstanding," or that he is the best qualified among several men who might have been nominated. They can only argue that he is "good enough."

Surely, Mr. President, this kind of argument is demeaning to the South, which has many better men to offer. And it is demeaning to the many Federal and State judges throughout the Nation who are conservatives in the traditional sense of that word, but are also great scholars of the law, while the present nominee is not.

We are urged to confirm this nominee on the principle that the Supreme Court should be balanced. This is certainly an acceptable point of view for the President to hold, and I am inclined to agree with it. It may be better for the country to have a Supreme Court whose members hold varying views of the role of the law as an instrument of individual and social justice, rather than a Court whose members hold identical judicial philosophies.

In this case, however, we are not being asked to balance the philosophies of the Court. We are being asked to balance excellence with mediocrity, and to balance sound principles of justice for all with the principle that justice is only for some Americans.

The present Supreme Court may or may not be unbalanced. I leave that argument to those of this great body who are members of the legal profession. The President has expressed the view that the Court does lack balance, and it is his right to hold this conviction. My objection is only to the nature of the balance he will achieve if this nominee is confirmed.

The present members of the Supreme Court reflect a wide range of age, legal experience, and philosophy, but each individual member is highly respected in his profession. We may disagree with particular decisions of the Court. Yet we do not doubt the intellect and sense of high judicial principle brought to bear on each case coming before the Court.

The confirmation of this nominee would damage that confidence in the most serious way. At a time when the Court is under attack by extremist elements of various hues, and by those who are resisting the inevitable changes in our society, we cannot afford to strike at this great institution, whose wisdom and prestige is essential to our eternal search for a just and orderly society.

The case against confirming Judge Carswell must begin with his speech delivered during a 1948 campaign for a seat in the Georgia Legislature. At that time the nominee was 28 years old, a member of the bar, and a veteran of a world war in which one of our chief enemies had given expression to its repulsive racist theories in the most monstrous campaign to annihilate a whole race of people. The nominee was not too immature, not too uneducated, not too inexperienced to understand the terrible impact of inflammatory words. He had become a member of a profession trained to understand the meaning and impact of words on people, and it can only be presumed that he used words with full knowledge of their impact.

Mr. President, on January 23 of this year the New York Times printed what is labeled as excerpts from that speech. As far as I know, Judge Carswell has not denied the accuracy of these excerpts. He did deny that he now holds the views he expressed then.

For those who may not have read and pondered Judge Carswell's opinion of the law, morality, the Constitution, and the Federal Government, which he expressed at the age of 28, I will read the latter portion of that speech here:

> Foremost among the raging controversies in America today is the great crisis over the so-called Civil Right Program. Better be called, "Civil-Wrongs Program."
>
> An attempt to regulate the internal affairs of a state is an open abrogation of states' rights as provided by the 10th Amendment. These amendments disclosed a widespread fear that the Federal Government might (under the pressure of proposed general welfare) attempt to exercise powers that had not been granted to it.
>
> "Civil Wrongs Program," is just such an attempt.
>
> Thomas Jefferson wrote in 1823, "I believe that the states can best govern over home affairs and the Federal Government over foreign ones. I wish, therefore, to see maintained the wholesome distribution of powers established by the Constitution for the limitation of both and never to see all offices transferred to Washington."
>
> The statement by one who actively participated in the drawing of the Constitution shows that the original framers never intended for the Federal Government to control every phase of American life.
>
> By this "Civil Wrongs Program" the Federal Government is asked to go beyond its constitutional powers and usurp the powers of the individual states. This attempt to control the internal affairs of a state is an attempt to complete the federalization of American life. It is an attempt to provide more power to the Federal Government and unbalance the check and balance system.
>
> It doesn't take too much imagination to realize the ultimate outcome of having all power in Washington.
>
> The South has proved it can manage its own affairs. We who live here are the judges. This is a political football, obvious on its face as an attempt to corral the bloc voting in Harlem.
>
> 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.

Mr. President, in fairness to the nominee, it is noted that he now renounces the sentiments expressed in that speech. In fact, he has managed to disclaim any understanding of his mental processes and motives in making the speech.

When asked by Senator HART to explain whether he did or did not believe the statement when he made it or whether his position had changed since making it, he replied:

> Senator, I said it. I suppose I believed it at the time. But trying to reach back into the recesses of one's mind and say what motivated you to do anything 22 years ago on that subject or anything else would be an exercise in psychology and psychiatry that I don't believe I am qualified to answer or explore.

I suggest, Mr. President, that if we were to judge the man solely on the basis of that speech, it would matter little

whether he spoke out of personal conviction or out of political expediency. If he spoke from conviction, he was at least sincere, but he was terribly wrong. Mere political expediency from a man who knew better, although not unheard of, is probably worse, particularly on a subject as critical as this one was then and is now.

We are urged to concede that many of us have recovered from the errors of 20 years ago, that we have seen the light, and that events have altered our opinions. This is true, of course. Few of us who make public speeches have not lived to regret some of our words. And most of us like to believe that we are a little better and a little smarter than we were 20 years ago.

I hope I would be the last to suggest that a man cannot reform. I know he can. But I believe that his reform can only be measured by his record. Words alone will not do. In searching that record for evidence of reform, we find a number of incidents, which, taken individually, might seem relatively unimportant, but become crucial in proving that the nominee's position did not actually change.

Shortly after losing his 1948 campaign for the Georgia Legislature, he moved to Florida and entered the practice of law. Possibly this move did soften his rhetoric. At least we could assume that President Eisenhower would not have appointed to the position of U.S. attorney a man who had continued to make similar speeches until the time of his appointment in 1953. Yet, nothing in the record presented to the Senate Judiciary Committee suggests affirmatively that his convictions had altered during his few years in the private practice of law. Nor does such evidence appear from his record as a U.S. attorney.

Members recall that it was during these years of the middle 1950's that the Supreme Court handed down its decision on the desegregation of public schools in the landmark case of Brown against Board of Education. It was during these years that suits were begun in many Southern States looking toward the desegregation of many kinds of public facilities and institutions. It was a time of fundamental change, and certainly it must have been clear to most lawyers that the Supreme Court would no longer uphold the old rule of "separate but equal" as a tool for maintaining racially segregated public institutions.

In any event, regardless of his personal preferences, a U.S. attorney must have been sharply aware of these controversies and of the legal issues involved. It would seem that he could hardly help recognizing the various plans devised for avoiding desegregation, including methods for transferring facilities previously owned by the public into private hands.

Yet, we find that U.S. Attorney Carswell in 1956 lent his name to one of these plans. It entailed the transfer of a publicly owned golf course into the hands of a private club, where its use could be and was limited to white golfers. Information furnished to the Senate Judiciary Committee indicated that this result was not only intended, but was well known at the time. However, Judge Carswell now tells us that he was not aware that there was any racial issue involved.

Mr. President, a talent for isolating one's self from the social and legal issues of one's community is not a quality we hope to find in a nominee for the Supreme Court.

Obviously, this incident in the personal life of Judge Carswell reveals no change in the attitudes expressed in his 1948 speech. It was a relatively minor incident. It could be overlooked more easily if the nominee had not held an official position in which he should have been more acutely aware of oncoming issues. But it is evident that his point of view had not changed by 1956.

Mr. President, I leave to the lawyers among us the analysis of the legal issues in the cases decided by Judge Carswell after his ascent to the Federal bench in 1958. I am satisfied to accept the judgment of legal scholars; and I have read with interest not only the discussions of this aspect of the matter which appeared in the majority and minority views of our Judiciary Committee, but some of the analyses from other responsible professional sources. I was particularly impressed by the following passage from the statement prepared by members of the Association of the Bar of the City of New York:

> Particularly telling—as showing the continung 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. 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 prejudice—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 15 cases 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.

Mr. President, this was not a statement signed by a few law students or professors who might be charged with a somewhat limited or impractical point of view. It was signed by 457 lawyers and law professors, in communities throughout the Nation, including some in my own State of Iowa. Some of these men are deans and faculty members of our leading law schools. Others are partners in eminent law firms in the country's major cities. I am sure that it required courage and great strength of character for some, who must be responsible not only for their personal positions but for the positions and fortunes of the firms they represent.

Perhaps equally compelling from my point of view as a layman were the accounts of Judge Carswell's behavior toward persons arrested and brought before his court for alleged offenses committed during the course of their activities on a voter registration drive. These were not defendants who were charged with committing violent acts, which might understandably provoke a judge. Nor were they accused of misbehavior in the courtroom.

Moreover, his incivility was directed not only toward the defendants, but toward their attorneys, several of whom testified before the Judiciary Committee. One of these attorneys was, when he appeared before the committee, a Justice Department employee, who testified under subpena. I understand that he is no longer with the Justice Department.

This young man corroborated the statements of other attorneys who appeared as witnesses in these words, as they appear unedited in the print of the committee hearings:

> It is relatively clear in my mind. I remember this. This was my first courtroom experience, really, out of law school, and I remember quite clearly Judge Carswell. He didn't talk to me directly. He addressed himself to the lawyer, of course, Mr. Lowenthal, who explained what the habeas corpus writ was about, and I can only say that there was extreme hostility between the judge and Mr. Lowenthal. Judge Carswell made clear, when he found out that he was a northern volunteer and that there were some northern volunteers down, that he did not approve of any of this voter registration going on and he was especially critical of Mr. Lowenthal in fact he lectured him for a long time in a high voice that made me start thinking I was glad I filed a bond for protection in case I got thrown in jail. I really thought we were all going to be held in contempt of court. It was a very long strict lecture about northern lawyers coming down and not members of the Florida Bar and meddling down here and arousing the local people against—rather just arousing the local people, and he in effect didn't want any part of this, and he made it quite clear that he was going to deny all relief that we requested. At that point, Mr. Lowenthal argued that the judge had no choice but to grant habeas as the statute made it mandatory.

The young man then went on to describe the judge's call for law books and his final reluctant admission that the statute did, in fact, require him to grant the relief requested. The defendants, incidentally, had just been illegally tried in a State court by a judge who refused to admit that his court had no jurisdiction over the case and who insisted on trying the case while the defendants were without counsel.

Prof. Leroy Clark of New York University, who supervised the NAACP legal defense fund litigation in Florida for 6 years, testified that Judge Carswell was the "most hostile Federal district court judge" that he had ever encountered on civil rights matters. Professor Clark testified as follows:

> Judge Carswell was insulting and hostile. I have been in Judge Carswell's court on at least one occasion in which he turned his

chair away from me when I was arguing. I have said for publication, and I repeat it here, that it is not, it was not an infrequent experience for Judge Carswell to deliberately disrupt your argument and cut across you, while according, by the way, to opposing counsel every courtesy possible. It was not unusual for Judge Carswell to shout at a black lawyer who appeared before him while using a civil tone to opposing counsel.

At another point in his testimony Professor Clark reported to the committee:

Whenever I took a young lawyer into the State, and he or she was to appear before Carswell, I usually spent the evening before making them go through their argument while I harassed them, as preparation for what they would meet the following day.

Mr. President, it is clear from the testimony of his friends, and perhaps indeed from Judge Carswell's demeanor before the Senate Judiciary Committee, that he is not considered to be naturally or habitually irascible. On the contrary, he seems to be pleasant and affable. Yet, several witnesses testified that, in their experience as attorneys before Judge Carswell, he treated them and their clients rudely, and even more important, he had to be forced to grant them the rights guaranteed both by the Constitution and by statute.

These witnesses had one thing in common: They had all appeared before Judge Carswell in the course of representing clients in cases involving civil and other individual rights. It is this kind of case which seems to bring out the worst in the nominee. And if we are to judge from the record of reversals by his Circuit Court of Appeals, it is this kind of case which found him the least willing, or the least able, to understand and follow the law as determined by the Supreme Court and the Federal appellate courts.

Senators will all agree that these are areas of the law still in evolution. In matters of equal opportunity for education, employment, housing, and voting many issues are not yet decided. There will be further legislative action in these fields during the coming months and years, and our courts will be faced with many crucial decisions.

As in the past, there will be those who will disagree with some of the decisions of the Supreme Court, and emotions will rise. I urge the Members of this great body to consider whether, regardless of private views on the particular issues, we can afford to have on the Supreme Court a justice who has already demonstrated his incapacity to suppress his own private feelings and to maintain a properly judicious approach in such cases. What kind of balance will this man give to the Court?

The nominee's attitude has been unbalanced over a period of many years. It is asking too much of the Supreme Court to hope that it can work some magic over emotions as well as intellect. Like the Presidency, the Supreme Court is reputed to change a man. However, it cannot be expected to work a complete transformation. To confirm this man will not give the Court balance; it will give it a burden. This is asking too much of the Court at so critical a time in our history.

I am concerned, also, over the lack of frankness with which the Senate has been dealt. Apparently, much of the information which the Senate must consider relevant was not furnished to the Senate by the Department of Justice, the White House, or any other source within the administration. Instead, it was obtained from independent sources such as the press and the various organizations concerned with civil rights and individual liberties. These sources are the first to admit that their resources have been limited, and that other information might be obtained from more thorough official investigation.

Judge Carswell himself has not chosen to answer his critics directly, and apparently, the President has not felt that it was his duty to encourage the nominee to do so. Instead, the nominee and his supporters have preferred to rely heavily on the endorsements of his colleagues on the Fifth Circuit Court of Appeals. It now appears that one of the most important of such endorsements, that of the distinguished retired member of that court, Judge Elbert Tuttle, may be questionable.

At this point, I wish to read into the RECORD Joseph Kraft's column from the Washington Post of March 17, in which Mr. Kraft asserts that Judge Tuttle actually withdrew his offer to testify on Judge Carswell's behalf after he learned of the material concerning the Carswell record on civil rights matters:

A QUESTION OF GOOD FAITH RAISED ABOUT JUDGE CARSWELL

As the Senate opens floor debate on the Supreme Court nomination of Judge G. Harrold Carswell, his supporters assert that there are only two adverse charges—racism and lack of distinction. But even as these claims are advanced, a third question is surfacing.

The third question involves good faith, perhaps even deliberate deception. Specifically, it is a question whether the judge did not mislead the Senate in allowing it to think that his nomination enjoyed the support of a distinguished Southern jurist—Elbert Tuttle.

Judge Tuttle has been a leading member of the Atlanta bar for more than 20 years. In 1954, after a year's service in the Eisenhower administration, he was appointed by President Eisenhower to the Fifth Circuit Court of Appeals—Judge Carswell's present court. From 1961 through 1967, when he reached the mandatory retirement age, Judge Tuttle was chief judge for the Fifth Circuit. In that position, he established among lawyers and judges a rare reputation as a man of integrity.

When Judge Carswell was nominated for the Supreme Court he sought out Judge Tuttle and asked him to support the nomination. Judge Tuttle agreed. On January 22, Judge Tuttle wrote the chairman of the Senate Judiciary Committee, James Eastland, that he was prepared to testify on behalf of Judge Carswell. He gave as a "particular reason" for wanting to testify "recent reporting" on a statement made by Judge Carswell when he was running for office in Georgia back in 1948. That statement was the original source of the racist charge against Judge Carswell. Judge Tuttle, in his letter, said he felt that the impression created by the 1948 statement was "erroneous."

In the next few days, however, there emerged more recent material on Judge Carswell and his attitudes on race questions. The new information apparently caused Judge Tuttle to have some second thoughts about testifying. On January 28, he telephoned Judge Carswell to say that, in the circumstances, he felt he could not testify. Judge Carswell said he understood. But that understanding was buried. For the official record of the Carswell hearing—the record read by senators in making up their minds—includes two references to the supposed support of the nomination by Judge Tuttle.

On the very first day of the hearing, January 27, Chairman Eastland placed in the record five "letters endorsing the nominee" from his fellow judges on the Fifth Circuit. One of those was the letter in which Judge Tuttle offered to testify.

Next day, hours after the telephone call, the committee heard the most (one is tempted to say, the only) impressive witness to testify on behalf of Judge Carswell—former Governor Leroy Collins of Florida. Governor Collins testified he had known Judge Carswell and Mrs. Carswell for many years. He alluded to the charges of race prejudice. And in rebutting them, he rested his case on the letter from Judge Tuttle. He told the Senate committee:

"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 was 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. Let me read you briefly from what Judge Tuttle said . . ." And then Governor Collins read excerpts from the Tuttle letter.

The Collins testimony compounded the misrepresentation. Not only did it cite a letter whose major thrust had been specifically disowned by Judge Tuttle. But it also asserted that the letter explained why Judge Tuttle wasn't on hand to testify. In fact, the letter said nothing about why Judge Tuttle hadn't come to testify.

Judge Carswell, of course, knew why Judge Tuttle wasn't on hand. But he hasn't been talking about the matter in public, despite numerous opportunities to set the record straight. He did not talk about the matter in January after Governor Collins testified. He did not talk about it on February 5 though he addressed that day a letter to Chairman Eastland based on a "full and careful reading of the entire transcript of the testimony." He said nothing on March 3 when the political editor of the Atlanta Constitution, William Shipp, printed the basic story of Judge Tuttle's change of mind and refusal to testify. And as of March 14, when this column began looking into the matter, he still had not said anything—not even, apparently, to Governor Collins.

Fortunately, that is not where the issue is going to stay. Senator Joseph Tydings, a Maryland Democrat on the Judiciary Committee, has become aware of the March 3 article in the Atlanta Constitution. He has been in touch with Judge Tuttle. And Judge Tuttle has agreed to set the record straight. It remains to be seen what explanation Judge Carswell gives of his curious reluctance to correct an obvious error in both the letter and spirit of the record. Perhaps there is a very good explanation. But perhaps not.

In any case, the question of whether Judge Carswell dealt with the Senate in good faith needs to be considered carefully, along with the other issues. It needs in particular to be considered by the many Republicans restrained by party discipline from voting against Carswell on what they know in their hearts to be the truly critical charge against him—the charge that he is just not up to the job.

Mr. President, on February 14 in Des Moines, Iowa, I announced that I would oppose the confirmation of Judge Carswell to the Supreme Court and summarized the reasons for my opposition.

I would like to share with you a few paragraphs of that announcement:

I have thus far voted for confirmation of all of Mr. Nixon's nominees except one. My decisions in both of these cases were arrived at only after long study and consideration.

In our office, we have examined every shred of evidence and testimony about Judge Carswell we have been able to obtain, including the full transcript of the hearings before the Senate Judiciary Committee.

At the outset, before examining any of the record, I took the position that a speech the nominee had made more than 20 years in the past and which he subsequently renounced should not in itself be regarded as a disqualifying factor, unless, in the context of the facts, an extraordinary point was involved relating to the nominee's fitness for the office.

In this case, having considered the entire record, I believe a critical point is involved.

I then outlined the various points from Judge Carswell's record that seemed to me to bear in an important way on his fitness for this high office.

Here are the concluding paragraphs of the statement:

At this stage, I hope it is clear that I do not oppose Judge Carswell on the basis of his being a Southerner or a strict constructionist. Obviously, there are many qualified jurists in America who answer this description.

It should be borne in mind that we are not considering a minor appointment, but one to the highest court of the land.

In evaluating the nominee's record, my legal advisors are in full agreement—that Judge Carswell's record reflects neither the high professional qualifications nor the freedom from bias that are expected from an appointee to the nation's highest tribunal.

As a Supreme Court Justice, Judge Carswell would be involved in decisions affecting the lives and rights of millions of non-white Americans.

Sometimes a simple analogy will put a picture quickly into focus.

Suppose Judge Carswell had delivered that racist speech he delivered in 1948 not against black citizens, but against the Catholics, the Methodists, the Mormons, the Jews, the Quakers, or any other white minority.

Do you seriously believe that such a man would be nominated, or if nominated, would be seriously considered for the Supreme Court of the United States?

Mr. President, I do not question the good and honorable intentions of my colleagues on both sides of the aisle who support the confirmation of Judge Carswell.

Nor do I purport to be an expert with regard to his professional qualifications. I did seek and receive the best legal advice available to me.

I believe I am one of many Americans of like background and temperament who wanted very much to approve the President's nomination, but who, when all of the facts on the record had been examined, were compelled to oppose it.

As I have pointed out, a cruical point involved was whether or not the nominee would be capable, as a Justice of the high tribunal, or acting without bias in matters affecting the lives and rights of 23 million black American citizens.

It is basically a matter of conscience.

I believe my southern colleagues have a right to ask: Is this a matter of northern conscience?

Do I condemn practices of racial discrimination in other States, but condone them in my own?

It is one thing to preach the gospel of racial equality for a State a thousand miles away.

What about my own State, where the black minority is only a fraction of what it is in many other States?

They are fair questions, and I will try to answer them in some degree from the record of my statements and actions as a three-term Governor of my native State.

One of my first actions in the area of minority relations was to issue an executive order, the first of its kind in Iowa, outlawing racial discrimination in State employment, as well as in contracting for work for the State government.

Subsequently, we enacted legislation providing for the first State civil rights commission, and I might add that it was endowed with enforcement powers. This was followed by the passage of a fair housing law for the State.

In 1967, when civil unrest was sweeping the great cities of the country, I made unannounced visits to the poor and black districts of several Iowa cities.

I did this not to pry in anyone's community, but simply to get some firsthand knowledge of the causes of the discontent which had not yet erupted in violence but which I knew must be there.

As I told the people of the State at the time, my findings made me appalled by my own ignorance and ashamed that I had not realized the need to make this kind of firsthand investigation before.

I talked with many black and poor people in their own homes and without others around.

I got an eyeful and an earful and, in all frankness, a noseful of the living conditions that had made these citizens deeply resentful.

In the summer of 1967, I met with the mayors, councilmen, and other municipal officials of the larger cities of the State in which our minority citizens are located.

In this and other meetings, I pledged the support of the State government to the municipalities in the event of violence. But the bulk of our discussion was directed toward what we could do to get at the root causes of the unrest.

I quote from my August 1967 speech to municipal officials:

Only in the framework of law can there be a better order of life for all citizens, regardless of race, creed or color.

In the meantime, we have a profound responsibility to do everything within our power, working together, to change the conditions that have produced unrest.

There are those who say that the racial problem in America is beyond solution. In my view, this just isn't true. Moreover, this philosophy of despair is disloyal to the ideals on which this nation was created.

We will meet this problem for the simple reason that we *must* meet it to preserve our union, our freedom and all that we hold dear.

We will meet it not with melodrama and glowing manifestos, but with hard work, patience, reason, practical common sense and, above all, faith in God.

I went on to tell the city officials that the grievances that have produced civil unrest in America have been abundantly documented, as follows:

They have been laid out in books; voluminous, revealing reports; and an endless succession of speeches, documentaries, magazine articles and newspaper editorials.

Much of this—

I said:

seems remote and abstract to the rank and file of us. Many of the real causes of racial discontent we have not seen, because we have not wanted to see them.

We can't go on in the dark. We must face the facts as they are, the conditions as they actually exist in our own communities.

We can't go on walking on eggshells, delicately bypassing the ugly realities. We need to call things by the right words.

The root causes of the racial tensions that have rocked the nation in recent months are well known to most of us, but I think it might be well to list some of them and take a fresh look at them.

At the top of anyone's list, of course, is poverty—not simply lack of money, but cultural and spiritual poverty as well—the kind of poverty that makes men lose hope for a better world.

Unemployment is obviously a big factor. Despite some progress toward eliminating job discrimination, Negro unemployment is growing, nationwide. It is easy to say that opportunity exists for those who have the incentive—but the fact is that the incentive, the hope, has been lost.

Earlier this week, I spoke of the urgent need to provide jobs for black citizens. Admittedly, I overstated the point, but I felt it was crucial to get the point across that whatever our rationalizations are, there is color discrimination in employment, and we need to lean over backwards to make up for the century of denying Negro citizens equal opportunity in employment. And we know in our hearts that while some progress has been made, there *is* discrimination in employment.

The breakdown of the black families in the ghettos is attributable in large part to the fact that men are unemployed and have lost hope for employment. And without a bread-winner, the family structure has neither stability nor meaning.

Housing is a major problem, and it should be clear by this time to any thoughtful person that segregating the ghetto—even if the ghettos were completely rebuilt—is not the answer.

As long as there is a "black community" and a "white community" in our cities, we will live in a divided land. The disquiet will not be ended until there is just one community—neither white nor black, but American.

One of the most tragic causes of minority resentment is the double-standard law enforcement that exists in some cities. There is a feeling on the part of officials in some communities that it is better to let the Negro section of town get along with a minimum of law enforcement. "We keep good track of them," these officials say, "and we know what is going on, and this is better than making them go underground in breaking the law. If they stray from the law a bit, they're among themselves."

But how does this make the majority of black citizens—the responsible, law-abiding Negro citizens feel?

The black citizen wants freedom from discrimination in public accommodations, housing, employment, education and all the other things that our society offers. And if we believe in equality of citizenship, we cannot deny this.

Contrary to the malicious misconception, he does not want to be white—he wants to be free and equal. And this is the birthright of citizenship in this land.

I do not pretend to you that the way is

easy. The injustices and deprivations of centuries cannot be overcome in a day.

But time has run out. The crisis is now. It isn't going to go away like the hula hoop craze. It will fester and grow unless we do the constructive things that must be done.

Many people of good will are ignorant of these facts, just as I was. Many people have let discrimination imbed itself in their lives without realizing it. Many people haven't the foggiest notion of what goes on in parts of town only a short distance from their homes and businesses.

Now it is time that we *should* know, and *must* know, in order to strengthen our society for the trials ahead.

We have a job to do—a job of rebuilding. It is not just a matter of tearing down buildings. It is a complex matter of reconstructing our society along the lines that it was always intended to be.

It can only be accomplished by the majority of our citizens, of all races and colors, working patiently together.

There is no doubt in my mind that our people, and their duly elected officials, are strong enough for the task. It requires some changing of long-held positions and attitudes. But we will be the better for it.

You know and I know that the conditions in our society that have been at the root of the disturbances exist in Iowa as well as in other states. The fact that the percentage of black citizens in our cities is small by comparison with some other urban areas does not excuse or lessen our obligation to meet their legitimate grievances.

To the contrary, I think here in Iowa we have an obligation and an opportunity to make Iowa a template among the states of a society where the people had the courage and the wisdom to make the big, necessary moves to assure equality for all citizens.

In acting to meet the immediate crisis, the No. 1 action needed was to provide jobs in our cities for unemployed young people.

The response of public officials and of private enterprise in various communities in setting up work programs to get these young people off the streets and to give them the self-respect and hope that come with employment was one of the greatest things that has happened in my State in my lifetime.

The genuine interest on the part of Iowa businessmen in these work programs, and their willingness to contribute substantial amounts of money for this purpose, exploded the allegation we sometimes hear—that the business community is too busy making money to care about human needs in the community.

In the meantime, the municipal officials from the larger cities, with whom I had met, set up a State task force for community interracial relations. I would not say that any wonders were accomplished by this group, with whom I met on a number of occasions. But for the first time, on a State level, we saw the decisionmakers of local government meeting across the table from representatives of minority groups and bluntly communicating. An interracial dialog in the interests of the various communities was initiated.

In early January of the following year, religious leaders of the major denominations in Iowa came to me with a unique request. They asked me to speak to a series of interfaith meetings of lay church people through the State on the crisis of American society as it applied to the lives of the people in Iowa.

In admiration, I can only say that these religious leaders meant business. They knew that the crux of the message would be the need to eliminate racial discrimination. They knew that there would be a backlash from an unknown percentage of the congregations. But they were determined to go ahead.

In a series of six regional meetings, covering the entire State, the lay people turned out in droves.

Here, from a transcript of my remarks, are a few excerpts of what they were told:

If we don't believe in the Golden Rule enough to follow it in our daily lives, it is time to change our religious professions or to brand ourselves hypocrites.

If we don't believe in a society of equality and justice for all—to the extent that we are willing to work for it, to plan for it, and to sacrifice for it—then we no longer have any right to quote the Gettysburg Address and the Bill of Rights as true expressions of our political creed.

We have a job—an incredibly massive job—of rebuilding to do. It is not just a matter of tearing down decayed buildings and erecting new ones. It is a complex matter of rebuilding the basic structure of our society along the lines it was originally intended to have.

It can only be accomplished by a majority of our citizens of all races and colors working patiently together.

The eye of the hurricane is the racial issue, although it must be recognized that this is just one aspect of the over-all crisis.

From a practical standpoint, the race relations problem is a logical focus of our attention; for if we face up to this part of our problem, it will mean that we are facing up to the entire problem of the disadvantaged and disinherited in our society.

Many of you people may be saying to yourselves, as I used to say a number of years ago: "My home town is Ida Grove, Iowa, a town of 2,300 people. The first time I ever saw a black man, I wanted to drive around the block and take another look, because I had never seen one in my youth." In many vast rural areas of Iowa, it is the same yet today.

I want to point out that the problems of Iowa belong to the citizens of Iowa, regardless of where they may dwell. What happens in Cedar Rapids, Davenport, Waterloo, Des Moines, Sioux City, and Council Bluffs belong to all Iowans, rural and urban.

At the same time, we're a fiftieth part of the union of states. What happens to any other state or city, or any citizen of this union, affects you and affects me.

In Iowa, we have, of course, a smaller percentage of minority citizens than other states. . . .

The very fact that the percentage of minority races in our state is small, by comparison with other areas, places all the greater responsibility upon us to make Iowa a template among the states of a society where the people had the vision and the moral courage to make the big, necessary moves to assure equality for all citizens.

If, in this atmosphere of strength, prosperity and God-given abundance, you and I can't find these answers, what hope is there for the rest of America?

And how long do you think the peoples on this earth will listen to the leadership of a nation which cannot solve these internal problems of its own society?

We have an opportunity in Iowa that few people in America have. We can come to grips with these problems much easier than many other areas of this country. We can find these solutions but it is not a solution that is to be found on the Potomac or under the gold dome in Des Moines, Iowa.

It begins in your own heart . . .

Together we sit, perhaps feeling that we are innocent and bear no responsibility for these great problems of our nation and our state. But I ask you to consider for a moment, as a nation, dedicated as ours is, to believing in God—one nation under God with liberty and justice for all—what our individual responsibilities are . . .

The big fact that we must grasp is that we have a profound moral and practical responsibility to do everything in our power, working together, to change the conditions in our society that have produced the discontent of minorities and other deprived citizens.

I believe that the vast majority of the people of this state have a deep desire to eliminate discrimination from our society. I sincerely hope that our black citizens, so often disappointed, will recognize the good faith effort when it comes.

What is the solution? people keep asking.

In the final analysis, there are only two ways to go—the way of discrimination or the way of equality for all citizens.

In the light of our religious convictions and our political ideals, it will be quickly seen that there is only one way to go.

I went on, Mr. President, in these long and serious talks to the church lay groups in Iowa, to detail minority problems in our State in specific terms and what I felt needed to be done about them.

I tried to get these people to put themselves in the places of those who were poor and black and in many ways discriminated against in their own communities.

A little later, we organized a resource panel of State officials who had responsibilities in such areas as welfare, recreation, employment, health, and education.

I took this panel to the larger communities of the State, and we discussed with local officials and interested citizens what could be done to alleviate the plight of blacks, the impoverished, and the deprived.

In justice to my esteemed colleagues from other parts of the country, where there are greater concentrations of minority populations, poverty, and unemployment, I want to make it clear that we admit that we have problems in our own State, as well.

We also are not lily white so far as racial discrimination is concerned.

And when, as a matter of conscience, I oppose the nomination of Judge Carswell because I believe he would not be unbiased toward 23 million of my fellow citizens, I am not pointing a finger of accusation at other States.

I am acknowledging that we, in my own State, are not free from the taint of discriminatory practices.

And I am acting to protect the rights of my own minority citizens in Iowa as well as the rights of minority citizens throughout this land.

Mr. President, I came to the Senate a little more than a year ago. I did not expect that in so short a time I would find myself standing on this floor opposing a President's nominee for the Supreme Court. Yet, the constitutional responsibility of the Senate falls alike on all Senators, junior and senior. It requires us to consider the nominations

sent to us by the President, not merely to ratify the President's choices.

The care given to this task will necessarily be greater when the position to be filled is one that will intensely affect the life of the Nation. The position of a Justice of the Supreme Court is one of these. Moreover, its impact is likely to extend far beyond the tenure of the President and many of us here in the Senate.

Recognizing the significance of our decision, I am sure that every Member here has examined his own conscience first. We have also looked to the views of the citizens whom we represent. We cannot surrender conscience to popularity, nor can we hope to satisfy every voter. Perhaps at best we can merely hope for understanding.

In this instance, Mr. President, my own position is somewhat eased by the overwhelmingly favorable letters and telegrams I have received from Iowans during the past several weeks. Unlike my experience during the debate on the previous nomination, I could see little evidence of an organized letter-writing campaign on either side. Nearly every letter I have received from Iowa as well as from other States has been a personal expression of opinion, not inspired by an organizational affiliation of the writer.

At this point I would like to read some of these letters and telegrams. Listeners will note that, with varying degrees of skill and intensity of feeling, the writers express fear that confirmation of Judge Carswell will damage the prestige of the Supreme Court and will impede progress toward equal justice and good order in our society.

A citizen from Iowa City writes:

I would like to commend you for your opposing the nomination of G. Harrold Carswell to the United States Supreme Court. As a law student, I think that it is important to have a justice on the court who understands the problems and issues that he will be confronted with while on the court and who is progressive rather than resistant to change. It is my feeling that Mr. Carswell is not such a man.

A citizen from Davenport writes:

I am writing in regard to the nomination of Judge G. Harrold Carswell to be a member of the U.S. Supreme Court.

I am opposed to this nomination.

Any nominee to the Supreme Court should be an outstanding member of the judiciary. He should be a leader of men. One who is highly regarded by his peers. His personal conduct and judicial career should be above reproach. Surely there is one such person in our land.

I do not believe Judge Carswell is this man.

A man from Davenport writes:

I would urge you to vote against the confirmation of Judge G. Harrold Carswell's nomination to the Supreme Court. The candidate's record in Civil Rights Cases is a disgrace, and he has not displayed sufficient judicial competence to be worthy to sit on the bench of the highest court in the land. It is frightening to think that he is the best conservative, strict-constructionist Judge available.

A man from Iowa City writes:

Please accept my support of your position on the confirmation of G. Harrold Carswell as a justice on the nation's highest court. Surely we as a people can do much better than this.

A man from Iowa City writes:

At this time I am writing to express my opinion that Judge Carswell not be confirmed by the Senate as a Justice of the United States Supreme Court. His appointment will not strengthen the image of the Supreme Court and he will not be fully accepted and respected by a large segment of the citizens of our nation. As you know, the information available about Judge Carswell indicates that he is not an outstanding man in his achievements and not particularly experienced in terms of time spent on the bench of higher courts. His decisions from the bench have been other than profound but rather perfunctory, narrow and concrete. There is the history of his being a prejudiced person in respect to Negroes which at this time, particularly, cannot make him fully acceptable to serve on the United States Supreme Court.

But more importantly I am concerned that President Nixon after receiving a mandate from the people in respect to Judge Haynesworth would be so insensitive and contrary as to recommend the appointment of a man with no more qualities than Judge Carswell. I am concerned that the President would do so after his earlier statement expressing his interest in finding "the most outstanding men" for the high position of Justice of the Supreme Court. I am concerned that the President may persist in suggesting less than acceptable nominees for high office in the manner that the patience of the Senators and citizens alike will wear, that they will give in and condescendingly accept his appointees.

I know that you will give the matter of Judge Carswell as careful thought as you did the recommendation for the appointment of Judge Haynsworth.

A woman from Cedar Rapids writes:

I am writing because of my concern over the Supreme Court nomination of Judge G. Harrold Carswell. I agree with Senator Tydings that this appointment should not be steamrolled through for confirmation.

I do not believe President Nixon should be allowed to use the U.S. Supreme Court as a political football. He has chosen Judges only from the South, not even considering a very large number of well-qualified judges, just because he wants to win support of the Southern states and pay his election debts.

I am a white woman and this nomination of Judge Carswell infuriated me. If it would upset me, a white woman, so much how must the black people feel about it.

From everything I have read Judge Carswell is just giving lip service to the statement that his ideas on white supremacy have changed.

Senator Scott talks about a delay in the appointment interfering with the work of the Supreme Court. If this 50 year old anti-civil rights Judge is appointed to the Supreme Court, I feel it will interfere, not only with the work of the court, but with the unity of the country, and the respect of the highest court in the nation, for the 20 or 30 years he will be serving on the bench. If delay in this appointment is slowing the work of the court, the blame should be put on President Nixon for using political appointments to his own advantage.

I strongly urge you to vote *against* the appointment of Judge G. Harrold Carswell for U.S. Supreme Court judge. Let's let President Nixon know he is responsible to *all* the people in his court appointments, not his unpaid debts.

I believe the reason the civil rights movement has come along as far as it has is because the majority of Americans know that superiority comes from within a man, not from the color of his skin.

I think what really makes me mad is the thought that President Nixon (and the Senate too, if this man is accepted) has no concern for the feelings of an entire segment of our country's population.

A man from Iowa City writes:

We applaud your expressed stand against the confirmation of the nomination of Judge G. H. Carswell to the Supreme Court.

President Nixon's choice casts further shadow on the administration's attempts to face integration in this country.

It is particularly appropriate at this time to fill the vacancy with a judge whose lack of bias is unquestionable, and whose professional qualifications are the highest.

We wholeheartedly will support your vote against the Carswell confirmation.

A man from Des Moines writes:

I wish to express my approval of your announcement that you will vote against Judge Carswell's appointment to the Supreme Court.

Judge Carswell's nomination was an insult to our colored citizens and was contemptuous of all of us.

God save the Republic.

A man from Iowa City writes:

Although you have already expressed your opposition to Judge Carswell's nomination to the Supreme Court, I want to express my disapproval of the nomination.

A Supreme Court Justice who is appointed for life must be above reproach. This is clearly *not* the case with Mr. Carswell.

I encourage you to oppose all nominations which are made as political payoffs.

A man from Alvord writes:

Twenty-two years ago, Judge G. Harrold Carswell publicly announced that he would forever embrace the principle of "white supremacy." He has since demonstrated in his public and private life that he has not abandoned that principle.

Speculate with us for a moment, Senator.

If I were Catholic or Jewish . . . and if a Supreme Court nominee had once proclaimed that Catholics or Jews were inferior beings, and still appeared to believe it . . . and if I heard that the United States Senate had confirmed such a man for the Supreme Court . . . How would I feel?

If I were of Mexican or Puerto Rican heritage . . . and if a Supreme Court nominee had once announced his belief that Mexicans or Puerto Ricans were inferior people, and gave every indication that he still believed it . . . and if I heard that the United States Senate had agreed that such a man could sit on the Supreme Court . . . How would I feel?

If I were young . . . and my disillusionment with the American system of justice had reached low ebb . . . and if I heard about the confirmation of such a man . . . How would I feel?

If I were black . . . .

If I were an American of any age, race, creed or religion, committed to democratic and moral principles, and I learned that a man whose principles are completely alien to those beliefs had been named to my country's highest court, what questions would you expect me to start asking?

We who are white and black, young and old, and of different religions, believe that every Senator must ask himself these questions in searching his conscience about the Carswell nomination. We also believe that no Senator could thereafter conscientiously vote for Judge Carswell's confirmation.

A woman from Richland, Iowa, writes:

Those of us concerned with the extension of human rights commend your position against the appointment of Judge Carswell

Thank you.

A man from Lake Mills writes:

I urge you to vote against the confirmation of Judge G. Harrold Carswell to the United States Supreme Court, on the basis of his marginal civil-rights record. The problems we have today imperatively underscore the importance of relentlessly seeking perfection in ethics in the area of civil rights.

A woman writes:

I am an Iowa-girl living now in Kansas, but I am so concerned about the pending confirmation vote on the appointment of Judge Carswell that I am writing to you as well as my present Senators. The appointment of this man makes me very uneasy. He has shown himself on occasion to be openly prejudiced. I refer to several of his civil rights decisions and to Congresswoman Patsy Mink's charges. If this man is appointed to the Supreme Court, there will be no one to overturn his prejudices should he choose to exercise them.

I am a voting Republican (yes, one of those) and as such I would like to see President Nixon's appointments confirmed, but I feel deeply that he has made a mistake this time.

Please give your decision on this vote careful consideration. There are better men available and it seems a shame to accept a man whose qualifications are that he is less controversial than his predecessor and that his finances are in better condition.

A woman from Omaha, Nebr., writes:

This is just a letter to tell you how I feel about the nomination of Judge Carswell the racist to the Supreme Court.

I am totally against the nomination of Carswell, since there is ample evidence that he has racist, segregationist views. I think these views and attitudes are more than enough to have him disregarded as a nominee for the Supreme Court. He's worse than Haynesworth in the fact that I never heard that Haynsworth was a racist, although I knew he was a conservative.

I read in the newspaper today that you would vote against his nomination. I hope more senators will come out as being against him. It would be a great setback for justice in the United States if a man of Carswell's caliber is elected (or appointed) to the Supreme Court. Thank you. (By the way, I'm 18).

A man from Clinton, Iowa writes:

I note it is reported you plan to vote against confirming the appointment of G. Harrold Carswell as an Associate Justice of the United States Supreme Court.

This letter is to concur in your decision. For a number of years the United States Supreme Court has been a secure focal point in the evolution of an orderly society under law in a new era.

While the nature of changes thus emerging is in turn bound to change in the future even as has been true in past years, nevertheless the nature of this development requires that our high court remain a dependable exponent of equality, effective justice and working democracy.

A man from Des Moines writes:

I am against the confirmation of G. Harrold Carswell for the Supreme Court.

A man from Orient, Iowa writes:

I doubt if this letter is really necessary for I feel sure you have already decided to vote against Judge G. Harrold Carswell for the Supreme Court. However, I have not seen any announcement yet of your intent, and do want to make my voice heard in the negative category.

A woman from Iowa City writes:

I would like to register my strong opposition to the nomination of Judge Carswell in light of his private and public racial bias and his lack of distinction in judicial matters.

A man from Coralville writes:

I think there is cause for voting against Judge Carswell.

He made the racist speech in the 1940's;

He collaborated on the whites-only country club deal in the 1950's;

He passed on a whites-only deed covenant in the 1960's.

I don't want to be worrying about his Supreme Court decisions in the 1970's.

A couple from Iowa City writes:

We wish to commend you for your decision to oppose the Supreme Court nomination of Judge Carswell. We are in agreement with you in your evaluation of his qualifications.

A man from Iowa City writes:

As a citizen of Iowa and as a supporter of yours, I urge you to vote against the nomination of Harrold Carswell to the U.S. Supreme Court. I believe his personal convictions are contrary to the meaning of the Constitution and Declaration of Independence.

A man from Clinton, Iowa writes:

I am writing to state that I am opposed to confirmation to the United States Supreme Court of Judge Harrold Carswell. I am now a student at the University of Michigan Law School but am a resident of Clinton, Iowa.

After reading many of Judge Carswell's opinions, I do not feel that he is qualified to sit on the court. It is unfortunate that the Nixon Administration has chosen to nominate an individual, lacking in the necessary credentials, as a political pawn. I urge the Senate to exercise its Constitutional duty and give its advice and consent to the President on all nominations.

Thank you for considering these views.

A couple from St. Louis, Mo., writes:

Because Judge Carswell's record disqualified him for the Supreme Court, we trust you will vote against his appointment.

A native of Waterloo, Iowa, now living in California writes:

Just add one more protest to your list on confirmation of the present nominee to the Supreme Court. When a man's own profession points to his mediocrity, I'm certainly inclined to believe it. The present nomination is so obviously purely political that its hard to stomach—"for the silent majority." While I live in what is definitely a sophisticated area, I am in no sense a "supercilious sophisticate." My feet are rather firmly planted in my legal and voting residence in Waterloo.

A woman from Medford Lakes, N.J., writes:

I am strongly opposed to the confirmation of Judge G. Harrold Carswell's nomination to the position of Justice of the Supreme Court. I feel that because of his record of anti-Negro actions, he will have a disastrous effect on the Negro population of this country and further divide the black and white elements of our society. We certainly cannot afford this at this time.

As a voter of New Jersey, I strongly urge you to vote *against* the confirmation of Judge Carswell's nomination to the Supreme Court.

A woman from Iowa City writes:

I ask you to vote against the confirmation of Judge Carswell to the United States Supreme Court. His judicial decisions and his courtroom performance are of an earlier day. America can not and will not tolerate its government drifting further away from the realities of this day and the days yet to come. Judge Carswell would be a step backward to government sanctioned racism.

A man from Davenport writes:

I trust that you will be voting against the nomination of Judge Carswell to the Supreme Court. His personal life, and his record as a judge prove him to be unfit for the Supreme Court. His nomination is an insult to 23 million black Americans.

A man from Iowa City writes:

I am writing in regard to the possible appointment of Judge Carswell to the United States Supreme Court. As a constituent of yours, I write with candor. We should not approve of Mr. Nixon's choice in this matter. The Court is in need of persons of more democratic persuasions than has been shown on the part of Judge Carswell. Furthermore, this nominee does not reflect the excellence of mind that we have traditionally sought to fill such a coveted position.

A woman from West Des Moines writes:

I am writing this to strongly urge you to do all that is in your power to reject the nomination of G. Harrold Carswell to the Supreme Court. Further, I hope you will, in the interest of racial equality in this country, urge your fellow Senators to do the same.

A woman from Marion writes:

I am writing to urge your vote against the confirmation of Judge Harrold Carswell as a Supreme Court Justice. Because of his attitude toward both blacks and women, I am sure it is in the best interests of the country not to have this man on the Supreme Court.

I urge you to vote against the Carswell confirmation and influence other Senators to do the same.

A telegram from Dubuque reads:

Gravely concerned about civil rights record of Associate Justice Carswell. Judicial record does not substantiate recent disavowal. Request opposition to nomination to U.S. Supreme Court.

A telegram from Burlington says:

I am strongly opposed to Judge Carswell's nomination to the Supreme Court.

A man from Des Moines writes:

Our Des Moines paper says that 15 of Judge Carswell's recent decisions have been unanimously overruled by the U.S. Circuit Court of New Orleans.

Is Judge Carswell a potential Oliver Wendell Holmes or merely a pay off to Strom Thurmond?

A couple from Iowa City writes:

Enclosed is an editorial taken from the Jan. 23, 1970 issue of The Denver Post. It succinctly expresses our views concerning President Nixon's nomination of Judge G. H. Carswell to fill the vacancy existing on the Supreme Court. In a time when our Society is undergoing such a moral upheaval and, Thank God, questioning its use of minority groups as an ego-building device, we feel it is inappropriate to place a man on the Court who has advocated "White Supremacy" and who has consequently shown little action to disavow that statement.

We hope that you and the Senate will not give its consent to this nomination.

The editorial from the Denver Post of January 23, 1970, reads as follows:

SENATE SHOULD REJECT CARSWELL

Sadly we feel compelled to urge the Senate to reject President Nixon's nomination of Judge G. Harrold Carswell to fill the

vacancy on the bench of the U.S. Supreme Court.

Up to the disclosure this week of comments attributed to Carswell in a campaign speech made in 1948 we were prepared to endorse his appointment. But that vigorous embracement of the doctrine of white supremacy and his avowal in the same speech to remain faithful to it in the future leads this newspaper to challenge his fitness for the high court appointment.

His repudiation, in which he renounced his previous comments "specifically and categorically," was logical and predictable for a man in his painful predicament. And we have no reason to doubt that he was as sincere in his latter as in his former statement.

But we worry about the decision-making problems and are reminded of Alexander Pope's couplet:

"Some praise at morning what they blame at night,
But always think the last opinion right."

The unfortunate fact is that Carswell is on record not only as formerly an ardent segregationist but also as a man who is capable of making a diametrical switch in his basic, personal philosophy. Now that he apparently has purged himself of the old and discredited doctrine of racial superiority, might he not "lean over backwards" in certain future decisions to support his passionate disclaimer of this week?

We are not contending that a man in public life should be criticized necessarily for changing his mind. We are saying that there could be legitimate questioning of any court decision in the area of civil rights in which Carswell participated, and in these critically sensitive times that kind of doubt ought to be avoided.

We feel personal sympathy for the judge. There must be many people like him in the South today who would like to take back the "praise at morning" they spoke at a time when the segregation tide was running strong and respectable. Most of them don't have to endure the crucible of securing Senate approval. And we have no reason to question his professional record, his legal background.

But his nomination now has suddenly spelled strife and controversy for the Nixon Administration. Neither the President nor the country can afford that. Its "Southern strategy" aside, the administration surely should exercise more thoroughness in examining a candidate's political fitness for a place on the Supreme Court.

If Carswell is approved, which now seems doubtful, he might turn out to have qualifications of the highest order. The history of Supreme Court appointments has several instances of controversial nominees who became outstanding justices. But we have grave fears that this nominee's old words would haunt his new career and jeopardize his effectiveness.

A lady from Des Moines writes:

I am appealing to you to please veto the Judge Carswell nomination. My opinions are not only because of his 1948 speech, but also recent court rulings. For instance—he dismissed a case in 1963 when blacks protested theater segregation in Tallahassee.

He is obviously *not* a fair man. He is a bigot. If his nomination goes through—he is jeopardizing the American Negro.

Another lady from Des Moines writes:

This is in regard to the nomination of Harrold Carswell for the Supreme Court. I oppose this appointment and urge you to vote against his nomination.

I give Mr. Carswell credit; he may have changed his racial attitudes. But the slim chance that he has not changed cannot be taken in such an important matter. It would be truly an insult to Black Americans and an embarrassment to the U.S. in the eyes of other countries if he was seated on the High Court.

A man from Ames writes:

I am writing to encourage you to vote against the nomination of Judge Harrold Carswell to the Supreme Court. The Supreme Court must be free of any taint or even suggestion of racial or ethnic prejudice. Even though Judge Carswell's statement in support of white supremacy was made twenty-two years ago, it cannot be overlooked. If this statement reflects his true beliefs, he is totally unqualified to be a Supreme Court Justice; if it was made to enhance his chances for election in a prejudiced area, his integrity comes into question. And the possibility, even if it is only a possibility, that some of his rulings as a judge reflect the views of his 1948 statement makes him a very poor choice for the Supreme Court.

A man from Dubuque writes:

I was pleased that you opposed the confirmation of Justice Haynsworth to the Supreme Court last November. I sincerely believe that it is just as important to prevent Justice Carswell's appointment to the bench and I urge you to vote against his confirmation. I believe that he should be defeated for the following reasons:

First, Justice Carswell has had an undistinguished career as a jurist. This was the prime prerequisite of the President for a position on the court. Carswell's supporters simply gratuitously label him as a distinguished jurist while citing no evidence of an outstanding career.

Second, Justice Carswell has not had another career of solid accomplishment in public or in private life which would denote personal excellence and would give promise of future growth to honor the position on the court.

Third, he was at one time in his life a "dyed in the wool" segregationist. Granted that it is true that he made the racist utterances in the heat of a "white supremacy" primary contest, he has had twenty-two years to demonstrate by word and deed that he has really changed. I am sure that we all believe that men may change over a period of years, and perhaps Carswell has, but an alteration of belief is not evident in decisions he has handed down over the years.

Fourth, his appointment would further divide our nation. Although Carswell has publicly recanted racist statements he uttered, his appointment would encourage people who are presently defying integration; it would discourage those who have been struggling peacefully to obtain their rights as Americans citizens.

The appointment of Justice Carswell clearly demonstrates that the present incumbent of the White House is using court appointments as political strategy. The President says that he wishes to appoint a strict constructionist who has an outstanding record as a jurist. Justice Carswell may be a strict constructionist in the eyes of ardent states righters but he has failed to evoke any enthusiasm in any of the leading law schools of the country. There must be some justices in the United States who would possess the characteristics the President is seeking without the obvious disabilities of the present nominee.

These are some of the reasons why I hope that you oppose the confirmation of Mr. Carswell. Unless there are some facts to refute the points I raised, I am sure that you will vote against the elevation of Mr. Carswell to the highest court in our land.

A couple from Grundy Center writes:

We are most concerned about the possible appointment of Harrold Carswell to the U.S. Supreme Court. We strongly urge you not to support his nomination.

The president of the Des Moines Branch of the National Association for the Advancement of Colored People writes:

At its January 27, 1970 meeting, the Executive Board of the Des Moines Branch N.A.A.C.P. voted unanimously to support the position of the National N.A.A.C.P. in its opposition to the appointment of Judge G. Harrold Carswell to the United States Supreme Court.

We have not taken this position because Judge Carswell is from the South, but because of his record on Civil Rights matters, which has not been favorable. Without meaning to question his current sincerity and integrity, the Executive Board felt it is doubtful that black citizens would get justice from him on Supreme Court cases.

The Executive Board of the Des Moines Branch N.A.A.C.P, therefore, urge you to reject the confirmation of Judge Carswell to the U.S. Supreme Court

A man from Dubuque writes:

I write this letter to urge you to *oppose* the confirmation of Judge George Harrold Carswell to the United States Supreme Court.

I have recently been in conversation with a number of Black youth—both students and non-students. The effect of a Carswell confirmation on these youth can only result in further alienation and embitterment.

I am sure we would all like to avoid another Haynsworth episode. If Carswell were a man with a brilliant record we could perhaps risk the reaction to his confirmation. But he has a lackluster record and his confirmation will cost us more in further polarization than we can afford to pay.

I urge you most strongly to oppose the confirmation.

A Cedar Rapids constituent writes:

As you are well aware, one of our major problems today is respect for the law and the people who carry out the laws. At this time we cannot afford to select a Supreme Court Justice who does not command the full respect of all the people. Whether the selected individual is from the North or South, he must meet the highest standards for service, not the minimum.

While I have nothing personal against either of the Presidential nominees, I feel that we should be able to find an appointee at this time who is above any hint of either any wrong-doing or incompetence.

A woman from Washington, Iowa, writes:

I want to register my opposition to the nomination of Judge G. Harrold Carswell to the Supreme Court.

In no way do I consider Judge Carswell to be the caliber of man the Supreme Court needs. His racist stands as recently as a few years ago undermines the confidence thinking Americans have in him. As explosive as the racial situation is in our country today, it is no time to fan the flames.

I urge you to oppose the nomination of Judge Carswell to the Supreme Court.

A professor from Portola Valley, Calif., writes:

Some Senators who have announced their opposition to the Supreme Court nomination of Judge Carswell doubt openly they can block it. Public discussion of a filibuster has surfaced recently—but this is said to be premised on the existence of 30 firm votes against confirmation.

Please help dramatize the appalling nature of this nomination. A filibuster against it—even if it fails—is little enough in the name of decency. This is not just another vote—it is perhaps a last chance to keep faith with a large but politically underrep-

resented racial minority in this country. Given the course of recent events, black Americans can only view Judge Carswell's nomination as the death knell for "Equal Justice Under Law." Is there any chance whatever that a man who had behaved similarly toward Catholics or Jews (or any white minority) would be seriously considered for the Court? How many Senators could sit comfortably and listen to a public retelling of Judge Carswell's offensive—and recent—dialect joke? It is time to sacrifice some of the genteel tone of the Senate, if need be, to show the callousness of this nominee—apart from his complete mediocrity as a jurist.

Your vote is needed, but it will not be enough. Please speak bluntly and act forcefully against this nomination. A filibuster will speak for those Americans of all races who though politically weak, are distressed by this nomination.

An Army lieutenant writes:

In following 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, it is my wish, and you have my full support in refusing this man one of the most consequential positions in our Federal government.

The testimony of Judge Carswell certainly indicates to me that a man as blind and naive about his personal affairs is not competent to make decisions of the magnitude of those made in the Supreme Court as to interpretation of the law affecting the lives of everyone in this country. Furthermore, this man does not hold any credentials justifying his even being nominated to this position and certainly has not distinguished himself as an outstanding legal mind.

Please, Senator Hughes, cast your vote no!

A man from Gainesville, Fla., writes:

As a Floridian and university administrator, I urge you to vote against the nomination of G. Harrold Carswell to the U.S. Supreme Court on the grounds that his credentials are mediocre and his views on racial equality questionable. Certainly our highest Court deserves a man with impeccable credentials. This man's qualifications leave much to be desired.

A professor from South Orange, N.J., writes:

Again and again I hear people commenting negatively on the qualifications of Judge Carswell for the Supreme Court followed by the statement that there isn't enough fight left to keep him from being confirmed by the Senate.

This is appalling. If he has shown himself to be so little qualified for the highest judicial position in the country, you and your fellow Senators must work not only to keep him from being confirmed but to make clear to the Attorney General and the President that we will not tolerate such an abuse of their nominating power.

What is against his nomination? First, his adherence to some of the fundamental viewpoints of the Constitution and the Bill of Rights seems doubtful. Second, he has demonstrated his lack of a first-rate judicial mind by the quality of his opinions in the cases tried before him, in the absence of any contribution to scholarly journals, and more importantly in the number of instances in which his decisions have been overturned at the Appellate level.

I cannot believe that there isn't a first-rate candidate who is Southern and holds a viewpoint different from that of the present Court. Perhaps Mitchell and the President are demonstrating, although unwittingly, that a first-rate judicial mind is incompatible with the views they would like to impose on the Court. Thus, they are forced to select men of third-rate qualifications.

I urge you to use your influence to defeat this nomination and any future ones of similar candidates.

A constituent from Cedar Falls writes:

Make your vote count. Stop Carswell.

A man from Iowa City writes:

I feel recent events in Chicago have seriously questioned the fairness of our judicial process. What is perhaps more disturbing however is the pending appointment to the Supreme Court.

Anthropologically, law is not that written by the legislatures, but that interpreted by our courts. When so many of our imperfect laws are being challenged, we need a high court whose motives will be above questions of fairness. The assurance of a fair trial for all is the last stronghold of national order.

Mr. Carswell's previous racial statements and court decisions indicate at best lack of vision, while his land dealings would question his impartiality on any case involving civil rights.

Therefore in order that we may settle our problems of justice and freedom in unquestionable courts, I urge you to reject the nomination of Harrold Carswell to the Supreme Court.

A woman from Des Moines writes:

I am writing this letter in support of your intention to vote against the nomination of G. Harrold Carswell. If Judge Carswell's nomination is confirmed this will be a crushing blow to racial equality in America. Carswell's record demonstrates his long standing racial biases that would probably slant any decision he would make. A belief in racial inequality should certainly disqualify one for a seat on the Supreme Court.

I know you will do all you can to prevent Carswell from obtaining the nomination.

A woman from Sumter, S.C., writes:

Today, not only black Americans but white Americans, as well, are concerned about Nixon Administration policy. I am one such person.

My purpose in writing you is to urge you to vote *against* Judge Carswell's nomination to the Supreme Court.

Mr. Nixon's "Southern Strategy" will not stop with the naming of inferior and racist men like Judge Carswell, but will continue on, only to eventually turn back the clock on all the social progress already made in this country.

Please, sir, I urge you and your constituents *not* to let a self-spoken racist be seated on the Supreme Court.

If the U.S. Senate goes along with Mr. Nixon's choice (in Judge Carswell), it will be giving its blessing to a very dangerous trend.

Thank you for your attention.

A man from Ithaca, N.Y. writes:

Very shortly the Senate will be voting on the nomination of Harrold Carswell. Even though I am not part of your constituency, I felt you would be most sympathetic to the reasoning I will put forth for rejecting Judge Carswell.

The young people of this nation will be watching the balloting on this issue very closely, just as we did on the Haynsworth nomination. If your vote is not a 'right' one, you may be assured that when it comes time for your re-election, we will mobilize all our people in an attempt to defeat you, as we did a certain individual in 1968!

It should be obvious what the correct vote is. Although Judge Carswell has not made any obnoxious statements or decisions on labor issues, his view on racial matters is quite clear. Columnist James A. Wechsler pointed out that during Carswell's tenure as district judge, 60% of his 23 civil rights decisions were upset.

A man who believes that a law is bad for judicial reasons is an asset to the Court. However, a man who votes for or against something merely on the basis of his own personal beliefs without any judicial reasoning involved is quite harmful. I believe Harrold Carswell to be such a man and await patiently your reply when the roll is called.

A woman from Denver, Colo. writes:

Although I am no longer one of your direct constituents, (my husband and I moved from Iowa in 1968), I am following your senatorial career with great interest. I am quite proud that Iowa chose you to represent them. I have been impressed with your courage and action in supporting your views and I hope you will be an active voice in our government for some time to come.

My specific reasons for writing is to urge you to do everything you can to defeat the nomination of Harrold Carswell to the Supreme Court. It is terribly important that we show the black community every indication that we are striving to make justice available through the courts. Even if Judge Carswell has repudiated his racist views, (and I am well aware of the ability to change one's ideas), his nomination will appear to be a deliberate attempt on the part of the Administration to reverse the progress made in the field of civil rights.

I am curious to know what the feeling about Mr. Carswell would be if he has espoused communist philosophy in his youth instead of his racist views. I personally feel that the attitude toward the Negro in the past has been far more dangerous and threatening to the true values of a democracy than any external political force.

A man from Temple, Tex., writes:

I am most concerned about the nomination of Judge G. Harrold Carswell to the Supreme Court. I don't think the basic and crucial issues in his record and attitude have been investigated nor considered sufficiently to this point.

I hope you agree with me and will insist on a complete examination, before permitting his confirmation to come to a Senate vote. You know better than I do how imperative it is to have a Supreme Court that understands the "needs for flexibility and change" in these times of rapid social transition. The great Abraham Lincoln opposed the Dred Scott decision and other positions of the Court 120 years ago for the reason that it was stand-pat, without either sensitivity for or understanding of the requirement for change under the "American Way" of life.

The attached copy of a news column by Clayton Fritchey spells out my objections to Carswell in a very forceful and objective way. If you have already read Fritchey's column, I urge you to read it again.

"CARSWELL'S INVESTIGATION INADEQUATE

"(By Clayton Fritchey)

"WASHINGTON.—Suppose Associate Justice Thurgood Marshall, the only Negro member of the Supreme Court, had once said: 'I yield to no man . . . in the firm, vigorous belief in the principles of black supremacy, and I shall always be so governed.' Is is conceivable that the U.S. Senate ever would have confirmed him, regardless of how he tried to explain it away?

"Judge G. Harrold Carswell, Nixon's latest appointee to the Supreme Court, who made the above statement in reverse (substitute white for black) while running for public office on a white supremacy platform, seeks to justify himself on the grounds that it was merely a youthful indiscretion.

"Well, he was not a callow youth, but a callow adult of 28 when, in cold calculation,

he deliberately tried to exploit racial prejudice to advance himself politically. He was a university graduate, he had gone to law school, and he was the editor of a weekly newspaper.

"Men have won the Pulitzer and even the Nobel prizes before they were 28. Pitt was prime minister of England at 24. Robert Hutchins was president of Chicago University at 28. In any case, even teen-age dropouts should know the doctrine of white supremacy is un-Christian, un-American, and repugnant to everything America stands for.

"Attorney General John Mitchell, who is becoming an expert at whitewashing the delinquencies of the men he recommends for the highest court, is not disturbed at Carswell having said, '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.'

"Mitchell, like Carswell himself, now wants the public to believe that the judge has repented and mended his ways. But there is no record of his ever having recanted or even regretted his statement, until he was confronted with it a few days ago after it was uncovered by an enterprising Southern journalist.

"Although Carswell has been on the federal bench for 11 years, there is nothing in his judicial record to suggest that he has had a change of heart on racial matters. In a number of civil rights cases the higher courts reversed his decisions, usually because they found that Carswell had wrongly denied Negroes' claims. The Senate Judiciary Committee owes it to itself to find out when and how Carswell's claimed conversion took place. Let us have the proof.

"Another extenuation advanced for the judge's anti-Negro speech is that he didn't really mean it, but in order to get elected he had to fool the voters in a white supremacy county. 'Ol' Harrold was just playing the game,' explains an old friend of the judge.

"Even assuming this is true, do Americans want a man on the Supreme Court who would violate their own principles so as to deceive voters into thinking he shared their racial prejudices? The passive reaction to the Carswell appointment suggests that the Senate has come to expect nothing better from Nixon. If Eisenhower, Kennedy, or Johnson had nominated a man with Carswell's lackluster record and bigoted outlook, there would have been general shock.

"After what the judge has so cruelly said about Negroes, how can these 23 million Americans ever believe they will get justice from him on Supreme Court cases involving their rights? To the blacks, it is all too obvious what 'strict construction' means.

"There are scores, perhaps hundreds, of able and distinguished men, both Republican and Democratic, whose appointment to the highest court would reassure the public and reflect credit on the President. Surely there are considerations superior to paying a political debt to Southern conservatives.

"For his own protection, the President at least ought to rely on somebody other than Mitchell to investigate future appointees. The FBI, it appears, somehow overlooked Carswell's white supremacy record. Or maybe, like Mitchell, they didn't think it was important."

A woman from the Bronx, N.Y., writes:

It is my opinion, and the opinion of many of my colleagues, that the central issue around the nomination of Judge Carswell has been blurred. We think that whether or not a man should be held responsible for something he said 22 years ago is *not* the critical issue here. On these matters, liberals, moderates, and conservatives alike can reach agreement.

The crucial point, it seems to us, is the fact that political acts and events have obvious and profound symbolic dimensions, and Carswell's nomination is a case in point.

It is regrettable, that the clear and probable repercussions of these symbolic assertions, are being ignored, or worse still, not even recognized. Our country is suffering under the strain of a number of "gaps": why introduce or reinforce another?

I would hope that you gentlemen would somehow find the strength to face this issue squarely with more recalcitrant colleagues as well as friends and try to address yourselves to the inevitable, (it seems to me) negative symbolic consequences of this appointment.

A woman from Boston, Mass., writes:

I urge you to do all you can to oppose the appointment of Judge Carswell to the Supreme Court. It seems to me far worse than the Haynesworth appointment, bad as that was.

A man from Jersey City, N.J., writes:

The Constitution of the United States *wisely* provides for checks and balances between the judicial, legislative and executive branches of our government, which makes our country truly representative of the peoples' wishes and therefore truly a democracy. At the present time, a perfect example of the applicability of this provision has come about (in the nomination of Judge Carswell), as it clearly provides for the *responsibility* and *duty* of the majority vote of the *entire* Senate to either confirm or reject the nomination to the highest court in our land.

In a dictatorship, the Premier (or party boss) nominates or appoints anyone he wishes (to any office) and that person is automatically installed to that office (or is removed or shot at the Premier's whim). That is the difference between a dictatorship and a true democracy, where the *majority* of its people and/or its elected representatives have the final say on practically all of the important offices, such as the Supreme Court.

I believe that President Nixon is dedicated, sincere and loves his country, just as I do (as well as millions of others). I also believe that had he known all the details of Judge Carswell's background and rulings, he would not have nominated him to the highest court of our land. However, as shown in the past (even if he won't admit it), the President seems to feel that once a candidate is nominated he cannot or will not withdraw it for whatever reason, and that is a mistake.

I don't believe the only question as to Judge Carswell's confirmation is purely ideological, *nor should* it be a question of *North* v. *South*. What should be of paramount importance is the *future progress* of this great country of ours, where a Supreme Court justice has the *power* and *authority* to shape and mold this Country's destiny in the *just* interpretation and judicial rulings of our Constitution. This is a *lifetime appointment* and should not be treated casually as any other minor appointment.

Although Judge Carswell refuted his 1948 racist speech, he has consistently *delayed, refused to hear,* or circumvented civil rights cases. Furthermore, his decisions have frequently been *reversed* by higher courts.

Are there any indications whereby any of Judge Carswell's previous rulings and actions have changed his 1948 racist views? Was it changed when he signed, contributed (and in all probability drew up) the incorporation document of the golf club? Was it changed when he consistently delayed, refused to hear or circumvented civil rights cases? Was it changed in his attitude and treatment toward Negro lawyers who appeared before him?

It is incomprehensible for anyone to confirm such a nomination (which is full of doubts and questions) to the highest court of our land, unless that Senator also shares the same views of Judge Carswell. In that case nothing that anyone can prove will alter their opinion or vote.

Judge Carswell's record indicates that he has not kept his oath of office to *defend* and *protect* the Constitution of the United States (*with justice for all*), as all public officials have sworn to do, and therefore his name should be rejected."

Another man from Madison, N.J., writes:

Although I am not a resident of Iowa, I strongly urge that you veto President Nixon's appointee for the Supreme Court. Judge G. Harrold Carswell has done various questionable items which have raised serious doubts to his credentials and character to serve as a Justice on the august Supreme Court. Various statements and incidents have been revealed concerning the conduct of Carswell as you probably are aware of. The Senate Judiciary hearings revealed those matters.

Members of the Senate are aware of the fact that some 450 lawyers recently signed a statement opposing the confirmation of Judge Carswell. In addition, a great many law students, faculties, and other professional people have written to express their concern. I will read some of these very fine statements:

STATEMENT OF PROFESSORS OF LAW, HARVARD UNIVERSITY, CAMBRIDGE, MASS.

To the Members of the United States Senate:

The events that have come to light through the Senate Hearings and the press persuade us to oppose the appointment of Judge G. Harrold Carswell to the Supreme Court of the United States.

We start with Judge Carswell's speech in 1948 expressing his belief in white supremacy. At a minimum, such a statement should require its author to evidence a rejection of his earlier views, a present commitment to uphold principles of equality which not only have a foundation in morality but also have come to form part of the law of our land. If we now recognize with a painful sense of relevance that respect for law by our ordinary citizens is a condition to the health of our society, can we make less exacting demands upon judges charged with administration of that law? Should not these demands be most rigorous when appointment to our highest court is at issue?

We believe the record to show that Judge Carswell lacks these minimum qualifications. His history bears no trace of commitment to those moral and legal principles which can now serve to bind our nation together. Rather, we find continuing evidence of his adherence to the racist views expressed in 1948.

The facts are too well known to need lengthy restatement. We refer principally to (1) Judge Carswell's involvement in 1956 (while serving as United States Attorney) with the leasing of a municipal golf course to a private club for the apparent purpose of maintaining segregated facilities in evasion of the Constitution; (2) the large number of his decisions against blacks in civil rights cases which were unanimously reversed by the appellate courts; and (3) the testimony by members of the Bar of his abusive conduct towards civil rights lawyers. We should add that we find unconvincing Judge Carswell's explanation to the Senate Judiciary Committee of the country-club incident. Confirmation of Judge Carswell would place on the Supreme Court a man of, at very best, shaky commitment to Constitutional principles which are of the gravest importance to our country. Such an act would serve neither the goal of a "balanced" Supreme Court, nor our larger national interest. Rather, it might prejudice the ability of our judiciary to hold the respect of all parts of our population, and exacerbate tensions in the country at large. For these reasons, we urge that the Senate refuse confirmation of Judge Carswell.

STATEMENT OF FACULTY AND ADMINISTRATORS, STANFORD LAW SCHOOL, STANFORD, CALIF.

DEAR SENATOR: It is my pleasure to enclose a petition, signed by 21 members of the faculty and administration of the Stanford School of Law, opposing the appointment of Judge G. Harrold Carswell to the Supreme Court of the United States. We respectfully urge you to oppose Judge Carswell's nomination.

The petition reads as follows:

"We, the undersigned faculty and administrators of the Stanford School of Law, oppose the appointment of Judge G. Harrold Carswell to the Supreme Court of the United States.

"Judge Carswell retracted his open espousal of the doctrine of white supremacy only when it became self-serving to do so. His conduct in the intervening years—his active participation in the formation of a segregated golf course, his rulings in school desegregation cases, his shockingly discourteous treatment of civil rights lawyers and their clients in his courtroom—make plain Judge Carswell's continued antagonism to the principle of racial equality.

"A man who had spoken and acted in this manner against Catholics or Jews would not even be considered, let alone nominated, for a position on the High Court. We cannot make an exception for Judge Carswell's conduct without breaking faith with the fundamental principles and commitments of our Nation.

"We respectfully urge all Senators of good will to vote against the confirmation of Judge Carswell."

POLICY STATEMENT OF THE CALIFORNIA LAW REVIEW, UNIVERSITY OF CALIFORNIA BERKELEY, CALIF.

The members of the *California Law Review* strongly oppose the nomination of Judge G. Harrold Carswell to the United States Supreme Court.

We recognize the President's prerogative of effecting a balance on the Court of competent men of varying schools of judicial philosophy. We are deeply concerned, however, about this nominee's early statement of undying belief in White Supremacy. His professed renunciation of this statement is belied by his intolerant behavior toward civil rights petitioners and their lawyers, his conduct in personally drafting a charter for a university booster club which prohibted membership by non-whites, his incorporation of a segregated country club to thwart integration, his sale of property subject to an unconstitutional racially restrictive covenant, and the disturbingly high rate of reversals of his civil rights decisions.

Of even greater concern, Judge Carswell's legal record and judicial opinions are devoid of any trace of distinction or contribution to the law which might set him apart from other judges and lawyers. Judge Carswell simply fails to meet the minimum standards of judicial competence necessary for service on the nation's highest court.

We therefore strongly urge the Senate, in exercising its duty of independent review, to withhold confirmation of Judge G. Harrold Carswell's nomination to the United States Supreme Court.

STATEMENT OF THE STUDENT BAR ASSOCIATION, THE NATIONAL LAW CENTER, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C.

DEAR SENATOR: The following resolution was unanimously passed March 4, 1970:

"*Resolved*, That the Student Bar Association of the National Law Center urges each and every Senator of the United States to reject President Nixon's irresponsible nomination of Judge Carswell to the United States Supreme Court."

The Student Bar Association is the duly elected representative of 1600 law students of the National Law Center of The George Washington University.

STATEMENT OF COMMITTEE OF ATTORNEYS AND ACCOUNTANTS AGAINST CONFIRMATION OF JUDGE CARSWELL, PORTLAND, OREG.

DEAR SENATOR: Soon you will be performing one of the most important functions of your job as United States Senator—confirming or denying the latest nominee to the United States Supreme Court, Judge G. Harrold Carswell of Tallahassee, Florida. Our Committee feels Judge Carswell should not be confirmed.

In 1948 Judge Carswell said that he would always be governed by the principles of White Supremacy. Of course talk is cheap and comment was made during an election campaign against a sworn segregationist. Judge Carswell's renouncement of that statement seems to lay to rest fears of his White Supremacy feelings. But that renouncement also came during a time he is being considered in a campaign for appointment to the Supreme Court. Again, talk may be cheap.

Our Committee's concern is that actions speak louder than words. Judge Carswell's actions since 1948 tend to confirm his White Supremist statement. As a District Court Judge, Carswell continued to interpret cases involving Negroes from a segregationist point of view even though the United States Supreme Court and his immediate Court of Appeals, the Fifth Circuit, had reversed him and others on cases on that very point. As a private citizen Judge Carswell gave legal advice to operators of a public golf course helping them to convert it into a private club so that Negroes could not be admitted.

Finally as recently as 1966, Carswell, while a Judge of the United States District Court, signed a Deed surrendering his courtesy rights. That Deed contained a covenant providing that the property involved would never be sold to a non-caucasian, a covenant contrary to the very laws he interpreted as a District Court Judge!

It is the fear of this Committee that racism has been nominated to a high place where it does not belong. You, as a United States Senator, cannot and should not allow a White Supremist by Self-proclamation and by actions to become a Justice on the United States Supreme Court. You, our Committee and our nation cannot withstand such a terrible thing to occur at this stage of our societal development.

Please vote against confirmation of Judge G. Harrold Carswell's nomination to the United States Supreme Court.

STATEMENT OF BOARD OF CHRISTIAN EDUCATION OF THE UNITED PRESBYTERIAN CHURCH, PHILADELPHIA, PA.

DEAR SENATOR HUGHES: I am writing to express my strong hope that you will vote against the confirmation of Harrold Carswell as a justice of the Supreme Court. In two ways he seems to me inadequate. The first is because of a lack of competence for this high post. You are surely aware of the judgement of the Dean of The Yale Law School who describes Judge Carswell as having "more slender credentials than any nominee for the Supreme Court put forth in this century."

The second reason is that all evidence points to Judge Carswell's having the same white supremacist attitude which he avowed 22 years ago. It is not appropriate to place on our highest court a man who prejudices run against the Constitution and the laws of the land. I urge you to vote against Judge Carswell's confirmation.

STATEMENT OF INDUSTRIAL UNION DEPARTMENT, AFL–CIO, WASHINGTON, D.C.

DEAR SENATOR HUGHES: On behalf of the Industrial Union Department, AFL–CIO, I wish to express our opposition to the nomination of Judge G. Harrold Carswell to the U.S. Supreme Court. It is not my nature to speak harshly of a person who I do not know in a personal way for fear that I may do an injustice, but the importance of the issue in this situation overrides my native reluctance.

The record of this nominee, as it has emerged from newspaper stories and from testimony before the Senate Judiciary Committee, is most disquieting. It raises, for us, two basic objections to the appointment. First, a number of Judge Carswell's activities over the years—his drafting of the charter for an all-white booster club for Florida State University in 1953; his participation, as an incorporator and director, in the formation of a racially-segregated golf course in 1956; his concurrence in the sale of personal real estate, in 1966, that used a deed barring non-Caucasians from buying or occupying the property; his hostile treatment of Negro lawyers and civil rights defenders who appeared in his court—all indicate to us that he has had no change of heart since his know-nothing avowal of white supremacy in 1948.

Second, analyses of his decisions by distinguished lawyers, law professors and deans of law schools, reveal, according to a statement more than 400 of them have signed, 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."

On November 21, 1969, the Senate rightly rejected the nomination of Clement F. Haynsworth, Jr. to the U.S. Supreme Court for the most part because he had failed to avoid the appearance of unethical behavior. If Judge Carswell is confirmed for the Court, what can we citizens conclude? That the *appearance* of misconduct disqualifies a man for service on the Court but that serious evidence of bigotry and incompetence do *not*?

To those of us in the Industrial Union Department and to millions of Americans who find white supremacy repugnant and the Supreme Court bench a place only for the most morally and intellectually fit, the answer is obvious. This shocking appointment must be rejected. We respectfully urge you to save the good name of the U.S. Supreme Court—as well as that of the U.S. Senate itself—by voting against the nomination of G. Harrold Carswell.

STATEMENT OF AMERICAN FEDERATION OF TEACHERS, AFL–CIO, WASHINGTON, D.C.

DEAR SENATOR: The Executive Council of the American Federation of Teachers meeting at Pittsburgh, Pennsylvania on Sunday, March 8, 1970 unanimously supported a resolution opposing the appointment of George Harrold Carswell to the Supreme Court of the United States.

In its statement, the Council regarded "the appointment of George Harrold Carswell as a threat to the integrity of the U.S. Supreme Court and the American system of jurisprudence." The Executive Council amplifies its position when it states that "we have exceptional reasons relating to our own role in public life to recommend that the U.S. Senate reject President Nixon's proposed appointment of Mr. Carswell."

Accordingly, as representatives of the more than 200,000 classroom teachers in the AFT, I respectfully urge that you vote "No" on the confirmation of George H. Carswell.

STATEMENT OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, WASHINGTON, D.C.

DEAR SENATOR HUGHES: On behalf of the membership of the International Union of Electrical, Radio and Machine Workers, a union dedicated to equality for all citizens, I urge you to publicly oppose and to vote against confirmation of the nomination of G. Harrold Carswell as an Associate Justice of the Supreme Court.

Testimony before the Judiciary Committee has demonstrated that Judge Carswell's record as a Federal judge, as a United States

Attorney and as a citizen seeking public office contains unmistakable evidence of bias against members of minority groups. Neither in his own oral testimony nor in his written reply has the nominee provided an adequate answer. On the contrary, by confining himself to protestations of fair-mindedness and by refusing to go beyond generalities, he has reinforced, rather than answered, the charges.

Civil rights is and has been for years the most crucial domestic issue in the United States. It is primarily to the Supreme Court that our minority group members have had to look for protection of their rights as citizens. Regardless of judicial philosophy, no judge should serve on that court whose record is tainted by evidence of bias in word and in deed.

This high standard, no less than high standards in conduct of financial affairs, must be maintained on the Supreme Court. Men—and women—who meet these and all other important criteria for Court service are available.

Only by voting against Judge Carswell's confirmation can you make it possible that the present vacancy on the Court will be filled by such a person. To do otherwise is to do worse than insult some of our citizens; it is to downgrade the court and endanger the rights of all citizens.

Mr. President, I yield the floor.

Mr. JAVITS. Mr. President, further continuing our discussion of the situation involving Judge Carswell, I would like to offer some statistics which relate to the record of the judge as a sitting judge in respect of the judgment of the Senate regarding his qualifications to occupy the highest judicial position in our land.

Mr. President, this information has been gathered together and published by the Ripon Society, an organzation of younger and more progressive members of my party, in which publication they have urged Republcan Senators to reject this nomination.

One of the categories analyzed is reversals on appeal.

Their compilation shows—and I will define it accurately—that during the 11 years 1958 to 1969 in which Judge Carswell sat on the Federal District Court in Tallahassee, 58.8 percent of all those cases in which he wrote printed opinions, as reported by the Digest of West Publishing Co., and which were appealed, resulted ultimately in reversals by higher courts.

They purported to take a random sample of 400 other district court opinions by other judges. They find that the average rate of reversals among all Federal district judges, extrapolated from the random sample of 400 during the same period, was 20.2 percent of all printed opinions—that is, cases in which opinions were printed when taken up on appeal.

And in the circuit in which Judge Carswell served, where they also purport to have taken a random sample of 100 district court cases emanating from the fifth circuit during the 1958–69 time period, the average rate of reversals was 24 percent of all cases in which there were printed opinions. They define a reversal to include an outright reversal, a vacation, a remand, and an affirmance with major modifications.

An affirmance is defined to include an outright affirmance, an affirmance with minor modifications, a dismissal of an appeal, and a denial of certiorari. The ultimate disposition of the case, rather than action alone in an intermediate higher court determined whether the result was to be classified as a reversal or affirmance.

It should be noted that these figures are based on 84 of Judge Carswell's reported decisions. They are believed by this group of researchers to be all of his printed court opinions.

They analyzed Judge Carswell's total rate of reversals for all his printed cases as 11.9 percent, compared, according to these researchers, to a rate of 5.3 percent for all Federal district court cases, and 6 percent for all district court cases within the fifth circuit during the same time period.

The majority of the cases, they say in their report, before any Federal district judge ordinarily do not result in appeals, hence precluding the possibility of reversals in those cases.

It is significant, however, that Judge Carswell's overall reversal rate for his printed cases is more than twice the average of Federal district judges. When additional unprinted opinions revealed in testimony before the Senate Judiciary Committee by Joseph L. Rauh, Jr., a lawyer, and by the memorandum of the Senator from Nebraska (Mr. HRUSKA) are included, they find that Judge Carswell has an overall reversal rate of 21.6 percent.

Mr. President, I yield the floor.

THE ANNOUNCEMENT OF SENATOR BYRD OF VIRGINIA THAT HE WILL SEEK REELECTION AS AN INDEPENDENT

Mr. ALLEN. Mr. President, I noted in the newspaper this morning a statement to the effect that the distinguished senior Senator from Virginia, the Honorable HARRY F. BYRD, will run for the U.S. Senate this year as an independent. The Junior Senator from Alabama wishes to congratulate the distinguished senior Senator from Virginia for his bold, his courageous, and his statesmanlike position in this matter, and he wishes him well in the coming election.

The junior Senator from Alabama noted that the distinguished senior Senator from Virginia made the point that the State Democratic Executive Committee in the State of Virginia is imposing the requirement on all candidates in the Democratic primary in that State that they agree in advance to support the national nominees of the national Democratic Party in order to be able to run in the State primary.

In the State of Alabama at one time we had a similar requirement. It was necessary that a candidate in the Democratic primary pledge in advance that he would support the national nominees of the Democratic Party. That requirement has been repudiated in the State of Alabama. That requirement is one of the principal reasons why there is an effective two-party system in the State of Alabama, because it caused people not to go into the Democratic primary. It repelled new adherents. Since the new voters had no other place to go, they would go to the Republican Party.

So it occurs to the junior Senator from Alabama that there is a similar situation in the State of Virginia in this regard; and he feels that the distinguished senior Senator from Virginia has made a bold and dramatic gesture indicating his great independence, indicating his nonpartisanship and nonpolitical approach to the problems of the Nation as they are considered in this great body.

The junior Senator from Alabama has long been a great admirer of the senior Senator from Virginia, as he was of his great and distinguished father, the late Senator Harry Flood Byrd; and he feels that the father of the present senior Senator from Virginia would certainly be proud of the action that his able son has taken in this regard.

It is the desire of the junior Senator from Alabama to commend the senior Senator from Virginia, because he has observed, during the short time he has been in the Senate, that the senior Senator from Virginia has voted for or against the President as his convictions dictated. He has voted for or against the policies of the national Democratic Party as his conscience and his convictions dictated. He has always put principle above politics. So it is the opinion of the junior Senator from Alabama that the loyal sons of Virginia will, in resounding terms, at the first opportunity they have to voice their opinions, give the distinguished senior Senator from Virginia a strong and overwhelming vote of confidence.

TV AND THE VOTE

Mr. PASTORE. Mr. President, in today's Washington Star appears an editorial entitled "TV and the Vote." This editorial deals with a plan I am now discussing with the Committee on Commerce with reference to the matter of the tremendous cost of campaign TV time and radio time in our elective process.

The editorial is rather complimentary and states:

There is nothing wrong, either, with the other major provisions of the bill that would abolish, the "equal time" rule. This restrictive yoke serves only to keep the nominees of major parties off major talk shows because of the possibility that a score of dingbat candidates will demand—and get—equal time.

The editorial then goes on, and here there is an error, which I should like to point out for the assurance of Members of the Senate who might be disturbed by the interpretation given in the editorial:

But the intent of Pastore's bill is not merely to let the networks decide which candidates are to be taken seriously. The idea is to clear the decks for TV debates between presidential candidates, and to make such political sideshows fixed features of the political scene. It is an abysmal notion. Debating skill—particularly under the artificial and arbitrary limitations of the TV format—is no true test of judgment, executive ability or intelligence, which are more reasonable presidential qualities than verbal agility.

Mr. President, let me say here that the "abysmal notion" is no part of the bill to be proposed. I share the sentiments of the editorial commentator—and there is no intent in the measure to dictate to broadcaster or to candidate the format to be followed.

As proof of that, I should like to point

out that in 1968, when I reported an amendment to section 315 of the Communications Act, in the report I was very explicit—and I read now from that report at page 5:

Encouraged by the results of the 1960 suspension, your committee believes that similar action with respect to nominees for the offices of President and Vice President will provide the opportunity for the major party nominees in cooperation with the broadcasters to present their views without the inhibitions presently contained in section 315.

Mr. President, I want to underscore this, because this is the important part of the report, in connection with the format discussed in the editorial.

I quote further from the report:

This committee wishes to point out that in urging the adoption of this legislation suspending section 315 as it applies to presidential and vice presidential nominees, it is not endorsing any particular format for the appearances of the nominees. Rather, complete freedom is being given to the broadcaster and nominees to develop specific program formats for the appearance of the nominees. The committee feels that the flexibility being given in this legislation will permit the broadcaster and nominees to innovate and experiment with various program formats, including joint appearances. Whatever is done, should be done as a result of discussion, negotiations, and cooperation between the nominees and the broadcasters.

Now, as a result of this, I have had a number of conversations with three presidents of the major networks.

Mr. Goodman, who is president of NBC, in appearing before our committee on the pending legislation had this to say:

To advance this purpose, 3 years ago, I pledged that the NBC Television Network would make available a designated number of prime-time half hours for appearances by the presidential and vice presidential candidates of the major parties in the 1968 campaign. We proposed to offer the time without charge, for the candidates to use as they saw fit, if section 315 could be amended to enable us to do this. We regretted that the offer failed because there was no legislative sanction that would protect us from having to offer the same number of evening half hours to at least 10 other presidential candidates, ranging from the Theocratic to the National Hamiltonian parties.

Mr. President, I want to make it abundantly clear that the plan we are discussing does not tie the hands of the broadcasters or the nominees for the office of President or Vice President. It does not bind them to any particular format, especially that of debates. The networks have promised that they would make available free, as the candidates saw fit to use, a number of half-hour programs which, I guess, would be a fine attack on these expanding costs.

The Republican Party spent over $12 million last year for presidential TV time. The Democratic Party spent about $6 million. Six years ago, I think it was just the reverse.

This whole matter is getting out of hand. There have been a lot of gimmicks suggested. For instance, one of the committees investigating this suggested that the cost be cut in half and that the Government pay that half.

I tell you very frankly, Mr. President, that sounds good but I am afraid it will be a long time before Congress will begin to underwrite that kind of bill.

But the networks realize their responsibility and their pledge to render public service. Realizing the costs involved, they have agreed that if we relieve them of the responsibility under section 315, they will give equal time, free time, and a format to the choosing of the nominees themselves without any restrictions, without any inhibitions.

We want to do away with this empty chair gimmick to embarrass anyone.

I just want to make that clear because, according to the editorial, there could be a misunderstanding.

For the convenience of the Senate I ask unanimous consent that the Washington Star editorial in full be entered in the RECORD at the conclusion of my remarks.

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

TV AND THE VOTE

The Senate's number one television watcher, Senator John O. Pastore, has produced a bill aimed at holding the political activity of the electronic Cyclops within reasonable bounds. Unfortunately, the blessings of the bill are considerably diluted by a proposal that the political monstrosity known as TV debates should be adopted as a permanent part of the elective process.

Certainly something has to be done to stop the wildly escalating cost of running for office. Any candidate, from dog catcher to president, is compelled to pour every cent he can lay his hands on into television and radio promotion. The increasingly common result is that the victory goes not to the candidate with the issues and the answers but to the man with the money, the sex appeal and the slogans.

The Pastore bill would limit the amount that can be spent to five cents for every vote cast for a given office in the preceding election. This ceiling, which would apply to all state-wide and national offices, would mean that presidential candidates in 1972 would be limited to $3.6 million each. Last time out, the Democrats shelled out $6.1 million and the Republicans $12.6 million for broadcast advertising.

There is nothing wrong, either, with the other major provisions of the bill that would abolish, the "equal time" rule. This restrictive yoke serves only to keep the nominees of major parties off major talk shows because of the possibility that a score of dingbat candidates will demand—and get—equal time.

But the intent of Pastore's bill is not merely to let the networks decide which candidates are to be taken seriously. The idea is to clear the decks for TV debates between presidential candidates, and to make such political sideshows fixed features of the political scene. It is an abysmal notion. Debating skill—particularly under the artificial and arbitrary limitations of the TV format—is no true test of judgment, executive ability or intelligence, which are more reasonable presidential qualities than verbal agility. In addition, it is unwise to hold such debates if one of the candidates is an incumbent president—which is the case roughly 50 percent of the time—because of the danger that in the heat of debate a president might produce a major disaster in diplomacy or national security.

The bill is expected to clear the Commerce Committee this week. When Congress starts chewing it over, two factors should be considered. First, those Republicans who might hesitate to limit campaign expenditures on the theory that it would help the impoverished Democrats, should remember that, not so very long ago, the tin cups were in their hands. Second, if Congress does anything at all about TV debates, it should outlaw them.

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. CRANSTON. Mr. President, on February 23, I announced my intention to vote against the confirmation of Judge G. Harrold Carswell as an Associate Justice of the U.S. Supreme Court. It is my intention to explain my opposition to the Members of this body, and it is my hope that what I have to say may move Senators favoring the confirmation of Judge Carswell to reconsider their position, and those who have not yet taken a position to take one against him.

Although I am opposed to this nominee, I do not desire my opposition to be construed as a denial of the constitutional power of the President to make judicial appointments. Under our Constitution, the President is given the power to make appointments to the Supreme Court. That power, however, is not unlimited, for article II explicitly makes these appointments subject to the advice and consent of the Senate.

As has been pointed out, the power of any President to nominate constitutes only one-half of the appointing process. The other half of this process lies within the jurisdiction of the Senate, which has the constitutional power and the solemn obligation to determine whether or not to confirm a particular nominee.

In an article written for Prospectus, a University of Michigan Law School publication, Senator GRIFFIN, the distinguished assistant minority leader, reviewed the history of the powers to nominate and to confirm Supreme Court nominees. He found that conflicting views on this matter existed at the time of the constitutional convention, and that they were resolved through a compromise dividing the powers between the President and the Senate.

Those Founding Fathers who favored a strong executive favored giving the President unlimited powers in making appointments with one important exception: They feared giving him unlimited power over Supreme Court appointments. They thought such power might tend toward a monarchy. So they favored giving the Senate the unlimited power to make Supreme Court appointments. Others opposed giving the Senate this blanket power. The compromise embodied in the Constitution provides that the President shall nominate Justices to the Supreme Court and certain officers of the United States by and with the consent of the Senate. It gives to the President the prerogative to nominate individuals to Federal appointive positions. It gives to the Senate the right to pass upon the qualifications of certain of these individuals.

Mr. President, because of the importance of the issues involving Presidential prerogative and Senate rights in the appointing process, I would like to read selected parts from the article written by Senator GRIFFIN:

Much of the controversy revolves around the appropriate functions of the President and of the Senate in the circumstances of a nomination to the Supreme Court. There are some who suggest that the Senate's role is limited merely to ascertaining whether a nominee is qualified in the sense that he possesses some minimum measure of academic background or experience. It should be emphasized at the outset that any such view of the Senate's function with respect to nominations for the separate judicial branch of the government is wrong and simply does not square with the precedents or with the intention of those who conferred the "advice and consent" power upon the Senate.

To assure the independence of the judiciary as a separate and coordinate branch. . . . it is important to recognize that this power of the Senate with respect to the judiciary is not only real, but it is at least as important as the power of the President to nominate.

No one denies the constitutional power of the President to make an appointment to the Supreme Court, technically even at a time when he is only a few months from leaving office. But, of course, that is *not* the point. Some have not understood, or will not recognize, that under our Constitution the power of any President to nominate constitutes only *one-half* of the appointing process. The *other* half of the appointing process lies within the jurisdiction of the Senate, which has not only the constitutional power but the solemn obligation to determine whether to confirm such a nomination. Because the Senate has not used its power of "advice and consent," there is a widespread belief that it is almost a rubber-stamp.

However, against the backdrop of history we must recognize that the Senate has not only the right but the responsibility to consider more than the mere qualifications of a nominee to the Supreme Court of the United States, the highest tribunal in a separate, independent and coordinate branch of the government. The Senate has a duty to look beyond the question: "Is he qualified?" The Senate must not be satisfied with anything less than application of the highest standards, not only as to professional competence but also as to such necessary qualities of character as a sense of restraint and propriety. A distinguished former colleague, Senator Paul Douglas of Illinois, put it this way:

"The 'advice and consent' of the Senate required by the Constitution for such appointments (to the Judiciary) was intended to be *real*, and *not* nominal. A large proportion of the members of the (Constitutional) Convention were fearful that if judges owed their appointments solely to the President the Judiciary, even with life tenure, would then become dependent upon the executive and the powers of the latter would become overwhelming. By requiring joint action of the legislature and the executive, it is believed that the Judiciary would be made more independent."

Illuminating the appropriateness of these views is the clear history of the formulation of constitutional obligations built into the structure of our government to realize such objectives as an independent judiciary and checks and balances on respective centers of power. In the Federalist Papers, Alexander Hamilton wrote that the requirement of Senate approval in the appointing process would ". . . be *an excellent check upon a spirit of favoritism of the President*, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachments, or from a view to popularity."

In the Constitutional Convention of 1787, James Madison generally favored the creation of a strong executive; he advocated giving the President an absolute power of appointment within the executive branch of the government. Madison stood with Alexander Hamilton against Benjamin Franklin and others who were concerned about granting the President such power on the ground that it might tend toward a monarchy. While he argued for the power of the President to appoint within the executive branch, it is very important to note that Madison drew sharp distinction with respect to appointments to the Supreme Court, the judicial branch. Madison did not believe that judges should be appointed by the President; he was inclined to give this power to "a senatorial branch as numerous enough to be confided in—and not so numerous as to be governed by the motives of the other branch; as being sufficiently stable and independent to follow clear, deliberate judgments."

At one point during the convention, after considerable debate and delay, the Committee on Detail reported a draft which provided for the appointment of judges of the Supreme Court by the Senate. Gouverneur Morris and others would not agree, and the matter was put aside. It was not resolved until the next to last day of the Constitutional Convention. The compromise language agreed upon provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all other officers of the United States." Clearly, the compromise language neither confers upon the President an unlimited power to appoint within the executive branch nor confers upon the Senate a similar power of appointment with respect to the judiciary. * * *

I believe that history demonstrates that the Senate has generally viewed the appointment of a cabinet official in a different light than an appointment of a Supreme Court Justice. * * *

The reasons for a limited Senate role with respect to executive branch appointments, however, do *not* apply when the nomination is for a *lifetime* position on the Supreme Court, the highest tribunal in the *independent*, third branch of government (footnote omitted). No less a spokesman than former Justice Felix Frankfurter has emphasized one of the chief reasons for the higher responsibility of the Senate to look beyond mere qualifications in the case of a Supreme Court nominee:

The meaning of "due process" and the content of terms like "liberty" are not revealed by the Constitution. It is the Justices who make the meaning. They read into the neutral language of the Constitution their own economic and social views . . . Let us face the fact that five justices of the Supreme Court are the molders of policy rather than the impersonal vehicles of revealed truth.

In an oft-quoted statement Chief Justice Charles Evans Hughes noted wrly: "We are under a Constitution, but the Constitution is what the judges say it is."

Thus, when the Senate considers a nomination to one of the nine lifetime positions of the Supreme Court of the United States, particularly a nomination to the position of Chief Justice, the importance of its determinations cannot be compared in any sense to the consideration of a bill for enactment into law. If Congress makes a mistake in the enactment of legislation, it can always return at a later date to correct the error. But once the Senate gives its advice and consent to a lifetime appointment to the Supreme Court, there is no such convenient way to correct an error since the nominee is not answerable thereafter to either the Senate or to the American people.

Throughout our history as a nation, until the pending nominations were submitted, one hundred and twenty-five persons have been nominated as Justices of the Supreme Court. Of that number, twenty-one, or one-sixth, failed to receive confirmation by the Senate. The question of qualifications or fitness was an issue on only four of these twenty-one occasions. In debating nominations for the Supreme Court, the Senate has never hesitated to take into account a nominee's political views, philosophy, writings, and attitude on particular issues.

The Senate's responsibility to weigh these factors is not diminished by the fact that such professional organizations as the American Bar Association limit their own inquiries. The ABA committee on the federal judiciary has acknowledged limitations on its role. For example, letters from the chairman of the committee, Albert E. Jenner, to Senator James Eastland which transmitted the committee's recommendations with respect to the nominations of Abe Fortas and Homer Thornberry contained this statement:

Our responsibility (is) to express our 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. *It is our practice to express no opinion at any time with regard to any other consideration not related to such professional qualifications which may properly be considered by the appointing or confirmed authority.* (Emphasis added).

Mr. President, Senator GRIFFIN's excellent article needs updating in one important respect. Since the time of its publication, three additional Supreme Court nominees have been submitted to the Senate. Of these, one Chief Justice Burger, was confirmed, and another, Judge Haynsworth, was rejected.

Mr. President, I am prepared to give special consideration to the President's wishes on matters relating to appointments to the executive branch. I recognize that unless he is given a strong hand in the choice of his associates, and the benefit of the doubt in cases where the merits or demerits of his nominees are not clear, he cannot be held accountable by the Congress or the people for the administration of the executive branch of Government.

I am not, however, willing to defer quite so easily to Presidential prerogative on matters relating to judicial appointments. It is true that Supreme Court justices are subject to impeachment proceedings. Unlike most other nominees, however, once judicial nominees are confirmed by the Senate, they are not directly accountable to either Congress, the Executive, or the people.

Federal judges serve for life and continue to affect the course of American history long after the President who nominated them has left the White House. This is particularly true of Supreme Court Justices who, as the final arbiters of our Constitution, set standards which are binding on both lower Federal judges and State judges.

Mr. President, before I outline my reasons for opposing the Carswell nomination, I want to clarify two additional points. I am not opposed to this nomination because Judge Carswell is a southerner. In my view, geographical factors should be irrelevant considerations in selecting Supreme Court nominees. President Nixon expressed this view in his 1968 campaign. But in picking first Haynsworth and now Carswell, the President obviously made geography his prime consideration. Their selections are an affront to the South, since the im-

plication is that this section of the country has no distinguished jurists. I believe that the South possesses its full share of outstanding jurists—some of them "liberals" and some of them "conservatives"—whose capacity and character would grace our Nation's highest Court.

Neither am I opposed to the Carswell nomination because Judge Carswell is considered a "strict constructionist" on matters involving constitutional interpretation. I can respect the Presidential prerogative of nominating strict constructionists to the Supreme Court. In the case of this nominee, however, the President has chosen a man whose judicial capabilities are so limited that it is doubtful that he could perform capably even as a strict constructionist.

The evidence adduced by the hearings on the nominee casts grave doubts on his basic intellectual qualifications to sit on the Court. His record as a jurist, lawyer, and U.S. attorney is totally devoid of professional eminence or distinction.

I believe, and the President led the country to believe, that professional eminence must be an indispensable qualification to those who are privileged to be considered to positions on our Nation's highest Court. Both in his campaign speeches and Presidential pronouncements, President Nixon assured the American people that he would consider for the position of Chief Justice only men possessing the "highest qualifications." Surely, the American people are entitled to the same consideration in nominations for Associate Justices.

Judge Carswell does not possess these qualifications. There is nothing distinguished in his record; on the contrary, his talents are permeated by a ubiquitous mediocrity.

Some have recently stated that mediocrity should be valued, rather than downgraded, and that it is essential to have a mediocre Associate Justice to represent those Americans who presumably are mediocre.

I cannot support this reasoning.

Who in America would want a mediocre Justice to sit upon our highest Court to pass upon his constitutional claims?

Clearly, there is no room for mediocrity in our courtrooms, especially in the Supreme Court which is the final arbiter of our constitutional rights. Those who have suggested that a mediocre Justice is necessary to represent mediocre Americans are not coming to grips with the real issue before the Senate. And, above all, they have grossly underestimated the intelligence and wishes of the American people.

I do not believe that the common man is mediocre or that he is entitled to mediocre justice. Every American, regardless of intellectual attainment, is entitled to have his complaint heard before a competent judge, whether at the trial of appellate levels.

I believe that the American people not only want, but are entitled to, the most highly qualified individuals to fill our Nation's highest and most responsible offices. This is particularly true in the case of Supreme Court positions, for, once Supreme Court nominees are confirmed, they cease to be directly accountable to the American people. As I have stated, Federal judges serve for life and continue to affect the course of American history long after the President who nominated them has left the White House. This unique feature alone requires the confirmation of only the most highly qualified nominees.

Mr. President, central to the question of mediocrity is the responsibility of constitutional interpretation. As today's Washington Post points out, perhaps the late Learned Hand, whose work is hailed almost universally as that of a great judge, explained best what qualifications a man needs for such fateful challenges:

> I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlye, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class.

Much has been said about Judge Carswell's insensitivity to civil rights. This stems in part from a white supremacy speech which he delivered over 20 years ago and in which he asserted that he would yield to no man in the firm vigorous belief in the principles of white supremacy and that he would always be so governed.

Though men do undergo changes of heart, Judge Carswell's record does not dispel lingering and disturbing doubts concerning the true nature of his present position on civil rights.

In 1956, at a time when he was a U.S. attorney sworn to uphold the Federal Constitution, he participated in a plan to convert a publicly owned golf course into a racially segregated club in an apparent attempt to avoid the Supreme Court's decision in *Holmes* v. *City of Atlanta*, 350 U.S. 879 (1955). In that case, the Supreme Court held that racially segregated municipal golf courses violated the equal protection clause of the 14th amendment.

Judge Carswell denied any knowledge of the discriminatory motives which prompted the conversion of the municipal golf course into a racially segregated private club.

Yet, he acknowledged that, at the time the conversion took place, he was aware of the fact that many lawsuits had been instituted in many places to prevent the type of subterfuge to which he claims not to have been a knowing party. Moreover, at the time of the conversion, a Tallahassee newspaper carried a front-page story in which the city commissioner stated that racial factors were hinted as the reason for the club's conversion into a private club.

After the hearings on the nominee had closed, it was reported that Judge Carswell joined in conveying a deed which contained a racially restrictive covenant. The property involved was acquired by Mrs. Carswell from her brother who had earlier acquired it from the Federal Government under a deed which did not contain such a covenant. The racially restrictive covenant was added by Mrs. Carswell's brother, and it was retained in the deed which was conveyed by Judge Carswell and his wife.

I am greatly troubled by Judge Carswell's participation in this transaction. Surely, a Federal judge who is sworn to uphold the Constitution of the United States knows or should have known that enforcement of racially restrictive covenants has been deemed to violate the rights guaranteed by the 14th amendment since 1948. *Shelley* v. *Kraemer*, 334 U.S. 1 (1948). Although I have no way of knowing whether or not Judge Carswell actually read the deed carefully and was aware of this restrictive covenant, I have yet to hear him say one word about this matter.

There is no evidence in Judge Carswell's record that he ever changed the white supremacy views which he held as a young political candidate. The hearings show that he first disavowed these invidious views 22 years after their espousal, and then only when he was nominated to the Supreme Court and was publicly confronted with his own past.

I am convinced that the Senate would resoundingly reject a nominee who in the past advocated black supremacy, whose life record was consistent with that view, and who finally renounced his black supremacy philosophy only when nominated for the Supreme Court.

Mr. President, questions concerning Judge Carswell's candor to one side, I believe that Judge Carswell's position on civil rights will put America's morality to the test.

Two Washington columnists, Frank Mankiewicz and Tom Braden, stated it this way in an article which appeared in the Washington Post on March 17:

> The practical test of how the country feels about its race problem will be made in the next few weeks. Senators opposed to the Supreme Court nomination of G. Harrold Carswell plan—in effect—to test the national morality.

They go on to state:

> If the country doesn't care, Carswell is in, with perhaps 40 votes against him from senators who make equality of race a matter of personal morality. In putting the Carswell issue before the nation, they are not so much asking others to adopt their view as they are saying in effect, "Do you want a man of the extreme opposite view so dignified as to participate in the deliberations of the nation's highest court?

They believe that the answer to this question depends on the degree of national commitment to the principle of equality. They couch this answer in the following terms:

> If Mr. Nixon is right in his earlier suggestion that those who want permanent segregation of the races constitute an acceptable part of the spectrum of public opinion, there is no reason why Carswell shouldn't make the court. On the other hand, if the nation really believes that the law is color blind, and that black citizens are entitled to the privileges and immunities of the Constitution, it cannot have a Carswell in the position of interpreting that Constitution.

The strategy of the opposition is to ask the country to decide.

In concluding, Mr. Mankiewicz and Mr. Braden made the following observations:

In other years and in other times it might have been thought that a president was asking too much of his party to go down the line for a man who helped to re-segregate a public golf course after the Supreme Court had ruled it was unconstitutional, who did not repudiate his statement that "segregation of the race is only proper and correct way of life" until he was nominated, and who bullied civil rights attorneys in his court.

But after the events of the last few months, Carswell's views may reflect an emerging national standard. The debate—and the public reaction to it—will tell.

Mr. President, I turn now to the matter of ethics.

Last Friday the distinguished assistant minority leader of the Senate stated on the floor that, unlike the Haynsworth nomination, the Carswell situation involves "no significant challenge or significant question raised in the record involving ethical considerations."

It seems to me, however, that ethical questions are not restricted to cases involving financial considerations and conflicts. And I believe that the hearing testimony about Judge Carswell's hostile and nonimpartial demeanor and attitude on the bench toward lawyers raising civil rights contentions before him raises grave ethical questions.

I have read the hearing record, and I have read the Canons of Judicial Ethics. And again, it seems to me, as a layman, placing the two documents side by side, that Judge Carswell's judicial behavior raises most serious questions of violation of Canons 5, 10, and 34. These canons are as follows:

5. ESSENTIAL CONDUCT

A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

* * * * *

10. COURTESY AND CIVILITY

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

* * * * *

34. A SUMMARY OF JUDICIAL OBLIGATION

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, *courteous, patient,* punctual, *just, impartial,* fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

I am not a lawyer, but the responsibility for making judgments and decisions in our Nation in these matters is not limited to lawyers. The President, empowered by the Constitution to nominate Justices of the Supreme Court, need not be an attorney. Members of the U.S. Senate, empowered by the Constitution to advise and consent in Supreme Court appointments, need not be lawyers. Actually, under the Constitution, Supreme Court Justices themselves do not have to be attorneys.

So I, a layman, chosen by the people of California to represent them in the Senate, must exercise my own judgment in the matter of the Carswell nomination, and all facts, issues and testimony relating to it.

I would like to read one brief extract from the report of the Judiciary Committee on the nomination of Judge Harrold Carswell, these being the separate views set forth by Senators HART, KENNEDY, and TYDINGS. They said, in a part of their statement:

Our judicial system must accord litigants a fair hearing. Justice is not dispensed when a judge's personal views and biases invade the judicial process. In Judge Carswell's court, the poor, the unpopular and the black were all too frequently denied the basic right to be treated fairly and equitably.

Judge Carswell was simply unable or unwilling to divorce his judicial functions from his personal prejudices. His hostility towards particular causes, lawyers, and litigants was manifest not only in his decisions but in his demeanor in the courtroom.

The record of the hearings held by the Judiciary Committee on Judge Carswell contain charges of behavior by him, both in his court and in his chambers, that violates Canons 5, 10, and 34. I have personally talked with four civil rights attorneys, white and black, who have appeared before Judge Carswell. They make the same sort of charges. Let me say that before charging Judge Carswell with violating the Canons of Ethics, I wanted to talk personally with attorneys who appeared before him.

It is most evident that there is a consistent pattern in his behavior of bias and hostility toward anyone arguing a civil rights case, of emotionalism, intemperance, and anger, and a close-minded determination to prejudge the cases before him even without listening to them.

Judge Carswell showed his antagonism toward all civil rights attorneys, including U.S. attorneys, and regardless of whether they were black or white.

This conduct violates Canons 5, 10, and 34. This conduct constitutes overwhelming evidence that Judge Carswell is not capable of the evenhanded justice Americans are entitled to in every court, high or low.

Of the four attorneys with whom I talked, two had not testified before the Judiciary Committee. One of these is Theodore Bowers. The other asked not to be identified. John Lowenthal and LeRoy D. Clark, with whom I talked, had testified.

I refer now to notes that I made during the course of my conversations with these attorneys. I refer first to notes of my conversation with Theodore Bowers, an attorney in Panama City, Fla.

He said of his experiences in Judge Carswell's court that the judge was hostile, even in regard to routine procedural matters.

He stated that civil rights cases seemed to affect him emotionally, that he would get excited in the course of such trials in his court.

Bowers told me that Judge Carswell turned away from him, looking off to the side, turning his body to the side, when he was presenting an argument. He stated that Judge Carswell stayed turned aside throughout half of his total argument. He argued for 10 minutes, and for 5 of those minutes Judge Carswell was looking away, had turned bodily away, seemed to be totally ignoring the case he was seeking to make.

He stated that Judge Carswell would appear especially hostile when he, Theodore Bowers, or others cited decisions of the Supreme Court. Judge Carswell attacked Supreme Court decisions while he was sitting on the bench of a lower court.

All this, said Bowers, was a consistent pattern of behavior by Judge Carswell from 1964 until 1968, when he left the court where these observations were made.

Theodore Bowers added that the judge would attack attorneys appearing in desegregation cases, and all this, he said, constituted what he would term to be "totally improper judicial posture."

Mr. President, another attorney, who did not wish me to name him, recalls also Judge Carswell turning away when he was making his argument, ignoring what he was seeking to say, the statements he was making in arguing his case.

He said:

I always felt there was an apparent burden on me in civil rights cases, beyond the normal burden of an attorney to prove his case in a normal case. In fact, he seemed to assume from the start that my side was wrong.

This attorney, too, stated that Judge Carswell would get excited in his courtroom, that he would lose his temper, and that he seemed to prejudge civil rights cases, adopting a hostile attitude before the first word was said by attorneys in civil rights matters. In one case, he said, Judge Carswell advised him, "Go ahead and talk if you want to talk, but you are wasting your time."

He also stated that Judge Carswell was impatient with him when he was seeking to present his case.

Another attorney, Leroy D. Clark, who is an associate professor of law at New York University, told me that Carswell would listen intently to the opposing counsel; then, when he would start his testimony on the other side in a civil rights matter, the judge would turn away, appearing bored and indifferent, as if what this attorney might say would be totally unimportant to the proceedings in the courtroom.

Clark also told me that Judge Carswell would get "angry and excited" in the course of civil rights cases in his court; he would be disrespectful to attorneys, he would be brusque, he would be abrupt, he would be impatient. Clark said, "It was just outrageous."

Clark told the committee, and also told me, that he literally had to coach attorneys before they appeared before Judge Carswell. They would act out how things would be expected to happen in his court. He would have to warn young attorneys, before they appeared before Judge Carswell that Judge Carswell would not let them complete an argument, that he would cut them off in the middle of a sentence, and they would practice this; they would practice with these young attorneys speaking to someone acting the part of a judge who would turn his back in the midst of an argument.

Clark said that he thought much of this was deliberate—the cutting off of the attorneys in the middle of a sentence—because such action would make the record, on appeal unclear, and muddy, thus make it more difficult to win the case on appeal.

Mr. President, I was quoting from statements made to me by Leroy D. Clark, associate professor of law at New York University, concerning the behavior of Judge Carswell as he had witnessed and experienced it in his court. He spoke of what he called "antics" by Judge Carswell which he felt were designed to intimidate and confuse the attorneys in his court. Some of these antics were grimaces, others consisted of turning his body, including his face, away from the lawyers, of constant interruptions, and of ignoring the words of the attorneys in his court. While these acts cannot really be made a part of the trial record, they serve to confuse the lawyers, and reduce the chances of winning on appeal.

He said that the judge would be extremely impatient with certain attorneys, including Mr. Clark. He said, "Rarely could you complete an argument in his courtroom." In his opinion, Judge Carswell was not an impartial mediator; in fact, he would take up the argument of the other side. For example, if opposing counsel failed to make their points, Judge Carswell would make them for them, and he would suggest the kind of questions which he wanted opposing counsel to raise. Clark said, "It was rather embarrassing to be there, up against two attorneys without a judge in the court."

He stated that Judge Carswell would make it plain that nothing that an unfavored attorney could say would affect him in any way. Signficantly, Mr. Clark told me that he was representing not only his views of Judge Carswell, but also those of several civil rights lawyers, who also practiced before Judge Carswell and who independently voiced the same complaints.

Professor Clark said that he had argued civil rights cases before judges in Alabama and Mississippi, and even though the judges may have been opposed philosophically to the interests of his clients, each of them, "acted like southern gentlemen" and presided fairly over the proceedings.

At this point, I would like to quote from statements made to me by Prof. John Lowenthal, a full professor of law at Rutgers University, on the matter of Judge Carswell's judicial temperament.

He said that, from the outset of proceedings, Judge Carswell would always evidence a predisposed view and a closed mind. This was apparent even before any testimony had been presented.

Professor Lowenthal described one incident which occurred in Judge Carswell's chambers, which is particularly distressing.

Judge Carswell remarked to Professor Lowenthal that he was "predisposed to do my clients in."

According to Professor Lowenthal, Judge Carswell's total lack of interests in the legal arguments led him to conclude, "If I ever saw a lack of judicial temperament, there it was."

Professor Lowenthal reiterated observations made by other lawyers with regard to Judge Carswell's propensity to become excited when civil rights cases were before him. He stated that Judge Carswell's voice would rise to a high pitch and that he would become quite hostile toward the civil rights attorneys.

He said, "I have never practiced before a judge more overly hostile than Judge Carswell."

Finally, John Lowenthal said, "Judge Carswell displayed a threatening attitude toward me."

Today, I also received a statement from still another attorney, who practiced before Judge Carswell.

I refer to Mr. Knopf and refer specifically to the transcript of a TV interview which he gave last Thursday, March 12, 1970, to Carol Lewis, Capital news correspondent of WTOP News, in Washington.

Mr. Knopf testified before the Senate Judiciary Committee under a subpena. At that time he was an attorney at the Justice Department.

After leaving the Justice Department and entering private practice, he said in an interview on WTOP News with Carol Lewis that he felt he could say more. He in fact added considerably more depth to his testimony given before the Senate Judiciary Committee.

I would like to read some excerpts from the TV interview:

KNOPF. When we first started out by asking the attorney where he was from and whether he was a member of the Florida bar and the attorney explained that they could not get members of the Florida bar to work in this controversial area of civil rights . . . that he had volunteered. And Judge Carswell then went on . . . delivered to him a lecture in a very loud voice and a very angry tone . . . telling him that he had no business coming down to Florida he didn't approve of lawyers meddling in local affairs and stirring up the local people with regard to civil rights I distinctly remember this because we had been trained . . . the little training we had received . . . at how to get civil rights workers out of jail. And I was listening to this lecture and listening to the judge getting angrier and angrier I began to wonder what do you do to get a lawyer out of jail. And then as the judge continued and got further angry I started to worry about what I would do to get myself out of jail because I expected that all of us would have been thrown in on some charge for contempt of court or something like that. He was that angry and that upset about our presence in Florida.

LEWIS. You said Judge Carswell lectured the lawyer. In what way did he lecture him? *What was the gist of his argument there in the courtroom?*

KNOPF. Essentially, that we had no business coming down to Florida and helping out other persons because we were just making trouble, that everything was peaceful before we had come down and that we were just stirring up trouble. The lawyer explained to him that we were trying to have these black people exercise their constitutional right to vote but this made no impression with the judge. And he also explained that every day these students stayed in jail . . . these voter registration workers . . . there was a danger that they would be beat . . . by other prisoners or by the guard officials and we seriously were concerned for their safety. This again had effect on him. We also said that the arrest was totally illegal and he had no choice but to release them.

And he said there must be some way that he could keep them in jail . . . even though the law was clear that he could not.

LEWIS. Would you say that he showed a certain insensitivity toward the role of the lawyers in the civil rights struggle. How would you characterize his attitude towards the whole struggle that you were involved in?

KNOPF. It was quite clear to me that he was totally opposed to all of our efforts. He implicitly or explicitly stated that he wanted to in no way help the civil rights efforts going on in Northern Florida at that time.

LEWIS. Mr. Knopf, you were a young lawyer who went to down to Florida feeling quite strongly about civil rights obviously. Is it possible that you yourself felt hostile toward the judge because he was a white Southern judge?

KNOPF. As a matter of fact, what I have learned in law school which proved false in this case was that we could expect hostility from the local state judges. But at least in federal court we thought we could get an impartial judge, and by impartial as lawyers as I guess the general public knows we meant someone who would listen to both sides and arrive at a conclusion based upon the evidence presented to him by competing sides. Here I found a judge who had no other side before him. There were only the civil rights side presented, who needed no other side because he took that position. He was the advocate for the anti-civil rights forces. He made all the arguments and had the attitude that there should be no relief granted civil rights attorneys. So instead of an impartial judge we were faced by his actions, I'd say . . . we were faced with a judge who already had his mind made up and he had said bluntly that he would do everything he could to make sure we were denied the relief that we requested.

LEWIS. During the hearings on Judge Carswell a statement he'd made in 1948 . . . a political statement clearly showed him to have some racist opinions. This was in 1948. From your experience of him in 1964 do you think he had changed from that position?

KNOPF. Well, any judge in my opinion who states that he will do everything he can to keep civil rights workers in jail, even though the law clearly favored their release, would seem to favor anti-civil rights actions and would be in accordance with his original speech.

LEWIS. Going back to your testimony . . . you were under subpena, Mr. Knopf. You were then working for the Justice Department and you no longer are working for the Justice Department. Did you . . . Was any pressure put on you from the department not to give total evidence before the committee?

KNOPF. No. The department was quite concerned about my presence there but they also went out of their way to make sure that nothing was said to me in the way of

pressures that could be later interpreted as pressure being put on me.

LEWIS. You were very very careful during the testimony not to express your opinions . . .

KNOPF. Well, it was suggested to me by various department officials that I was subpenaed to give the facts and not to give my opinions and I took those suggestions . . .

LEWIS. Who suggested that?

KNOPF. Well, I'd say they were from persons I regarded as trying to help me, rather than persons that were trying to get me in any difficulty.

LEWIS. Well, during the testimony you gave, Senator Tydings said . . . "Do you think that Judge Carswell gave a fair and unbiased hearing to persons in his courtroom" . . . and at that time you said . . . "Senator, if I may duck that question." Now, you're no longer with the Justice Department. Mr. Knopf, don't duck the question now.

KNOPF. I would say that civil rights . . . my civil rights clients . . . did not receive a fair and impartial hearing at all. They were met with a judge who had made up his mind in advance that he would deny them all relief if he possibly could.

LEWIS. One of the arguments put forward in favor of Judge Carswell is that he is a strict constructionist and therefore we should forgive some of the decisions that he made. From your experience with Judge Carswell would you say that he is a strict constructionist . . . or is there another way you could describe him as a Judge?

KNOPF. Well, any judge who says to a lawyer as he did to us that he doesn't care what the law says, but there must be some way he can get around it, in my view is not a strict constructionist . . .

In summary on this matter of ethics and in relationship to my view that Judge Carswell has violated Canons 5, 10, and 34 of the Canons of Judicial Ethics, I refer to the language in those canons:

5. ESSENTIAL CONDUCT

A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

* * * * *

10. COURTESY AND CIVILITY

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

* * * * *

34. A SUMMARY OF JUDICIAL OBLIGATIONS

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

The evidence in the transcript of the hearings of the Judiciary Committee and the evidence that I today placed before the Senate from several attorneys, one of whom did not appear before the Judiciary Committee, and one of whom lately had more freedom to express his views, clearly shows that Judge Carswell's behavior in his court was, indeed, violative of Canons 5, 10, and 34 of the Canons of Judicial Ethics.

Mr. President, I now would like to turn to the views of those whom I represent here, the citizens of the State of California. They have taken the time to communicate to me their views concerning Judge Carswell. To date, I have received approximately 2,000 letters, and they are running 40 to 1 against the confirmation of the nomination of Judge Carswell. I wish to read extracts from some of these letters.

First, I would like to read a letter which is not from a constituent. I do so because I have received many letters from individuals outside California who oppose confirmation of Judge Carswell. This letter is from the Community Legal Assistance Office in Cambridge, Mass.:

COMMUNITY LEGAL ASSISTANCE OFFICE,
Cambridge, Mass., March 11, 1970.

Senator CRANSTON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: As a concerned citizen and as an attorney who represents the have-nots in this country, I feel compelled to write you urging that you vote against President Nixon's appointment of Judge Carswell to the Supreme Court.

In my work as a legal services lawyer in a number of communities, I have been in constant contact with the poor. A great many of them are black or Puerto Rican. In large measure, the goal of our program is to demonstrate to these oppressed groups that through use of our legal institutions, great strides can be made to end the cycle of racism and poverty in America. However, such a promise of help through the law becomes both illusory and hypocritical when the President appoints a man whose background would hardly justify confidence on the part of our clients. A judge who has had an undistinguished career on the bench, who has achieved no great distinction as a scholar or writer, who made that infamous speech over twenty years ago, who reinforced his lack of understanding and sensitivity to racial problems by participating in a scheme for the purchase of a municipal golf course, who has a record of antagonism toward civil rights lawyers, and who participated as recently as three years ago in the sale of property with a restrictive clause (violating a Supreme Court decision) is certainly not the type of candidate worthy of Supreme Court appointment.

I understand the natural hesitancy of a Senator to question the judgment of the President. However, the nomination of Judge Carswell represents such a slap in the face to all of those with whom we constantly work to encourage participation in the "system" that you must oppose it. Much of the work thousands of dedicated young attorneys and others are performing will be undone if Judge Carswell is permitted to join the Supreme Court.

I hope these thoughts will help persuade you that there is only one course of action you can take in good conscience.

Cordially,

LOUISE GRUNER GANS,
Staff Attorney.

Then, here is a letter which states:

MARCH 10, 1970.

Re Senate confirmation of Judge Carswell.

Senator ALAN CRANSTON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CRANSTON: As an individual deeply concerned with the fight for dignity and human rights for all Americans I must register my complete dismay and dissatisfaction with the prospective confirmation of Judge Carswell to the United States Supreme Court. Judge Carswell's record in matters relating to human rights and equal rights for minorities indicates that he has a "passionate disrespect" for racial equality or understanding. His appointment to the Supreme Court would have an extremely damaging affect upon the faith that all people have in both the ethics and credibility of our nation's highest court.

I fervantly urge that you and your colleagues in the Senate reject this blatant attempt to introduce racism to the Supreme Court.

Sincerely,

GENE C. JOHNSON.

Here is another letter:

FEBRUARY 16, 1970.

Hon. ALLAN CRANSTON: As a veteran of the Vietnam conflict, I served in the defense of all Americans, regardless of their color or religion. I firmly believe, as I'm sure you and all other responsible Americans do, in the principle of equality for *all* Americans. I feel that the nomination of G. Harrold Carswell to the Supreme Court would be an appalling blow to civil rights and human dignity in this country. Therefore, I strongly urge you to vote against this nomination.

Sincerely,

MARK KATZMAN,
Ensign, USNR.

A group of law students wrote me the following letter:

DEAR SENATOR CRANSTON: As law students, our professional training helps us perceive the gravity of the issues raised by the nomination of G. Harrold Carswell to the Supreme Court. Even a cursory study of constitutional history makes clear the lasting imprint on the nation for good or for ill of each appointment to the Court. Our sober recognition of what is now at stake in filling the seat once held by Holmes, Cardozo and Frankfurter—jurists of wisdom and intellect—requires us to record our deep dismay at the nomination of a man whose lack of qualification for elevation to the Supreme Court is plain.

It is argued that the present nominee is a "strict constructionist" whose confirmation would bring "balance" to the Court.

We know something, however, of the difficulty of resolving legal questions. We know the fallacy of believing that the words by which the Constitution guarantees our scheme of ordered liberty and justice can be construed as if they contained, as Holmes put it, "only the axioms and corollaries of a book of mathematics." "Due process of law," Justice Frankfurter has written, "conveys neither found nor fixed nor narrow requirements. . . . It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right." It is precisely because, as Holmes has taught us, "judges are called upon to exercise the sovereign prerogative of choice" that we ask what accomplishments of Judge Carswell suggest that he deserves a place in this tradition.

We do not deny the President's prerogative of effecting a balance on the Court of men of highest distinction from different schools of judicial philosophy within the contemporary tradition whose rational discourse

may advance constitutional jurisprudence, or even of effecting a geographical balance. Our concern over the present nomination, therefore, in no way derives from Judge Carswell's Southern background. We know of many Southerners who, as outstanding judges, lawyers and legislators, have contributed their wisdom, compassion, perspective and courage to the development of our laws. The confirmation of a nominee of little distinction would be no monument to Southern jurisprudence. What view of the Supreme Court, we wonder, other than sheer contempt, requires "balance" by mediocrity?

Judge Carswell's record concerns us both for the presence of just the prejudice and fitfulness which Cardozo cautioned against and for the absence of excellent deserving of the highest reward.

We are concerned over his early statement of undying adherence to white supremacy beliefs, perpetuated by his intolerant behaviour toward civil rights petitioners and their lawyers, his incorporation of a club to thwart integration, his sale of property subject to a racially restrictive covenant, his "darky joke", and his disturbing rate of reversal in civil rights cases. Such evidence does not demonstrate the growth of Judge Carswell's decency and maturity—a minimal requisite for a judge called upon to interpret constitutional language which must draw its meaning from "the evolving standards of decency that mark the progress of a maturing society."

We are even more concerned, however, that Judge Carswell's record is devoid of any trace of distinction or contribution to the law which might set him apart from other judges and lawyers. It has been recognized that Judge Carswell even falls well below the average of the more than 500 federal judges in both his scholarship and craftsmanship and in his perception and articulation of issues in his opinions.

We thus urge the Senate fully and faithfully to exercise its constitutional trust of independent review of this most important appointment: not to presume qualification in the absence of its disproof (although much disproof there be). Rather, we urge the Senate to require an affirmative showing that Judge Carswell possesses some special qualities of spirit and achievements of intellect for which he deserves elevation to the highest office of a co-equal branch of government. In their absence, we submit, confirmation must be withheld.

This letter is from Sacramento, Calif., my State capital:

SACRAMENTO, CALIF.,
March 13, 1970.

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

DEAR SENATOR CRANSTON: My wife and I have generally been members of the "silent majority", taking few opportunities to state our opinions on political issues and priding ourselves on analyzing political issues and government representatives. However, we feel the time has come to speak out on the nomination of Judge Carswell to the United States Supreme Court.

We strongly urge you to vote *against* his approval. The Supreme Court is the highest body of men in the country—in some respects outranking the President; to approve a member of this court demands the closest of scrutiny before approval and a maximum of ability from the nominee. In my opinion—hopefully yours also—Mr. Carswell falls far short. His background is that of a racial bigot and he has done little to indicate his views have changed. In addition the legal intellect demanded of a Supreme Court Justice is lacking in Mr. Carswell. Review of appeals from his court indicates approximately 50% reversal by the same Supreme Court to which he has been appointed by President Nixon. Many of the foremost leaders in jurisprudence have spoken out against approval despite the American Bar Association vote.

We're sure it is not necessary to recite the specific instances in the case against Mr. Carswell as you know them well. We hope you will vote against approval; however, if you are in favor of approval, we would appreciate hearing of your reasons. We shall eagerly await the confirmation vote.

Thank you for your time; we hope hearing from your electorate helps you reach a decision.

Sincerely yours,

JOHN W. YOUNG, M.D.
KAREN C. YOUNG.

The next letter is from a Republican campaign worker in San Carlos, Calif.:

JANUARY 28, 1970.

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

DEAR SENATOR: As a registered Republican and campaign worker, I am asking you not to vote for the Supreme Court confirmation of George Harrold Carswell. I am sure that Justice Carswell meets the needs of the judicial system of the United States Court of Appeals. I am also sure that Justice Carswell's views of our world is not one that we want as a national standard.

I do not believe that statements attributed to Justice Carswell reflect the type of character of an individual that will so greatly influence our national manners. If we are truly interested in law and order, I suggest that those who set the national standards such as the President and The Congress begin by demonstrating the type of law and order intended in the Constitution and not the type of law and order that serves political needs.

Very truly yours.

WILLIAM D. GOODELL.

SAN CARLOS, CALIF.

The next is a letter from a committee of attorneys and accountants who also oppose the confirmation of Judge Carswell:

COMMITTEE OF ATTORNEYS AND ACCOUNTANTS AGAINST CONFIRMATION OF JUDGE CARSWELL,
Portland, Oreg., March 13, 1970.

Re: Judge Carswell.
Honorable ALAN CRANSTON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Soon you will be performing one of the most important functions of your job as United States Senator—confirming or denying the latest nominee to the United States Supreme Court, Judge G. Harrold Carswell of Tallahassee, Florida. Our Committee feels Judge Carswell should not be confirmed.

In 1948 Judge Carswell said that he would always be governed by the principles of White Supremacy. Of course talk is cheap and the comment was made during an election campaign against a sworn segregationist. Judge Carswell's renouncement of that statement seems to lay to rest fears of his White Supremacy feelings. But that renouncement also came during a time he is being considered in a campaign for appointment to the Supreme Court. Again, talk may be cheap.

Our Committee's concern is that actions speak louder than words. Judge Carswell's actions since 1948 tend to confirm his White Supremist statement. As a District Court Judge, Carswell continued to interpret cases involving Negroes from a segregationist point of view even though the United States Supreme Court and his immediate Court of Appeals, the Fifth Circuit, had reversed him and others on cases on that very point. As a private citizen Judge Carswell gave legal advice to operators of a public golf course helping them to convert it into a private club so that Negroes could not be admitted.

Finally as recently as 1966, Carswell, while a Judge of the United States District Court, signed a Deed surrendering his curtsey rights. That Deed contained a convenant providing that the property involved would never be sold to a non-caucasian, a convenant contrary to the very laws he interpreted as a District Court Judge!

It is the fear of this Committee that racism has been nominated to a high place where it does not belong. You, as a United States Senator, cannot and should not allow a White Supremist by Self-proclamation and by actions to become a Justice on the United States Supreme Court. You, our Committee and our nation cannot withstand such a terrible thing to occur at this stage of our societal development.

Please vote against confirmation of Judge G. Harrold Carswell's nomination to the United States Supreme Court.

Very truly yours,

GEORGE WITTEMYER,
Chairman.

The next letter is from a large number of law professors at UCLA:

FEBRUARY 20, 1970.

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

DEAR SENATOR: Surely no one who values the unique role of the United States Supreme Court as both a symbol and as a vital instrument of liberty can relish the spectacle of yet another struggle in the effort to maintain high standards and judicial integrity on the nation's highest tribunal. Exhausted from a struggle to save the Court from the damage it would have suffered from the appointment of a judge who demonstrated a singular insensitivity to accepted norms of behavior in conflict of interest situations, the legal profession must now protect the court from a one-time self-professed white supremacist whose undistinguished career on the bench has contributed to the fulfillment of the vows he made more than twenty years ago to uphold the "ideals" of racial segregation.

The Supreme Court is as threatened now by racism as it was by impropriety two months ago. A judge whose career has all too frequently been marred by evasion of the letter and spirit of Supreme Court decisions, who has repeatedly been reversed by the Court of Appeals for his decisions in racial cases, and who has demonstrated a callous indifference to the constitutional rights of America's black citizens can hardly be gauged the right man for the Supreme Court at this turning point in American history.

For these reasons, as law professors who view the law as an instrument of peaceful and orderly social change, we feel a special responsibility to oppose the elevation of G. Harrold Carswell to the Supreme Court.

Respectfully,

Benjamin Aaron, Reginald H. Alleyne, Michael R. Asimow, Robert C. Casad, George P. Fletcher, Kenneth W. Graham, Jr., Donald G. Hagman, Martin H. Kahn, Kenneth L. Karst, William A. Klein, James E. Krier, Leon Letwin, Henry W. McGee, Jr., Melville B. Nimmer, Monroe E. Price, Paul O. Proehl, Joel Rabinovitz, Ralph S. Rice, Barbara B. Rintala, Gary T. Schwartz, Herbert E. Schwartz, Henry J. Silberberg, Frederick E. Smith, William D. Warren, Richard A. Wasserstrom, Professors of Law.

Mr. and Mrs. Lawrence G. Mohr, Jr., of Menlo Park, Calif., wrote the following letter:

MENLO PARK, CALIF.,
March 15, 1970.

Senator ALAN CRANSTON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CRANSTON: This letter is to protest the nomination of Judge Carswell to the Supreme Court.

It is totally reprehensible to me, a young white man, that the nomination may have a possibility of being ratified. My wife and I, as well as many of our friends, feel this selection not only runs counter to the obvious trend of requiring actions to demonstrate sincerity on matters such as race and equal rights. Any individual nominated to this highest bench must have total credibility with at least one tenth of our nation.

Most importantly, the judge does not meet the standards which we feel are minimal. The recent protest from eminent laws schools clearly demonstrates the judge's inadequacies.

Please vote against this nomination.

Very truly yours,

LAWRENCE G. MOHR, Jr.
NANCY H. MOHR.

Mr. George T. Caplan, from Los Angeles, Calif., wrote me as follows:

LOS ANGELES, CALIF.,
March 12, 1970.

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

DEAR SENATOR CRANSTON: I am writing to you to urge you in the most forceful terms to oppose the nomination of Judge Carswell to the United States Supreme Court. As a lawyer and as a constituent of yours I feel most strongly and earnestly that the caliber of the highest bench will be substantially demeaned should Judge Carswell be confirmed. Certainly, there must be lawyers and judges in the South who are also Republicans and Conservatives who have significantly greater intellectual qualifications than Judge Carswell who, I can only conclude, can fairly be characterized as mediocre at best. As a lawyer I am reluctant to use these words to describe a judge but I believe that the magnitude of the error which would be committed should the Senate confirm his nomination requires vigorous opposition.

Respectfully yours,

GEORGE T. CAPLAN.

Rev. Edwin C. Lingberg, pastor of the Temple City Christian Church of Temple City, Calif., wrote me the following letter:

TEMPLE CITY CHRISTIAN CHURCH,
Temple City, Calif., March 11, 1970.

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

DEAR SENATOR CRANSTON: I am writing to protest the nomination of Judge G. Harrold Carswell to the United States Supreme Court.

I urge you to vote against confirmation on these grounds.

First, the public statements and actions of Judge Carswell, together with his record of past decision, indicate to me that he is not as sensitive as he needs to be in the area of civil rights. Our nation is polarizing more and more on this issue. The Supreme Court has been a key institution in support of more sane civil rights for all persons. Its members should be outstanding examples of persons committted to civil rights for all men.

Second, the Supreme Court has, in recent years, given more emphasis to human rights than to property rights. As I read the Constitution, and especially the Bill of Rights, it seems to be most concerned with these precious human rights. I would not want to see the Court move away from this concern. I feel that Judge Carswell is more concerned with property rights than with human rights.

Again, I urge you to vote against the confirmation of Judge G. Harrold Carswell to the United States Supreme Court.

Sincerely yours,

EDWIN C. LINBERG.

Mr. Peter Haberfield, an attorney with California Rural Legal Assistance, wrote me the following letter:

CALIFORNIA RURAL LEGAL ASSISTANCE,
Marysville, Calif., March 12, 1970.

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

DEAR SENATOR CRANSTON: I am a legal service attorney in Marysville, California. My clients are poor whites, poor browns, and poor blacks. As one who sees his role as channeling conflict into legal mechanisms, and who sees as the necessary requirement for this task that poor people maintain some hope in legal processes, I wish to voice my very strong objections to the nomination of Judge Carswell to the Supreme Court. The combination of his now infamous speech, his involvement in the purchase of the municipal golf course, the antagonism which he demonstrated toward civil rights lawyers (some of whom I practiced with while in the civil rights movement in the south), and the recent disclosure of his involvement in the sale of property with the restrictive covenant makes him a man that cannot maintain the confidence of the poverty communities of our country. How can a black person give a man the benefit of the doubt with this record? I assure you that I have not met a black person who could venture such questionable "understanding".

This nomination, coupled with that of Haynsworth, and combined with the present administrations' role in trying to forestall integration of schools has, in my mind, panicked the members of black communities around the country. Black people are being driven more and more to the position of the Panthers, who they regard as their sole source of protection against the racism which they recognize in the white community. More and more black people are defining their problem as one of "fighting for survival".

I urge you with all my heart to oppose this nomination and to encourage as many other of your colleagues.

Sincerely,

PETER HABERFIELD.

Mr. President, I think these people have spoken eloquently for my State. I think they have also spoken eloquently for our Nation.

I now yield the floor.

DEEPER INTO THE SOUTHEAST ASIAN QUICKSAND

Mr. MONTOYA. Mr. President, Americans across the political spectrum have watched with growing apprehension the slowly lifting curtain on a new drama in Southeast Asia. Our obviously growing involvement in the remainder of what was French Indochina is becoming increasingly evident. Such a policy is ill-conceived, and can only lead to catastrophe of staggering dimensions.

Already, we are told by administration sources that more Americans have perished in Laos as a result of ground action than has previously been revealed. Separate reports are now being issued regarding our losses in Laos. Our casualties there in lives, aircraft, and dollars certainly are anything but insignificant.

In addition, an ominous new trend is developing, gaining terrifying momentum of its own. We could never have gotten involved in Vietnam without becoming committed in Laos. And we cannot become entangled in Laos without plunging eventually into Cambodia. Here is our next Laos, just as Laos is becoming our most recent Vietnam.

In spite of the President's efforts to withdraw from Vietnam, we are inexorably becoming more deeply committed in Southeast Asia, generally. Our profile is rising there, instead of becoming less visible.

It is obvious to all but the most myopic observer that the Government of Cambodia had a hand in organizing and encouraging recent demonstrations there against Communist troop presence in that nation. Official statements issued by the Cambodian Government tear away any remaining shreds of concealment on this particular matter.

The Communists may embarrassingly reject these demands, which curiously have not been made previously by Cambodia in such a strenuous manner. In such a case, the Government of Cambodia has a perfect excuse to appeal to our Government for assistance in removing the Reds.

In turn, our military on the scene in Saigon will have another lever to utilize against the President's commitment to inexorably extricate our forces from Southeast Asia. Here is a handmade excuse with which to broaden our involvement in another area of that segment of the globe. For years, some have called for major punitive action against Communist sanctuaries in Cambodia. It all goes far to show us the real extent of the macabre web we have become enmeshed in. Several options are available. We might enter Cambodia with major armed incursions of up to battalion size. Or we could edge into it in the form of another Laos-type commitment. Nonetheless, whichever route we travel, our destination is disaster. Whether it be special forces in mufti with air support or openly maneuvering and fighting regiments, only tragedy and frustration can result.

Let us understand that we cannot separate Vietnam from Indochina. If we are totally involved in one, we must inevitably become inextricably intertwined in the other. Throughout a thousand years of recorded history, this geographical area has been treated as a cohesive unit by every conqueror and each colonial power. It is considered one unit by the Communists. In order to effectively respond to them, we will have to become involved on the same level, or get out entirely. Are we ready for major, protracted war over all Indochina?

Do we want to become involved in a conflict that will rage indefinitely over an area immeasurably larger than the present involvement? Are we prepared to fight another Vietnam, and another, and yet another? Will we commit ourselves to setting up another regime that will be viable or in our favor in Cambodia and Laos? How long would that take? How many lives? How many billions?

Mr. President, I commend the study of Indo-Chinese geography to the distinguished Members of this body. We have thus far mainly struggled on the

ocean littoral of Indo-China. Yet this is modest compared to what awaits us in the interior.

Jungle-covered mountains, tropical streams, impassable vegetation, unknown diseases, bleak highlands inhabited by primitive tribesmen with little if any concept of ideology or the fever of cultural nationalism. Mile after mile of terrain that could swallow a million troops. Ask the Japanese who learned painfully and sorrowfully what such landscapes can do to the workings of a major military command.

The leaders of Cambodia now find it convenient, after several years of allowing major Communist military activity within their borders, to come weeping to the American Government. They ask us to enforce their political demands upon the Communists, playing their ace—American military power. They have long felt that on request we could be played off against those who might seek to swallow them. Cambodia has no permanent allies. She has only permanent interests. In this case, they involved a sacrifice on our part. Yet if we make that sacrifice, all withdrawals from Vietnam, all lowering of our profile, all past assurances go down the drain in an instant.

Sihanouk has allowed clandestine American military operations within his borders, just as he has allowed and now allows Communist operations. Presently a struggle for power within the Cambodian Government is being turned into a lever with which to bring into being a major American commitment in Cambodia. The takeover this morning is the catalyst for this plan to get us officially involved.

Mr. President, in the past we have followed a geopolitical standard roughly stating that whatever is on the periphery of our zone of special interest is worth protecting against other comers. This has been carried forth, even to the point of committing American military personnel. Once we have a military presence, they become a fine target for everything from palace intrigue and guerrilla warfare to local nationalisms and intergovernmental blackmail. The worst example of how such an extension of commitments of this type can bring us to terrible harm is the Vietnam situation. Now we are turning things around, with worse potential for damage to our Nation. How?

We are bringing a peripheral involvement into actual being by allowing geopolitical initiative to pass to the Cambodian ruling groups. We are allowing them to decide where we shall be involved and whether we shall be involved. We are allowing them to set a time schedule for our involvement. We are allowing them to actually create an involvement on the periphery of a situation where we already acknowledge our presence to be a mistake. We are creating another domino which, of course, once set up in the minds of our leaders and public, must not be allowed to tumble over. This is utterly senseless. Other dominoes border on the Cambodian frontiers. It is ultimate political and military folly to commit ourselves to such adventure.

Even with the best of intentions, the administration can be and actually is being drawn into such a situation. It is not a whole-hog jump overboard. Instead, we are edging into it just as a salami is sliced. No single slice constitutes the end of our sausage and a complete meal. But eventually the salami is gone.

First, a few helicopters. Second, a few bombers or a small base. Then some "advisers" on the ground. Or a few thousand guerrillas who happen to be anti-something-or-other tribesmen. Then a thousand advisers and stepped-up bombing raids. And eventually, lo and behold, a full-fledged involvement, complete with credibility gap, dead Americans, shot-down planes, and separate casualty lists.

It is obvious we are edging into the quicksand again. Once in, we could be stuck in something that might prove impossible to extricate ourselves from easily or quickly. The greater our commitment, the greater our loss of prestige if we suffer losses or seek withdrawal.

What does it profit us to remain in that area? These nations are not viable political entities. Their leaders would not know democracy if they tripped over it in their bathrooms. Jailing anti-Communists and trampling upon civil liberties seem to be their favorite weapons. If they fought the Communists as hard as they fight their own internal political opponents we would see real progress there.

Leaders of non-Communist regimes in Indochina have a vested interest in maintaining a permanent American presence there. They want troops to fight their wars and keep them in power—American money to steal in carloads and stash away in Swiss banks. They want American boys to do their dying and American goods to peddle on their black markets. And now, in the name of democracy, we are thigh deep in the cesspool of Asia. Further expansion of such an involvement is insanity. It is the ultimate commitment of the American Nation to the wrong conflict.

We have no business there. We have no interests there. We have no basic requirements or presence or economic investments there which demand major military protection. It is a backyard of the world. Europe, Latin America, and other areas require our interest and dollars. Domestic requirements now veritably shriek for attention.

Russia's naval challenge, growing anger of Latin America toward our ignoring of their needs, our growing unemployment and social ferment at home, these are our basic interests. Indochina? There lies catastrophe, madness, and death. Douglas MacArthur warned us time and again against involvement in a land war in Asia.

There is a limit to the power of any great nation-state. History has proved this amply in the past. Greece met disaster in her expedition against Syracuse. Rome could never completely conquer the Germanic tribes and wisely ceased attempting to do so.

Charlemagne understood the limits of military powers. Certainly the city states of Italy during the later Middle Ages were utterly practical. They used others rather than allowing themselves to be used as we are being utilized now.

Those who would not understand the limits of their power were themselves destroyed, and their nations and societies with them. How many of Napoleon Bonaparte's Grande Armeé returned from the wastes and snows of Czarist Russia? How many of Hitler's 6th Army beheld the sights, sounds, and feelings of home again? How many of Nasser's troops walked in triumph down the streets of Tel Aviv?

Every military establishment and the economic base behind it lives under basic limitations. There is a limit to money to be expended, young lives and bodies available and their willingness to sacrifice and perhaps perish.

This is an unworthy cause. It is a useless cause. It is a cause that will not triumph in any meaningful manner nor bring credit to those who champion it. To extend ourselves further into the tangle of Indochina's jungles is perhaps ultimate folly.

Mr. GRIFFIN. Mr. President, will the Senator from New Mexico yield?

The PRESIDING OFFICER (Mr. FANNIN). Does the Senator from New Mexico yield to the Senator from Michigan?

Mr. MONTOYA. I yield.

Mr. GRIFFIN. I listened with great interest to the Senator's statement. I must say, in all candor, that many of the phrases which he uses I find no evidence or facts to support. I want to remind him that the number of Americans in Laos today is essentially and substantially the same number that were there when this administration took office.

Mr. MONTOYA. May I state to my friend from Michigan at that point that it was wrong, when this administration took over, to have them there and it is wrong today.

Mr. GRIFFIN. And that that number is in the neighborhood of 1,000 total personnel, that since this administration has been in office, North Vietnam has poured in some 18,000 troops into Laos, bringing the total of North Vietnamese in Laos to the neighborhood of 67,000.

I listened and waited for the distinguished Senator to heap some criticism upon the North Vietnamese. He certainly criticized the administration for doing nothing more than keeping the same number in Laos that was there when this administration took over.

Mr. MONTOYA. May I inform the Senator from Michigan that I am rising here to protect the lives of American boys and to try to exhort this national administration not to increase our involvement but to diminish it, and to take us out of any involvement in Cambodia.

Mr. GRIFFIN. Let me make the point that what little presence we have in Laos today is primarily to save the lives of American boys which are at stake in Vietnam.

I thank the Senator from New Mexico for yielding to me.

THE CALENDAR

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the con-

sideration of the Calendar Nos. 735 and 736.

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

YUMA MESA IRRIGATION DISTRICT, ARIZ.

The bill (S. 2882) to amend Public Law 394, 84th Congress, to authorize the construction of supplemental irrigation facilities for the Yuma Mesa Irrigation District, Ariz., was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2882

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of January 28, 1956 (70 Stat. 5, Public Law 394, Eighty-fourth Congress), is amended by inserting after the word "buildings" the words "and irrigation works and facilities".

SEC. 2. Section 4 of the Act of January 28, 1956, is amended by changing the period at the end thereof to a comma and adding "but the contract executed on or prior to such date may be amended to include works authorized after such date by amendments to section 2."

SALINE WATER CONVERSION PROGRAM, 1971

The bill (H.R. 15700) to authorize appropriations for the saline water conservation program for the fiscal year 1971, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar No. 734, S. 3426, be indefinitely postponed. It is the counterpart to H.R. 15700.

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

PROTOCOL TO THE NORTHWEST ATLANTIC FISHERIES CONVENTION

Mr. MANSFIELD. Mr. President, continuing in executive session, I ask unanimous consent that the Chair lay before the Senate Executive I, 91st Congress, first session.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate, as in committee of the whole, proceeded to consider Executive I, 91st Congress, first session, the Protocol to the Northwest Atlantic Fisheries Convention, which was read the second time, as follows:

PROTOCOL TO THE INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC FISHERIES RELATING TO PANEL MEMBERSHIP AND TO REGULATORY MEASURES

The Governments parties to the International Convention for the Northwest Atlantic Fisheries signed at Washington under date of 8 February 1949, which Convention as amended is hereinafter referred to as the Convention, desiring to establish a more appropriate basis for the determination of representation on the Panels established under the Convention, and desiring to provide for greater flexibility in the types of fisheries regulatory measures which may be proposed by the International Commission for the Northwest Atlantic Fisheries, agree as follows:

Article I

Paragraph 2 of Article IV of the Convention shall be amended to read as follows:

"2. Panel representation shall be reviewed annually by the Commission, which shall have the power, subject to consultation with the Panel concerned, to determine representation on each Panel on the basis of current substantial exploitation of the stocks of fish in the subarea concerned or on the basis of current substantial exploitation of harp and hood seals in the Convention Area, except that each Contracting Government with coastline adjacent to a subarea shall have the right of representation on the Panel for the subarea."

Article II

Paragraph 2 of Article VII of the Convention shall be amended to read as follows:

"2. Each Panel, upon the basis of scientific investigations, and economic and technical considerations, may make recommendations to the Commission for joint action by the Contracting Governments within the scope of paragraph 1 of Article VIII."

Article III

Paragraph 1 of Article VIII of the Convention shall be amended to read as follows:

"1. The Commission may, on the recommendations of one or more Panels, and on the basis of scientific investigations, and economic and technical considerations, transmit to the Depositary Government appropriate proposals, for joint action by the Contracting Governments, designed to achieve the optimum utilization of the stocks of those species of fish which support international fisheries in the Convention area."

Article IV

1. This Protocol shall be open for signature and ratification or approval or for adherence on behalf of any Government party to the Convention.

2. This Protocol shall enter into force on the date on which instruments of ratification or approval have been deposited with, or written notifications of adherence have been received by, the Government of the United States of America, on behalf of all the Government parties to the Convention.

3. Any Government which adheres to the Convention after this Protocol has been opened for signature shall at the same time adhere to this Protocol.

4. The Government of the United States of America shall inform all Governments signatory of adhering to the Convention of all ratifications or approvals deposited and adherences received and of the date this Protocol enters into force.

Article V

1. The original of this Protocol shall be deposited with the Government of the United States of America, which Government shall communicate certified copies thereof to all the Governments signatory or adhering to the Convention.

2. This Protocol shall bear the date on which it is opened for signature and shall remain open for signature for a period of fourteen days thereafter, following which period it shall be open for adherence.

In witness whereof the undersigned, having deposited their respective full powers, have signed this Protocol.

Done at Washington this first day of October 1969, in the English language.

For Canada:
A. E. RITCHIE, October 10, 1969
For Denmark:
TORBEN RONNE, October 15, 1969
For the Federal Republic of Germany:
ROLF PAULS, October 3, 1969
For France:
CHARLES LUCET, October 13th, 1969
For Iceland:
For Italy:
EGIDIO ORTONA, October 14th, 1969
For Norway:
ARNE GUNNENG, October 14, 1969
For Poland:
JERZY MICHALOWSKI, October 14th 1969
For Portugal:
For Romania:
For Spain:
MERRY DEL VAL, 15th October 1969
For the Union of Soviet Socialist Republics:
For the United Kingdom of Great Britain and Northern Ireland:
EDWARD E. TOMKINS, October 6, 1969.
For the United States of America:
DONALD L. MCKENNA, October 10, 1969

Mr. MANSFIELD. Mr. President, the Committee on Foreign Relations unanimously reported this protocol to the 1949 Northwest Atlantic Fisheries Convention, and so far as the committee is aware, there is no opposition to it.

The purpose of the protocol is twofold: First, as exploitation of nontraditional fisheries within the convention area increases, the protocol provides that membership on the subarea panels can be expanded accordingly; and second, the protocol removes the present restriction on the kinds of regulatory/conservation measures which the International Commission for the Northwest Atlantic Fisheries can recommend for the purpose of achieving optimum utilization of the area's fisheries.

In order to provide further background and detail on the changes called for by the protocol, I ask unanimous consent that a portion of the committee's report be printed at this point in the RECORD, including the prepared statement of Mr. Donald L. McKernan, the Secretary of State's Special Assistant for Fisheries and Wildlife.

There being no objection, the excerpts from the committee report (Executive Report No. 91–16) were ordered to be printed in the RECORD, as follows:

MAIN PURPOSE

This protocol to the 1949 Northwest Atlantic Fisheries Convention provides for the removal of the convention's current restrictions relating to (1) the number of commissioners on each of the special panels established by the convention; and (2) the kinds of measures which the International Commission for the Northwest Atlantic Fisheries may propose in order to achieve optimum utilization of fish stocks in the convention area.

BACKGROUND

The purpose of the 1949 Northwest Atlantic Fisheries Convention is to investigate, protect, and conserve the fisheries of the Northwest Atlantic Ocean (39°N, 42°W) so that the maximum sustained catch from those fisheries is maintained. The 14 parties to the convention are Canada, Denmark, the Federal Republic of Germany, France, Iceland, Italy, Norway, Poland, Portugal, Roumania, Spain, the U.S.S.R., the United Kingdom, and the United States. The territorial waters and exclusive fishery zones of the contracting parties are not subject to the convention's provisions.

The attainment of the convention's purpose is the task of the International Commission for the Northwest Atlantic Fisheries and the six special panels of commissioners for the five subareas into which the convention area is divided, plus the special panel on sealing for the entire area. The International Commission, in which each participating government has one vote, coordinates the work of the panels and, based on their findings and suggestions, makes recommen-

dations to the contracting parties. The principal types of fish found in the convention area are rosefish, cod, haddock, and flounder.

EXPLANATION OF THE PROTOCOL

1. Membership on the special panels is presently restricted to those governments having an interest in one or more of the fisheries designtaed by the convention. Thus, under this provision panel membership is not open to those governments directly concerned with stocks of fish not specified in the convention. Accordingly, those with an interest in these fisheries do not have a voice in the regulatory proposals recommended for adoption by the International Commission. The protocol removes the restriction on panel membership by permitting it to be based on "current substantial exploitation" of any fishery in one of the convention's subareas.

2. In trying to achieve the purpose of the convention, the International Commission is restricted to five types of fishery conservation measures which it may recommend to the contracting governments. All five measures are based on scientific criteria alone, and only one has proven useful—minimum mesh size for nets. At the present time, the Commission is considering the need to recommend a general quota system for specific fisheries in the convention area; however, in view of the present restriction, the Commission is not authorized to make such a recommendation. The protocol removes such restriction, and "would permit the Commission to propose any appropriate fisheries regulations designed to achieve the optimum utilization of stocks of fish * * * taking into account economic and technical considerations as well as scientific investigations."

The United States initiated the proposal to remove the restriction of the types of regulatory measures which the Commission can recommend. It believes the acceptance of this proposal is very important in terms of maintaining the well-being of our own fishing industry operating in the convention area and "is necessary to achieve an adequate regime for the rational exploitation of the Northwest Atlantic fisheries * * *." Moreover, "The United States has urged all governments parties to the Convention to act promptly on the Protocol in order that the Commission might consider necessary action thereunder at its June 1970 annual meeting."

As of March 11, 1970, none of the parties to the Northwest Atlantic Fisheries Convention had ratified the protocol; all must do so before it can enter into force.

COMMITTEE ACTION

The Protocol to the Northwest Atlantic Fisheries was submitted to the Senate on December 12, 1969 and was referred to the Committee on Foreign Relations. On March 11, 1970, pursuant to notice, the committee held a public hearing at which Donald L. McKernan, Special Assistant to the Secretary of State for Fisheries and Wildlife, presented the administration's favorable recommendations. Mr. McKernan testified that the United States is anxious to have a quota arrangement for the area covered by the Northwest Atlantic Fisheries Convention and that acceptance of this protocol would permit the International Commission to recommend such an arrangement to the contracting parties. Mr. McKernan also stated that the Department of State knows of no opposition to the protocol. The transcript of this hearing is printed in the appendix for the information of the Senate.

On March 12, 1970 the committee met in executive session and ordered that this protocol be favorably reported.

The Protocol to the Northwest Atlantic Fisheries Convention, by providing for greater flexibility in terms of both panel membership and regulatory/conservation measures, should help to achieve the convention's objective of maintaining the maximum sustained catch from the fisheries in the convention area.

The Committee on Foreign Relations recommends that the Senate give its advice and consent to this protocol at an early date.

STATEMENT OF THE HONORABLE DONALD L. MCKERNAN BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE, MARCH 11, 1970

On December 12, 1969, the President submitted to the Senate with a view to receiving its advice and consent to ratification a protocol to the 1949 International Convention for the Northwest Atlantic Fisheries (ICNAF). The protocol relates to Panel membership and to regulatory measures.

Purpose of 1949 convention

The 1949 Convention has as its purpose the investigation, protection, and conservation of the fisheries of the northwest Atlantic Ocean in order to make possible the maintenance of a maximum sustained catch from those fisheries. It established the International Commission for the Northwest Atlantic Fisheries (ICNAF), in which each contracting government has one vote and to which each contracting government may appoint not more than three Commissioners, assisted by experts and advisors. The northwest Atlantic area to which the Convention applies is divided into five sub-areas, separated more or less geographically and biologically, the boundaries of which are defined in the annex to the Convention. Each sub-area has a special Panel of Commissioners drawn from member nations of the Commission which participate in the particular fisheries in the sub-area, as well as a Panel on seals which is not limited geographically.

Panel membership

Panel membership is reviewed at each Annual Meeting of the Commission, which has the power, subject to consultation with the Panel concerned, to determine representation on each Panel on the basis of current substantial exploitation in the sub-area concerned, or of seals in the Convention area. A nation with coast adjoining a sub-area may always be a member of the Panel for that sub-area, regardless of its level of exploitation in the sub-area. On a practical basis, Panel membership is generally accorded on the basis of the interest of a particular government to be represented on a Panel.

Importance of the panels

The importance of the Panels is two-fold. First, proposals for conservation regulations may originate only in the Panel for the sub-area concerned, and, after approval by the Commission, are subject to acceptance or rejection only by those governments which are members of the Panel concerned. Once a regulatory proposal has entered into force in accordance with the approval procedure laid down in the Convention as amended, however, all other contracting governments are bound to enforce the regulation with reference to its vessels fishing in the sub-area concerned.

Second, annual contributions are based primarily on the number of Panel memberships, so that each government assumes a significant financial obligation in becoming a member of a Panel, approximately $2,000.

Change in basis for panel membership

The Convention presently provides (Article IV, paragraph 2) that Panel membership is determined on the basis of current substantial exploitation in the sub-area concerned of fishes of the cod group, of flatfishes, and of rosefish. These were the species of primary concern when the Convention was signed in 1949. Since then, however, significant fisheries have developed with regard to other species in the Convention area, and the Commission has the authority to regulate them. However, they do not form a basis for Panel membership, and thus it is possible for a Panel to consider regulation of a significant fishery within its sub-area without the nations primarily interested in that particular fishery necessarily being a member of the Panel or even eligible to be a member. The protocol would remedy this deficiency in the Convention by establishing current substantial exploitation of any stocks of fish in the sub-area concerned as the basis of membership in the Panel for that sub-area. Thus any contracting government would be entitled to become a member of the Panel for any sub-area in which it conducts substantial fisheries, regardless of species. It is considered that such a basis of Panel memberships would be more rational than the present provisions of the Convention.

U.S. membership

The United States is presently a member of the three Panels for the sub-areas in which the United States fishes. We do not anticipate becoming a member of any other Panel, on the basis of this protocol or otherwise, and thus there are no adverse financial implications for the United States in approving the protocol. In fact, because the protocol establishes a basis for other governments to become members of additional Panels for sub-areas where they conduct substantial fisheries for species other than those now specified in the Convention, the relative financial contribution of the United States could decline through the protocol. Nor does the protocol hold any adverse implications for the United States with regard to conservation regulations. Since we presently hold memberships in all Panels for sub-areas in which we fish, we have the authority to accept or reject any regulatory proposal which might apply to American fishing vessels. It is considered extremely unlikely that American fisheries will develop in the other two sub-areas (Labrador-Greenland) or with regard to seals.

Change in regulatory measures

The change in the provisions governing Panel memberships, proposed by Canada, was merged in this protocol with a proposal by the United States for a protocol regarding regulatory measures, and we regard this portion of the protocol, amending paragraph 2 of Article VII and paragraph 1 of Article VIII, as its most important feature. In fact, it provides a broad new approach to fisheries regulatory measures in this small portion of the world ocean which we hope will be adopted more generally around the world. The protocol would permit the Commission to propose any appropriate fisheries regulations designed to achieve the optimum utilization of the stocks of fish which support international fisheries in the Convention area, and to take into account technical and economic considerations as well as scientific investigations in formulating these proposals. The Convention presently limits the Commission to five specified types of regulations, which may be based on scientific investigations only. Experience has taught us, in the face of growing complexity in the international management of fisheries, that such limitations do not permit us to do a completely adequate job of managing these important fisheries.

We have learned a great deal about the international management of fisheries in the two decades since the Convention was concluded. At the same time, the world fisheries have grown tremendously, and are continuing to grow at a rapid rate. Many new, larger, and more sophisticated fishing vessels have been built, and they operate in more parts of the world ocean and at greater distances from home than they previously did. Gear and fishing techniques have continuously been improved. Thus the situation we are facing today in the management of international fisheries is far different from what we were facing when the Convention

was prepared. It was an admirable instrument in its time, but it did not provide sufficient flexibility to cope with the growing demands which have been placed on it, demands which could not have realistically been foreseen at the time. Over the years we have modified the Convention through a number of protocols, so that it is today more suitable to deal with today's situation than when first drawn. We consider the present protocol as a major step in remaking the Convention into a modern instrument fully capable of dealing with today's international fisheries situation, and flexible enough to deal with new problems which develop in the future.

Of the five types of regulations presently allowed by the Convention, only one had been utilized up until last year, although the Commission's scientists had recognized several years ago that the one type of regulation in use was inadequate. The overall catch quotas, closed areas, and closed seasons proposed at last June's ICNAF meeting with regard to the depleted haddock and hake stocks off New England, and presently in force, were regarded as stop-gap measures in the face of the limitations imposed by the Convention and the situation we were facing. hopefully, during the next few years they will allow a restoration of these important species to their former levels, but in the long term they cannot ensure both that the stocks are maintained and that American fishermen catch an adequate share of them in the face of competition from large, modern, highly mobile, and often subsidized foreign fleets.

The Convention simply does not grant authority to the Commission to consider such matters as the latter and it is questionable whether the conservation provisions are adequate to maintain the stocks in the face of the continually growing fishing effort to which they are being subjected. By removing the limitations on the types of regulations which the Commission may propose, and by allowing it to consider economic and technical considerations as well as scientific investigations, the protocol would permit the Commission to propose such regulations as it deems necessary in any circumstances to maintain the resource, and to ensure that the interests of particular groups of fishermen are protected. Thus, it would be possible to establish an overall quota for a particular stock, and to assign portions of the quota to particular national groups of fishermen. This would be done in the Commission by taking into account all relevant factors, not just some of them as at present, including the relative immobility of small-boat coastal fishing fleets such as the United States maintains in the area and their competitive disadvantage with regard to large distant water fleets.

Example of haddock fishery on Georges Bank

The haddock fishery on Georges Bank might be cited as an example. American fishermen for decades have depended on this stock, and have traditionally taken almost the entire maximum sustained yield. Their vessels and gear have been developed with particular reference to this fishery, and are ill adapted to engage in many other fisheries or to travel long distances to other fishing grounds. Because the ICNAF regulatory authority was not sufficiently flexible to cope with a vast increase in effort by large distant water vessels on this stock, and with a natural disaster in the fishery, the stock has been severely depleted. The emergency quota established for the stock is only about one-quarter of the tonnage normally taken by American fishing vessels alone, and is available to all fishermen.

Consequently, the American haddock fishery is in a severe state of depression. Hopefully, the American haddock fleet will survive these difficult years, and will be able to take the bulk of the allowable quota. Hopefully, also, the emergency measures which have been taken will restore the stock to its former level of abundance in a few years, and the American fishermen will once again regain their former levels of prosperity. But the Convention cannot prevent a similar situation developing once the stock has been restored. The protocol can. It will allow the Commission to take into account the economic dependence of the American small-boat fishery on this stock, and that American vessels and gear are designed to operate on this stock close to their home ports, but on few others. It will allow the Commission to consider the traditional catch of the American haddock fleet. It will allow the Commission, after considering these factors, to establish a national haddock quota on Georges Bank for the American fishermen which will ensure that they will continue to catch the bulk of the catch on which they are dependent, and that foreign fleets will not be able to clean out the haddock stocks, or even simply take the allowable catch for the year in a few weeks and then move on to other fishing grounds. At the same time, foreign and American fishermen can continue to compete for other species in the same areas, where the traditional fisheries situation is different, and where the economic and technical factors are different.

Protocol serves U.S. interests

The protocol, of course, would permit other regulatory measures to be proposed as well. It is entirely flexible in this regard. Experience has shown us that our national interests in international fisheries management cannot be served if bodies such as ICNAF are constrained in the types of proposals which they may make. The interests of the United States will continue to be protected, however, regardless of what action the Commission might take under this broad authority, by the provisions of the Convention which permit the United States to accept or reject any proposal which would apply to American fisheries. The United States may object to any Commission proposal which pertains to the ICNAF area in which Americans fish, and thereby relieve itself of any obligation to observe the regulation regardless of whether it may become binding on other governments. Thus the protocol will serve the fisheries interests of the United States in the ICNAF area, but will not provide for any measure which is inimical to those interests.

In addition, adoption of the protocol will make international cooperative management of high seas fisheries resources more effective, and thus contribute to the maintenance of the freedoms of the seas which are so important to the United States by relieving pressures to cope with fisheries problems by extension of national jurisdiction over broad expanses of the oceans.

Prompt action urged

The United States has urged in the Commission that all contracting governments take prompt action to ratify the protocol, in hopes that the authority can be accorded the Commission to commence dealing with these problems at its June 1970 Annual Meeting. The Department of State recommends that the Senate give early and favorable consideration to the protocol. It will contribute both to the solution of pressing problems affecting the American fishing industry in the northwest Atlantic and to broader interests of the United States in the oceans.

The PRESIDING OFFICER (Mr. FANNIN). If there be no objection, exhibit I, 91st Congress, first session, will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which will be read for the information of the Senate.

The bill clerk read as follows:

Resolved, (two thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol to the International Convention for the Northwest Atlantic Fisheries relating to Panel Membership and to Regulatory Measures, Dated October 1, 1969. (Executive I, Ninety-first Congress, first session.)

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Chair lay before the Senate Executive J, 91st Congress, first session, the Convention on the Privileges and Immunities of the United Nations.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider Executive J, 91st Congress, 1st session, the Convention on the Privileges and Immunities of the United Nations, which was read for the second time, as follows:

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

(Adopted by the General Assembly of the United Nations on 13 February 1946)

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similiarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Consequently the General Assembly by a Rresolution adopted on the 13 February 1946, approved the following Convention and proposed it for assession by each Member of the United Nations.

ARTICLE I

JURIDICAL PERSONALITY

Section 1. The United Nations shall possess juridical personality. It shall have the capacity:

(*a*) to contract;

(*b*) to acquire and dispose of immovable and movable property;

(*c*) to institute legal proceedings.

ARTICLE II

PROPERTY, FUNDS AND ASSET

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4. The archives of the United Nation, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by

financial controls, regulations or moratoria of any kind—

(a) the United States may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be:

(a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE III

FACILITIES IN RESPECT OF COMMUNICATIONS

Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV

THE REPRESENTATIVES OF MEMBERS

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) inviolability for all papers and documents;

(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also

(g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V

OFFICIALS

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nations shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(c) be immune from national service obligations;

(d) be immune, together with their spouses and relative dependent on them, from immigration restrictions and alien registration;

(e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) have the right to import free of duty their furniture and effects at the time of first taking up post in the country in question.

Section 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE VI

EXPERTS ON MISSIONS FOR THE UNITED NATIONS

Section 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) inviolability for all papers and documents;

(d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

ARTICE VII

UNITED NATIONS LAISSEZ-PASSER

Section 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

Section 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors traveling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

ARTICLE VIII

SETTLEMENT OF DISPUTES

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

(a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

FINAL ARTICLE

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

Mr. MANSFIELD. Mr. President, discussion of this convention should not long detain the Senate. As a matter of fact, the Senate has already once approved it in 1947, by passing a joint resolution authorizing the President to accept it on behalf of the United States, but for essentially irrelevant reasons the joint resolution did not pass the House. Now, some 20 years later, the matter is back for approval in the form of a treaty.

During this time, the provisions of the International Organization Immunities Act of 1945 and of the Headquarters Agreement Act of 1947 have provided the necessary privileges and immunities for most of the officials covered by the convention. Apparently, the executive branch was satisfied with this situation, but the United Nations was not. One hundred and one of its members have become parties to the convention, but the United States, the principal host government, did not. The anomaly of this situation has not escaped other United Nations members, which cite it as a reflection of the lack of U.S. interest in the United Nations.

Briefly, the convention provides for certain privileges and immunities to the United Nations as an organization, to the representatives of member states, to United Nations officials, and to experts on missions for the United Nations.

While the convention largely represents the existing practice with regard to privileges and immunities, it does enlarge upon them in three relatively minor respects. Under present laws, only resident representatives to the United Nations enjoy full diplomatic immunities. Nonresident representatives, such as the approximately 1,000 who come for the annual sessions of the General Assembly, are granted only functional immunities—that is, immunities only with respect to their official acts. Under the convention, they would now also enjoy full diplomatic privileges and immunities, and the committee finds this fair. Many distinguished foreign officials, parliamentarians, and other outstanding citizens of other nations yearly come to New York for important meetings and should be treated like their permanent colleagues.

United Nations officials now enjoy only functional immunities and for the most part this will remain as is. However, under the convention, the Secretary General, Under Secretaries and Assistant Secretaries of the United Nations—which number about 40 persons at the present time—would be granted full diplomatic privileges and immunities. Again it seems only fair to the committee that the Secretary General should enjoy the same rights as a third secretary in a minister's permanent mission.

Experts on United Nations missions are the last group whose position would be improved by the convention. They now have no privileges and immunities other than limited transit privileges. The convention would grant them functional immunities, not full diplomatic immunities. It is estimated that this would affect about 100 persons a year.

These are the highlights of the treaty. The committee's report discusses them and other matters in greater detail.

I want to touch briefly on the two reservations recommended by the executive branch. The first one applies to American citizens and resident aliens employed by the United Nations and provides that in their case the immunity from taxation and from national service obligations does not apply. All this reservation does is to preserve the status quo.

The other reservation also preserves the status quo by continuing to make it possible for the United States to compel the departure from the United States of any of the persons to whom the convention applies if they have abused their privileges and immunities. This question of abuses, which would include espionage, is of some importance and I want to stress the fact that the United States is fully protected. From a national security standpoint there is no objection to the convention. As a matter of fact, the committee knows of no objection from any quarter.

To sum up, the Committee on Foreign Relations believes that it is in our national interest to accede to the convention. We are the host country and while we seem to have been content to drift along under present laws, the United Nations has not.

Mr. President, I urge that the Senate give its advice and consent to accession to the Convention on Privileges and Immunities of the United Nations, subject to the reservations.

The PRESIDING OFFICER (Mr. FANNIN). If there be no objection, Executive J, 91st Congress, first session, will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which will be read for the information of the Senate.

The bill clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Convention on Privileges and Immunities of the United Nations approved unanimously by the General Assembly on February 13, 1946, (Executive J. Ninety-first Congress, first session) subject to the following reservations:

(1) Paragraph (b) of section 18 regarding immunity from taxation and paragraph (c) of section 18 regarding immunity from national service obligations shall not apply with respect to United States nationals and aliens admitted for permanent residence.

(2) Nothing in Article IV, regarding the privileges and immunities of representatives of Members, in Article V, regarding the privileges and immunities of United Nations officials, or in Article VI, regarding the privileges and immunities of experts on missions for the United Nations, shall be construed to grant any person who has abused his privileges of residence by activities in the United States outside his official capacity exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(a) No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States ex-

cept with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate member in the case of a representative of a Member (or a member of his family) or with the Secretary General in the case of any person referred to in articles V and VI:

(b) A representative of the member concerned or the Secretary General, as the case may be, shall have the right to appear in any such proceedings on behalf of the person against whom they are instituted;

(c) Persons who are entitled to diplomatic privileges and immunities under the Convention shall not be required to leave the United States otherwise than in accordance with the customary procedure applicable to members of diplomatic missions accredited or notified to the United States.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to vote on Executive I commencing tomorrow at 12 o'clock noon; that immediately following its disposition, the Senate vote on Executive J; and that immediately following the disposition of the vote on Executive J, the unfinished business be laid before the Senate.

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

Mr. MANSFIELD. The votes on the treaties will be record votes. The yeas and nays will be obtained. I make this statement only so that Members of the Senate will be aware that there will be two record votes tomorrow on two separate treaties, one right after the other.

The unanimous-consent agreement was subsequently reduced to writing, as follows:

Ordered, That the Senate vote at 12 noon on Thursday, March 19, 1970, on the resolution of ratification to the Protocol to the International Convention for the Northwest Atlantic Fisheries (Ex. I, 91st Cong., 1st sess.); to be immediately followed by a vote on the resolution of ratification, with the two reservations, to the Convention on the Privileges and Immunities of the United Nations (Ex. J, 91st Cong., 1st sess.); following which the nomination of George Harrold Carswell will be the pending business before the Senate.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR RECOGNITION OF SENATOR HANSEN TOMORROW

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that, at the conclusion of the prayer and the disposition of the reading of the Journal tomorrow, the distinguished Senator from Wyoming (Mr. HANSEN) be recognized for not to exceed 20 minutes.

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

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

VIRGINIA STATE GRANGE OPPOSES DIVERSION OF HIGHWAY TRUST FUNDS

Mr. BYRD of Virginia. Mr. President, I have a communication from the Virginia State Grange. It is a resolution concerning Federal highway policy. The resolution urges a consistent fiscal policy in the area of highway construction. It also discusses the Federal highway trust fund.

This resolution by the Grange says that the highway trust fund has been the target of various groups interested in seizing and taking from that fund money for other purposes, and it urges Congress to protect the integrity of the highway trust fund.

Mr. President, I want to say a few words about the highway trust fund. I feel that without this trust fund the great interstate highway system which has been developed in the last 15 years would not have come about.

I am going to do something today that I have never done before on the floor of the Senate, and it is a little sentimental, I must admit. I feel that the dominant factor, the dominant person, in the establishment of the trust fund and the safeguarding of that trust fund for so many years was my immediate predecessor in the U.S. Senate. I hesitate to say a great deal about him, because not only was he my closest and dearest friend, but he also was my father. In reading this resolution adopted by the Virginia State Grange, it brought back to my memory just what a strong and determined fight he made to establish this trust fund and then, after its establishment, to protect it.

So while I have some hesitancy, because of our relationship, in expressing my views on it, I do feel today that I want to commend the former senior Senator from Virginia for the part he played in this vitally important matter.

Mr. President, I ask unanimous consent to have the text of the resolution printed at this point in the RECORD.

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

Whereas, the Virginia State Grange is vitally concerned with rising costs and spiraling inflation in every quarter; and

Whereas, highway transportation is one of the essential elements in modern agricultural production; and

Whereas, speedy completion of the Interstate Highway System and the upgrading of other roads and highways is vital to rural people's struggle for economic parity; and

Whereas, the Federal Highway Trust Fund has been the target of various groups interested in seizing the monies thereof for construction of rapid transit systems in large urban areas as well as for other non-highway purposes; moreover, said Fund has been the subject of various cutbacks for the stated purpose of fighting inflation but which in actuality served to create surpluses in the Fund from which revenues could be borrowed to finance other agencies of the federal government causing greatly increased costs in the highway program due to the resulting delays; and

Whereas, said Fund is entirely Self-liquidating, debt free and funded exclusively by taxes on motor vehicles and their owners and users thereby affecting no other federal program in any adverse way; Now, Therefore, Be it

Resolved, that the Virginia State Grange states its opposition to the diversion of highway trust funds for any non-highway purposes and the manipulation of the Highway Trust Fund revenues by the Executive Branch; moreover, we favor the enactment of legislation that would effectively suspend the numerous federal taxes providing revenues for the Highway Trust Fund during times in which the Executive Branches finds it necessary to cut back the highway program by withholding highway fund allocations to the States; and, Be it Further

Resolved, that we urge the speedy restoration of revenues borrowed from the Highway Trust Fund during the various stoppages of the highway program over the past few years in order that the present Interstate Highway System may be completed at the earliest possible date; and, Be it Further

Resolved, that copies of this resolution be sent to the members of Congress from Virginia, the Governor and the Master of the National Grange.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6543) to extend public health protection with respect to cigarette smoking, and for other purposes; that the House receded from its disagreement to the amendment of the Senate numbered 13 to the bill and concurred therein, with an amendment, in which it requests the concurrence of the Senate.

SUPREME COURT OF THE UNITED STATES

The Senate resumed the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. HRUSKA. Mr. President, it would appear that the debate regarding the confirmation of Judge Carswell has entered—to paraphrase the late Justice Frankfurter—a semantic thicket.

This morning's Washington Post editorial page took me to task for suggesting—at least in view of the Post's editorial department—that Presidential appointments to the Supreme Court be placed under a quota system. The Post editorial was a reaction—almost precisely an overreaction—to remarks made by me in a television interview this past Monday regarding the President's power and right to nominate the man he deems fit and qualified to serve on the Court. In response to a question by the television interviewer I sought to reply to those political and editorial voices who, having failed to develop substantive arguments to the Carswell nomination, are

now reduced to making general, broad-gauged and unsubstantiated charges regarding the nominee's abilities.

Is he, these opponents have asked, a man of sufficient intellectual powers and talents to sit on the Supreme Court? The adjective—and let me stress it was not I but these opponents who first used it—"mediocre" has been applied in this case.

The point that I tried to make in the television interview—which I confess I made in a rather mediocre way—was that the measure of any man's intellectual powers and talents to hold a position depends more often than not on whether the persons giving out the grade are for or against the nominee. I have no doubt for example that some of the men sitting on the bench today, though considered by Judge Carswell's editorial and political critics to be brilliant, might be considered otherwise by other Americans.

I am reminded, too, of the aspersions cast on the qualifications of previous Supreme Court nominees in Senate debate of years gone by. In this regard, I invite the Post editorial writers, and other critics of the Carswell nomination, to examine the debates and editorial controversy surrounding President Roosevelt's nomination of Justice—then Senator—Hugo L. Black, August 12 to 17, 1937.

It was alleged of Senator Black at that time that he was unqualified to serve on the U.S. Supreme Court, inasmuch as his only prior judicial experience had been limited to having served for a brief period as a municipal night court recorder in Birmingham, Ala.

It was also charged that Senator Black lacked not only judicial experience but also judicial temperment.

Or, perhaps these oracles at the Post might want to examine the CONGRESSIONAL RECORD for February 3, 1965, when Senator Smathers presented a detailed analysis of the judicial experience of the then sitting members of the Court. His conclusion was that six of the nine—and this counted Justice Black—had no judicial experience.

As to whether Judge Carswell will be a brilliant judge, only history can decide. History is replete with men whose preconfirmation critics were silenced by their brilliant performance on the Court. That Judge Carswell possesses here and now the capability of being such a Supreme Court Justice is, in my opinion, beyond question.

As for the question of semantics, the word "mediocre," if my dictionary serves me well, derives from the word "medio" or "medi," meaning middle. And while I certainly do not favor any quota system for the Supreme Court regardless of what the Post editorial says, if the question is raised as to whether that great body of citizens whom the editorial writers have come to call middle Americans, are entitled to a voice on the Supreme Court, my answer is a resounding yes.

In brief, I believe there is room on the Supreme Court of the United States even for a man not approved by those in charge of the grading system at the Washington Post, or any other newspapers of like mind, or who fails to meet the peculiarly biased demands of Judge Carswell's opponents.

Mr. President, in the television interview to which I referred, I said, as best I can recall, and here I am paraphrasing, but I will stand on the substance and the thrust of it:

> Let no one leave this room with the idea that I accept for a moment the charge that Judge Carswell's record is mediocre.

I had just gone to the radio-television gallery after spending more than an hour on the floor of the Senate presenting the case for Judge Carswell. In that speech I said:

> Judge Carswell's nomination is sound, logical, and desirable.
>
> He is well qualified and well suited for the post.
>
> He is learned in the law.
>
> He is experienced.
>
> He is a man of integrity.
>
> He is possessed of proper judicial demeanor which he has displayed and exercised during his years of public service.
>
> He enjoys the approbation and the respect of bench, bar and community.
>
> All of these attributes appear affirmatively in his personal, professional and judicial acts and doings.
>
> His elevation to the Supreme Court will serve to better balance the Court philosophically.
>
> He should be confirmed.

In discussing the speech with reporters in the gallery, I sought to express the idea that whether a man is mediocre or distinguished, might like beauty be in the eye of the beholder. I suggested that whether a nominee is mediocre or not might depend on whether you are using the definition of his friends or his enemies. Theoretical legal scholars, I was trying to suggest, do not always make the best judges. A good judge, as I noted in my floor speech, needs practical courtroom experience. He needs commonsense—or, as we say in Nebraska, "horsesense."

Then, Mr. President, in dismissing the idea that the charge of mediocrity was really worth considering, I unfortunately asked the rhetorical question, "Even if he were mediocre."

That was clumsy of me, and I confess it candidly and in all good spirit. What I am about to say conveys the idea I failed to make in the press gallery.

Mr. President, here I ask unanimous consent to have the editorial printed in the RECORD at the conclusion of my remarks, I am vain enough to think someone will read them sometime, and will have the editorial I am discussing ready at hand.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, there is more than one criterion for requisite qualifications of a member of the Supreme Court. Next to integrity, comes at least average intelligence and what I just referred to as commonsense, both of which Carswell has demonstrated by working his way through college and up to his present position. These, of course, are basic requirements, necessary for future development after assuming the position and being confronted with complex judicial issues which will come before the Court.

Ideally, the Court would be composed of men of diverse backgrounds, representing the principal areas of the far flung Nation and the various philosophies of the citizens. Ideally, also, it would be at least principally composed of lawyers of substantial experience in the general practice of law who had, in addition, substantial experience as trial judges.

Commonsense, experience as a trial lawyer and experience as a trial judge are far more important than legal scholarship which too often is the only qualification an outstanding legal scholar has. Legal scholarship alone is woefully inadequate to qualify a lawyer for any bench, trial or appellate. Substantial experience as a lawyer in the general practice and especially a minimum of 10 years experience as a trial judge is the education and background needed to make it possible for a lawyer to become an effective appellate judge. A lawyer so equipped naturally becomes a legal scholar after appointment—elevation is an inaccurate term because the trial judge is at the least equally important in our judicial system—to an appellate bench by the very nature of the appellate duties. He should become a far superior scholar to one who has not had trial experience as a lawyer and judge because he understands the trial process and knows how to apply the law properly in specific factual situations in a practical and just manner. He does not get lost in the technicalities of the law as does a pure scholar who knows only theory.

It is a false basis to say that Judge Carswell has not shown legal scholarship in the written opinions rendered by him as a trial judge. Busy trial judges do not have time to indulge in the niceties of legal scholarship. They must decide most questions instantly while sitting in the trial of cases without opportunity for leisurely research in their library with the assistance of their law clerk. Those who cite the reversal of his decisions by appellate courts are not using a valid criterion. Appellate judges are not all blessed with divine wisdom, either.

The demands of the trial bench are great but very rewarding for one who wishes to understand the judicial process from the ground up. He acquires in the trial process, in the disposition of hundreds of cases a year—and that was the experience of Judge Carswell during his 11 years on the district court—broad experience that can be acquired in no other way and that is vital for an ideal appellate judge. He learns to evaluate evidence, he observes the tactics of lawyers appearing before him, learns why they do the things they do. When he becomes an appellate judge, he knows how to read the record meaningfully because he can read between the lines where the vital part of the record is contained. The records which come before the appellate courts, which are the basis of appellate decisions, are made by trial judges. In the trial process he acquires an insight that can be acquired in no

other way. He knows the problems of the litigants and approaches the appellate bench with a vast knowledge that contributes to what we call commonsense, which is a rare quality far too often lacking in our appellate judges.

It is so manifestly unfair to say that a lawyer with 10 years' experience on the trial bench is unqualified to sit on the Supreme Court because he has just average intelligence and has not demonstrated great ability as a scholar, when the fact is that he has acquired necessary experience that cannot be obtained anywhere else and has been involved in the merits of as many actual legal controversies as an appellate judge will review in an entire lifetime. A trial judge is the factfinder which is the most important step in the judicial decisional process. As a trial judge he has learned and will not forget as an appellate judge that under our judicial system it is the province of an appellate court to review the record for errors of law and not to try the case de novo from a cold record, and he will not be avid to substitute his judgment for that of the trial judge and jury who heard the evidence at firsthand.

Whether a judge is a good judge is not a justiciable issue. It is a matter of opinion which is usually based upon whether the litigant or lawyer expressing the opinion has been successful or unsuccessful when appearing before him and whether his political ideals are the same as the person expressing the gratuitous opinion.

It would seem that the principal objection to Judge Carswell is that he has just average intelligence and is not a profound legal scholar. Geniuses are rare. Many of our greatest men have possessed just average talents. That this is the principal objection to Judge Carswell speaks well for him since it proves that there is no valid deficiency in his qualifications and his detractors must rely on their opinion, based on incomplete knowledge since only those who have known Judge Carswell intimately for a long period of time know and are qualified to express a valid opinion as to his innate qualifications. It is manifestly unfair that a man carefully chosen by our President and Attorney General, both astute lawyers, both good men, both unquestionably having the ardent desire to choose a Justice for the Court who will do them honor in the years to come, should be submitted to the indignity of repeated press dispatches impugning his God-given talents as being only average.

Historically, our Justices have developed into either great Justices or those not so great after ascending the Bench. No one can prophesy accurately whether an appointee will become great. But no one has dared to attack Judge Carswell's integrity and most of his detractors have at least given him credit for average intelligence. None that I have heard have mentioned the value of his experience as a trial judge.

I venture to say that if he had had no experience at all as a judge, the opponents would have made their principal objection to his nomination that he lacked experience as a trial judge.

My opinion is that his rise in life from an obscure country boy who worked his way through college to his present position speaks well for him. The fact that he is from the southern part of our country should not condemn him. After all that is part of America and some of our greatest men who arrived at the point of true greatness began their careers with that apparent handicap. I predict that time will prove Judge Carswell's greatness and the good judgment of the President in choosing him.

EXHIBIT 1

THE SUPREME COURT: A QUOTA FOR MEDIOCRITY?

Until Senator Hruska brought it up Monday, we had never given much thought to selecting justices of the Supreme Court on the quota system. But now that he has suggested it—"There are a lot of mediocre judges and people and lawyers," he said, "and they are entitled to a little representation, aren't they?"—it raises all kinds of possibilities. For one thing, it would simplify the life of the President. He could limit his search for a nominee when a seat fell vacant to the group that was then underrepresented. And it would greatly simplify the life of those in the Senate who must now defend the President's nomination of G. Harrold Carswell.

Of course, the quota system would create a few problems. If the mediocre judges are entitled to have one of their own kind on the court, what about the bad judges? Heaven knows, there are enough of them to make up a sizable constituency. Or what about one to represent the old judges? Or the unethical judges or, as Senator Long suggested, how about some judges who were C students instead of just ones who were A students? Or, for that matter, what about the non-lawyers, aren't they entitled to some justices all their own?

We are not sure how far Senator Hruska would want this idea of quota representation to spread. We rather doubt that the body in which he sits would acknowledge a system under which a senator was selected because it was time for the mediocre people to be represented by a mediocre man.

Be that as it may, if Senator Hruska is serious, he'd better tell the President. Mr. Nixon, after all, has talked all along about appointing "extremely qualified" men to the court, stressing that he wasn't interested in quotas except one for "strict constructionists." Somehow, we doubt that Mr. Nixon would want to concede that he was departing from the standard of excellence all Presidents have clung to publicly in nominating justices—even when they departed from it in practice.

The problem of mediocrity and the court, however, is not a laughing matter for two quite different reasons. One is the fact that there is no tougher nor more responsible job in government, save for the presidency itself, than that of a Supreme Court justice. He must cast a vote on more than 3,000 cases each year; listen to arguments on more than 120 cases; write at least a dozen full-dress opinions if he is to bear his share of the load. This is not a job for a man of mediocre talents. The court's work suffers any time it is done by men of run-of-the-mill abilities.

Even more important is the burden of constitutional interpretation. Perhaps the late Learned Hand, whose work is hailed almost universally as that of a great judge, explained best what qualifications a man needs for such fateful challenges:

"I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class."

Somehow this doesn't strike us as work for mediocre men, for students with nothing more to recommend them than a gentleman's C, or even as far as that goes, B-plus. Although this country has been obliged to accept mediocrity upon occasion in presidents and senators—and even Supreme Court justices—it has never been public policy to the best of our recollection to go out actively in search of it. Certainly this is not the time, and the Supreme Court is not the place, to start.

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

Mr. HRUSKA. Mr. President, I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I was privileged to hear the Senator from Nebraska make his statement with reference to Judge Carswell. Let me emphasize again, as I understand the statement of the Senator, Judge Carswell's nomination is, first of all, sound, logical, and desirable; that he was and is well qualified; that he is learned in the law; that he is experienced; that he is a man of integrity; that he does possess the proper judicial demeanor. He has displayed and exercised the proper demeanor for a number of years as a U.S. attorney, as a Federal district judge, and now as a Federal circuit judge, and that he does enjoy and continues to enjoy the approbation and respect of the bench, the bar, and the community.

This I understand is the position of the Senator from Nebraska. To this I would add another source. I have in my hand a statement prepared by Prof. James William Moore, who, as we know, is the Sterling Professor of Law at Yale University.

This statement was prepared for a nationwide television program. It was not used. But let me read from a portion of the statement with reference to his consideration of Judge Carswell.

The part I read appears on pages 4 and 5 and is as follows:

We of the Ivy League—the big, prestigious law schools such as Yale, Harvard and Columbia—are often intellectual snobs. Any lawyer, judge or professor who does not have an Ivy League degree or has not taught at one of our schools and written a law review article or a book is almost by hypothesis blessed with mediocrity. We seldom go west of Yankee Stadium or south of the Potomac, except to jet in the clouds over America en route to an association or business conference.

Having been in each of the fifty 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. That diversity will undoubtedly produce difference of outlook and, among judges, difference of judicial philosophy. But it adds nothing to intelligent discussion of the issues to use such "code words" as "mediocrity" and "insensitivity" when what the critics really mean is that they disagree with the nominee's philosophy.

I think the Senator from Nebraska will agree that this professor of law who, as I indicated, is the Sterling Professor of Law at Yale University and who has been teaching for 34 years, says it very well. I think there is a certain amount of intellectual snobism about those who would say the nominee is insensitive in one case, and in the very next case that the nominee is mediocre.

I would guess that the Washington Post should be expert on what may or may not be mediocre.

I would place my emphasis where the distinguished Senator from Nebraska did, on the positive fact surrounding the nomination made by a President learned in the law, and suggested to the President by an Attorney General who is also learned in the law.

Certainly no one questions Judge Carswell integrity, or his honesty, or ability or the respect he receives from the bar and the community.

I share the views expressed in the first instance by the Senator from Nebraska and restated on the floor of the Senate.

Mr. HRUSKA. I thank the Senator very much. It is noteworthy that Professor Moore has been on the faculty of an ivy league school for more than one-third of a century and he should know what he is talking about. As we all know, he is highly regarded at the bar.

I would make this further observation. No one has dared attack Judge Carswell's integrity, and most of his distractors at least give him credit for average intelligence. We must remember that there is ample evidence in the record from people who have spoken highly of him, who call him an excellent trial judge and appellate judge, and state that he not only possesses many fine attributes which would make him an outstanding member of the Supreme Court, but that he has a definite capacity for greatness.

It is interesting to observe that the witnesses who called him mediocre do not and have never known him. They base their conclusions upon the printed word with regard to his juristic attainments.

Those who have come out with these high opinions as to his future, have known him well. They have appeared before him and tried lawsuits in his court. These are the people who should know of his qualifications. Professor Moore is in an excellent position to make such a judgment.

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

Mr. HRUSKA. I am happy to yield to the Senator from Kansas.

Mr. DOLE. I ask unanimous consent at this time to have printed in the RECORD the biographical sketch of Prof. James William Moore and the entire statement which I indicated was prepared for a network television program but was not used. It indicates the great work Judge Carswell did in connection with the establishment of a law school at the Florida State University.

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

BIOGRAPHICAL SKETCH OF PROF. JAMES WILLIAM MOORE

Professor Moore is the holder of a named chair—Sterling Professor of Law—at Yale University. He has been a member of the faculty of Yale Law School for more than thirty years, and is a member of the Standing Committee on Practice and Procedure of the Supreme Court of the United States. He is the author of many legal articles and books, chief among which are the authoritative "Moore's Federal Practice", and "Collier on Bankruptcy". In addition to his teaching duties, he is presently counsel to the trustee of the New York, New Haven and Hartford Railroad, and has been since the beginning of its reorganization in mid-1961. Professor Moore was born in Oregon, grew up in Montana, and has lived for nearly a third of a century in Connecticut. En route to becoming a distinguished authority on federal procedure, he worked as a cowpoke and as a professional prize fighter.

REMARKS OF PROFESSOR MOORE

Some who oppose confirmation of Judge Carswell as an Associate Justice of the Supreme Court have said that he is a "racist" or a "segregationist". I know differently, from extended personal contact with Judge Carswell in connection with a matter in which both he and I were interested. 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, creed, and classes. If I had doubts, I would not be here, for I have a minority ethnic strain, that of an American Indian, and during all my teaching life, over 34 years on the faculty of the Yale Law School, I have championed the rights of all minorities. About five years ago a small group of jurists, educators, and lawyers asked my help 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. As I came to know him in working with them, I was impressed with his views on legal education and the type of law school that he desired to establish. He was very clear about the fact that he wanted a law school free of all racial discrimination—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. Dean Ladd, too, was impressed with Judge Carswell, both as a man and as a judge. He has written the Senate Judiciary Committee a letter to that effect, stating:

"Carswell has an innate sense of fairness . . . 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 authority 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."

Dean Ladd concluded his letter by urging confirmation of Judge Carswell.

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—consisting of about 100 students—passed the bar examination on the first go-round. This is a hallmark of distinction for any law school.

We of the Ivy League—the big, prestigious law schools such as Yale, Harvard and Columbia—are often intellectual snobs. Any lawyer, judge or professor who does not have an Ivy League degree or has not taught at one of our schools and written a law review article or a book is almost by hypothesis blessed with mediocrity. We seldom go west of Yankee Stadium or south of the Potomac, except to jet in the clouds over America en route to an association or business conference.

Having been in each of the fifty states, and having taught in most sections of the 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. That diversity will undoubtedly produce difference of outlook and, among judges, difference of judicial philosophy. But it adds nothing to intelligent discussion of the issues to use such "code words" as "mediocrity" and "insensitivity" when what the critics really mean is that they disagree with the nominee's philosophy.

I note the testimony before the Senate Judiciary Committee of the General Counsel for the United Automobile Workers, who criticized Judge Carswell as having "graduated from the third best law school in Georgia, I believe there are four . . ." I do not personally subscribe, and I certainly hope that the President, the United States Senate, and the Nation as a whole will never subscribe to the notion that only graduates of Ivy League law schools may be confirmed as Justices of the Supreme Court of the United States.

Indeed, I would go further and say that one of the reasons why I feel strongly that Judge Carswell should be confirmed is the fact that he will restore balance to the Supreme Court of the United States. Balance may be of different kinds—for example, the factor of geographical balance is one that numerous Presidents have considered in the past, and which certainly merits consideration here. Florida is the most populous state of the Union never to have had a Supreme Court Justice, and the South as a whole can fairly be described as having been underrepresented on the Supreme Court in the last generation. Ethnic, religious and racial considerations have undoubtedly played a part in nominations in the past and will do so in the future.

Judge Carswell will bring to the Court not only balance, but ability and experience as well. His experience encompasses both private and public practice, and he has served both as a trial and an appellate judge. I am generally familiar with his written opinions, and especially in the areas of the law with which I am particularly knowledgeable—federal practice, bankruptcy, and creditors' rights—I find them to be of excellent quality.

The President has chosen well. It is my belief and hope that Judge Carswell will be confirmed by the Senate.

Mr. DOLE. Mr. President, I might add that Professor Moore speaks as a member of a minority group since he is part American Indian. He knows, of course, about championing causes for the rights of minorities because he is a member of a minority group himself. Furthermore, as the Senator from Nebraska did today, the professor also notes that we are talking about the nomination of a man qualified by experience as a Federal district attorney and Federal district judge, and now as a circuit judge.

Certainly no one in this Chamber suggests that this experience disqualifies the nominee from sitting on the Court.

Mr. HRUSKA. I happen to be familiar with the document you describe. The manuscript was prepared by Professor

Moore for use on a television show. After having written it, he was advised that the format of the program would not allow him to read any prepared statement, but he drew from it and certainly supports it. Those are his views, as he expressed them.

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

Mr. HRUSKA. I am delighted to yield to the distinguished Senator from Wyoming.

Mr. HANSEN. I am happy to have an opportunity to speak in support of Judge Carswell and to underscore the very basic and sensible points that have been made by my distinguished colleague, the Senator from Nebraska.

The Senator from Nebraska, speaking earlier in this Chamber, said, with reference to the speech that he had made when talking to reporters in the gallery:

I sought to express the idea that whether a man is mediocre or distinguished, might, like beauty, be in the eye of the beholder.

The distinguished Senator from Nebraska continued:

A good judge, as I noted in my floor speech, needs practical courtroom experience. He needs commonsense—or as we say in Nebraska, "horse sense."

He continued by saying:

There is one more criterion for requisite qualifications of a member of the Supreme Court. Next to integrity, comes at least average intelligence and what I just referred to as common horse sense, both of which Carswell has demonstrated by working his way through college and up to his present position.

I think what the distinguished Senator from Nebraska, who is the ranking minority member of the Committee on the Judiciary, has said needs to be pondered by all Americans. We have been debating, and likely will continue to debate for some days in the future, the qualifications of Judge Carswell. We are discussing whether he measures up to those tests that may be imposed on him by each Member of this body, for so far as I can determine the Constitution imposes a very broad standard which I am sure everyone would have to agree Judge Carswell eminently meets.

But beyond that what may qualify Judge Carswell in the eyes of the Members of this body will be determined by the self-imposed qualifications that each Member of the body may want to impose upon the judge.

Actually, he measures up very well. For those who contend he is mediocre—and that was not the word of my distinguished colleague from Nebraska as he pointed out; those words were used by others, not by him—I wish to call attention to what has been said of some other distinguished jurists.

When the distinguished minority whip spoke in support of Judge Carswell yesterday, he called attention to the fact that:

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."

I would call to the attention of the detractors of Judge Carswell what was said by the distinguished columnist, Carl Rowan.

Mr. Rowan in his column said:

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 Texan 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.

I would add that I think it says also a great deal about Judge Carswell.

As I interpret Mr. Rowan's remarks, he says, quite frankly, that he likes the straightforward manner in which Judge Carswell has responded to questions. He likes his lack of ambiguity.

I think it does all of us good to see people in prominent positions who readily admit that what they may have said earlier in their lives should not have been said. Judge Carswell has renounced what he said at age 28.

I would only gather, from what Mr. Rowan says, that he finds Judge Carswell most acceptable by this measure.

I ask my distinguished friend from Nebraska if, in his opinion, I am correctly interpreting what Carl Rowan said.

Mr. HRUSKA. I would think so. I have not read the entire article, but certainly the fashion in which he judges the episode of the 1948 speech and his drawing of the parallel with former President Lyndon B. Johnson is a candid appraisal of the Judge's remarks.

Mr. HANSEN. I admit the Washington Post is entitled to its bias. It has demonstrated that bias on many, many occasions. It does not always concern itself consistently. In yesterday's Wall Street Journal, the following inconsistency was pointed out.

I ask unanimous consent that, at the conclusion of my remarks, there be included in the RECORD the editorial from the March 17 issue of the Wall Street Journal, entitled "Playing With Fire."

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

(See exhibit 1.)

Mr. HANSEN. That is simply to underscore the fact that the Washington Post gets on both sides of an argument and is not a bit concerned about consistency.

I am pleased that the distinguished Senator from Nebraska has taken this occasion to get back into context the thread that ran throughout his very worthwhile speech on the floor of the Senate. Now all of us might understand more clearly the interesting and extremely worthwhile background of Judge Carswell. He has had the sort of experience in the past which I feel will enable him to be a very fine jurist, in fact an outstanding jurist.

I can recall, in the years I have watched the behavior of members of the Supreme Court, that it is very easy indeed to misjudge what a man may be. It has been said that while one can attempt to categorize a person, and while he may attempt to predict what he will be when he becomes a member of the Court, no one really knows. I say that about Justice White, who I think is a most distinguished member of the Supreme Court, a man who, in my judgment, has earned the respect of most Americans.

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

Mr. HANSEN. I yield.

Mr. HRUSKA. How much judicial experience did Justice White have before he was named to the Supreme Court?

Mr. HANSEN. I think the Senator can answer that question better than I can, but it is my understanding that he had absolutely none.

Mr. HRUSKA. That is correct.

Mr. HANSEN. I think it is also a fact that a number of members of the Court who stand out as examples of the very finest of this coequal branch of Government were elevated to the Court without any prior judicial experience, experience that would have been invaluable.

What I think is important to understand is that each man must make his own way on the Court. It certainly cannot be said, as I was attempting to point out, that one can identify where a person will be philosophically. I spoke about Justice White. I know at the time of his appointment it was believed by many that he would be a very liberal member of the Court. I suspect that today most lawyers would not so categorize him. He is an outstanding jurist. I compliment the late President Kennedy upon his selection of Justice White for the Court. I have every confidence that when the nomination of Judge Carswell is confirmed, as I believe indeed it will be, he will write his own record on the Court, and he will eminently preserve the confidence that has been reposed in him by the President, and he will justify and merit the high regard for him that has been epitomized by the remarks of the Senator from Nebraska.

EXHIBIT 1

PLAYING WITH FIRE

The editorial page of the Washington Post, which we read every day and recommend for its clarity and style, ran a couple of items side by side last week on the general subject of disobeying the law.

The first was an editorial about the white violence against black school children in Lamar, South Carolina. It suggested the blame for such demented acts must be shared by our national leaders, especially those who have been talking equivocally about the Government's commitment to the equality of all its citizens. The editorial singled out Senator Thurmond and Vice President Agnew, who, it said, "have been playing with matches in public for some time now, and yet they want us to know immediately and for the record that if there is one thing they deplore its fire."

Beside it was an article entitled "One Way of Saying 'No More Deaths'," which ap-

plauded, with reservations, the anti-war protesters who have invaded draft centers and ransacked defense-companies' offices to dramatize their conviction that when life is at stake, marching is not enough. The article approvingly quoted Howard Zinn, a professor of political science at Boston University: ". . . And it is the mark of enlightened citizens in a democracy that they know the difference between law and justice, between what is legal and what is right . . ."

These two items are not remarkable; you can hear approximately the same two arguments almost anywhere these days. We single out the Post only because this juxtaposition presents us with the opportunity to say that we find the two statements utterly irreconciliable.

It is unfortunately true enough that Mr. Agnew and Senator Thurmond, though we wouldn't equate them, may have said things that encouraged some of their listeners to violence. Such people are easily encouraged. They are, after all, every bit as self-righteously zealous as the people who rip up draft offices. They believe *they* know the difference "between what is legal and what is right."

Which has always been our difficulty understanding how anyone can advocate setting the individual conscience above the law. We don't say the law is always wise, just or moral, but if you excuse the office-ransackers then you must also pardon the race warriors, and after them the people who set bombs in public buildings, and eventually anyone else who can claim a veneer of morality for his whims.

We appreciate that what the Post article condones is not a ventilating of whims but an expression of deeply felt conviction. The difficulty is drawing the line, being able to ensure that what begins in a limited, more or less harmless way doesn't get out of control.

Like playing with fire.

Mr. HRUSKA. I thank the Senator from Wyoming very much. He may be interested to know that, in addition to the examples cited by the Senator from Michigan, the distinguished minority whip, there was the historical instance of Judge Brandeis, highly beloved and greatly respected by all liberal groups and by all scholars and by all professors of the law. Yet when he was nominated in 1916 by President Wilson, there was severe and very bitter opposition to his confirmation.

Mr. President, seven past presidents of the American Bar Association opposed him; 55 prominent Bostonians, led by Harvard President Lowell, opposed him; and what do you suppose, Mr. President, their objection was? In writing, they put it, that he lacked proper "judicial temperament."

In light of the history which he compiled and the fashion in which he had conducted himself before confirmation of his nomination, as well as when he became a member of the Court, the seven past presidents of the American Bar Association and the 55 prominent Bostonians, led by President Lowell, could not have been more wrong. There again, what we call beauty is that which is being seen by the eye of the man who sees it. They did not want to see the virtue or merit in the appointment, so they let their emotions get away from them.

Mr. HANSEN. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I am happy to yield.

Mr. HANSEN. The Senator has referred to the actions of the seven former presidents of the American Bar Association when the nomination of the late Justice Brandeis was before the Senate for confirmation. It might be worth noting, as I believe indeed it is, that they said, in addition to the statement that has just been read by the Senator from Nebraska:

> 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.

I suspect that the persons who uttered those words must have had many, many occasions to regret such an unwarranted indictment of a great jurist. I think that most of us would agree that Justice Brandeis indeed looms large as one of the great men on the Supreme Court. Does the distinguished Senator from Nebraska suspect that it must have been a source of continuing embarrassment to those seven former presidents of the American Bar Association that they ever said a thing about the reputation, character, and professional career of Mr. Brandeis as making him unfit to be a member of the Supreme Court of the United States?

Mr. HRUSKA. There would be ample ground to feel a little embarrassed about it and perhaps bothered about it in later years.

Mr. HANSEN. I should think so.

Mr. HRUSKA. I thank the Senator from Wyoming, as I do again the Senator from Kansas (Mr. DOLE), for having engaged in this colloquy.

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

Mr. HRUSKA. I am happy to yield.

Mr. GRIFFIN. I regret that I was not in the Chamber throughout the presentation made by the distinguished Senator from Nebraska, but I have had an opportunity to scan the text of his remarks. I commend him on another outstanding contribution to the debate on this nomination.

It is my belief that his statement puts in perspective the issue that has developed concerning the qualifications of Judge Carswell.

As a member of the Judiciary Committee, I listened and watched the nominee testify during the hearings. As one judge of his performance, I concluded—and it is in the record—that he handled himself and answered the questions in a manner that was anything but mediocre. In my view he was an outstanding and an excellent witness.

I was impressed with his demonstration of an excellent background in the law and in legal history, and his acquaintance with the history of the Supreme Court.

Certainly, I would not presume to be an adequate judge of another man's potential for greatness. Who am I to make such an assessment? Yet, as Senators, we have to try to pass on such nominations and, as best we can, we must decide whether such a nomination should be confirmed.

I have noticed the argument of some that Judge Carswell's decisions are not voluminous and wordy; so far as I am concerned, that is no argument at all. Certainly, I would not accept the contention that those in the Senate who make the longest speeches necessarily make the greatest contribution to the deliberations of this body. Indeed, I rather admire a Senator or a judge who can express his thoughts succinctly and get to the point. Needless to say, one of the greatest speeches ever made, and one of those which will be remembered the longest was a very short speech by Abraham Lincoln. I refer, of course, to the Gettysburg Address.

Mr. President, I have also noticed the argument of some who say that Judge Carswell has not authored many articles.

Of course, a review of his biography reflects that when he was out of law school only a few years he began working for the Government as a U.S. district attorney. Then he went on the bench and served as a district judge for 10 years, and finally went to the circuit court of appeals.

I realize that there may be a justice or judge here or there who busies himself writing articles. But it is my impression that most sitting judges, the outstanding ones, are very busy handling the business of the court. Furthermore, I believe a good judge is reluctant—and with good reason—to write articles and engage in extrajudicial writing which would tend to put him on record concerning issues as to which he might later be called upon in a case to decide.

I really do not see any merit at all to that criticism, which I have heard and read from time to time.

Mr. HRUSKA. What the Senator says is true. During his 11 years as a trial judge, Judge Carswell presided over and disposed of 4,500 cases. For all but a year, or maybe 18 months, of that career he was the sole judge in that district. The last year or 18 months he had added to his district another district judge.

So during that long period of time, he carried a heavy burden. In addition to his trial that he actually sat in judgment on and presided over, responsibilities he had to manage the district. He had to make the arrangements for the jury terms and the grand juries, and do all the other administrative work that is involved in a busy court.

It would tax one's imagination to understand where a man having on the average about 500 cases a year—would find time to do the research and creative work of writing a book. I must commend those who carry the heavy burden of being judges and still find time for literary work.

Mr. GRIFFIN. The Senate is, and should be, interested in excellence. We should strive to join in the appointment, if possible and to the extent possible, of outstanding Supreme Court Justices. It would be my view that, while no one can predict with certainty whether any nominee will become a great Justice of the Supreme Court, I would say that this nominee has credentials and experience which give him a much better start, and indicate a greater likelihood, that he might achieve greatness as a member of the court, than has been the case with respect to a number of nominees in the past, who have been confirmed by the Senate, and who are now recognized by history as having been great justices of the Supreme Court.

So once again I commend the Senator from Nebraska.

Mr. HRUSKA. I thank the Senator. It might interest him to know that in this commentary of Prof. James William Moore, a man who has been teaching law school and who has practiced also, and had a tremendously fine career in the practice and the teaching of law, there is this language:

> Having been in each of the 50 States, and having taught in most sections of the country, I have long been impressed with this Court's diversity—economic, social, moral, and ideological. In my opinion, the Supreme Court should be representative of that great diversity—

Mr. President, that includes the middle America that we hear so much about these days—

> that diversity will undoubtedly produce difference of outlook and, among judges, difference of judicial philosophy; but it adds nothing of intelligent discussion of the issues to use such code words as "mediocrity" and "insensitivity," when what the critics really mean is that they disagree with the nominee's philosophy.

It is language like that which, it seems to me, should be very well considered in connection with the subject about which I have undertaken to make remarks during the course of this afternoon.

Mr. President, I yield the floor.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the completion of the remarks by the able Senator from Wyoming (Mr. HANSEN) on tomorrow, there be a period for the transaction of routine morning business, that Senators be permitted to make speeches therein, and that there be a limitation on those speeches of 3 minutes.

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

RECAPITULATION OF SENATE ORDERS FOR TOMORROW

Mr. BYRD of West Virginia. Mr. President, for the information of the Senate, I would like to recapitulate briefly the orders for tomorrow.

The Senate will adjourn shortly, as in legislative session, until 11 o'clock tomorrow morning. Following the disposition of the reading of the Journal, the able Senator from Wyoming (Mr. HANSEN) will be recognized for 20 minutes; following which there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes; following which, at 12 o'clock noon, there will be a rollcall vote on Executive I, 91st Congress, first session, to be followed by another rollcall vote on Executive J, 91st Congress, first session; following which the unfinished business will be laid before the Senate by the distinguished Presiding Officer.

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment, as in legislative session, until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 52 minutes p.m.) the Senate adjourned until tomorrow, Thursday, March 19, 1970, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate March 18, 1970:

U.S. COAST GUARD

The following-named graduates of the Coast Guard Academy to be permanent commissioned officers in the Coast Guard in the grade of ensign:

Michael Ray Adams
Michael Duane Allen
William Howson Anderson
Samuel Janison Apple
John Holland Baker, III
Timothy Glenn Balunis
Donald George Bandzak
James Ronald Beach
John Lawrence Beales
William Lawrence Beason, Jr.
Edward Joseph Beder, Jr.
David Stephen Belz
Thomas Edward Bernard
David George Sidney Binns
Ernest Joseph Blanchard, IV
Allen Kenneth Boetig
Richard Walter Brandes
Lawson Walter Brigham
Charles Richmond Brown
James Stuart Brown
Joseph Lance Bryson
James Steven Carmichael
Roy James Casto
John Davis Clark, Jr.
James Byrne Clarke
Jeffrey Nathaniel Compton
Rodney Longhurst Cook
Roger Charles Cook
Richard Marshall Cool
Michael Dillon Cooley
Richard Dall Crane
Robert George Cross
Terry Michael Cross
David Dahlinger
Thomas Lee Davis
Edward John Dennehy
Christopher Desmond
Donald Robert Dickmann
Terrance Martin Edwards
John Haley Fearnow
Gale Wayne Fisk
Michael Francis Flessner
James Black Friderici
Gerald Alan Gallion
Melvin Wayne Garver
John Anthony Gaughan
Michael Don Gentile
Guy Turner Goodwin
Victor Joseph Guarino
Paul Leonard Hagstrom
Terrance Patrick Hart
Harold Wayne Henderson
John Edward Hodukavich
Thomas Michael Howard
John Francis Hughes
Conrad Richard Huss
David Bruce Irvine
Paul Chandler Jackson
George Francis Johnson
Horton Winfield Johnson
David Timothy Jones
Richie McMillan Keig
Harold Gregory Ketchen
Michael John Kirby
John Kent Kirkpatrick
David Bruce Klos
Glenn Gene Kolk
William Edward Kozak
Kenneth Charles Kreutter
Lawrence Vincent Kumjian
Edmund Francis Labuda, Jr.
Larry Franklin Lanier
Kim "I" MacCartney
Steven Andrew Macey, Jr.
Andrew Malenki III
David John Maloney, Jr.
Ronald Anthony Marcolini
James Gordon Marthaler
William Anthony McDonough, Jr.
John Francis McGrath, Jr.
Gary Robert McGuffin
Edward Allen McKenzie
Dennis Robert McLean
Thomas Lee Mills
Anthony Thomas Mink
John Ross Mitchell
Theophilus Honiz III
David Richard Moore
Richard Stephen Muller
John Michael Murphy
Spencer Michael Neal
James Quentin Neas, Jr.
Mark Andrew O'Hara
Peter Carlton Olsen
James Clifford Olson
Donald Burnham Parsons, Jr.
Michael Mariano Pawlik
Marc Pettingill
Douglas Craig Phillips
Peter Quido Pichini
William Wilbert Pickrum
Dennis Michael Pittman
Robert Lee Pray
Thomas William Purtell
John Edward Quill
Kevin Lawrence Ray
David John Reichl
Stephen Michael Riddle
Thomas Bernard Rodino
Henry John Rohrs, Jr.
Stephen Richard Rottier
Albert Joseph Sabol
Julius Benjamin Sadilek, Jr.
Steven Edward Sanderson
Fredrick Henry Sellers, Jr.
Philip Edward Sherer
Robert Dennis Sirois
Anthony Raymond Souza
Alan Edward Spackman
Frederick Norman Miner Squires III
Douglas Bruce Stevenson
Bruce Beverly Stubbs
Anthony Stanislaus Tangeman
Thomas Brogden Tayor
Timothy Lenox Terriberry
Myron Frank Tethal
William Brinker Thomas
Joel Alan Thuma
Frank James Tintera, Jr
Ralph Dean Utley
Jonathan Michael Vaughn
Robert Julius Vollbrecht
Gregory Steven Voyik
Alan Frank Walker
Chester John Walter
George Paul Waselus
Charles Rodney Weir
Robert John Williamson, Jr.
David Edward Wilson
Thomas Xavier Worley
Ralph Arner Yates
Thomas Joseph Zieziulewicz
Kenneth Michael Zobel

The following-named officers of the Coast Guard for promotion to the grade of lieutenant (junior grade):

Philip K. Hauenstein	Robert L. Hoyt
Donald A. Kirkham	William J. Hamilton
Jerry E. Bowersox	Michael T. Burnett
Robert B. Millson	Ronnie T. Wheeler
James L. O'Brien	John H. Burger
Robert M. McAllister	Paul D. Huffman
James L. Jones	Miller R. Chappell
Gary A. Bird	Curtis J. Olds, Jr.
Theodore C. Scheeser	Douglas R. Peterson
Paul E. Hill	Carl R. Sosna
John E. Steve	Michael J. Arnold
Richard L. Youdal	Richard D. Carmack

The following-named members of the permanent commissioned teaching staff of the Coast Guard Academy for promotion to the grade of commander:

Harlan D. Hanson
Louis K. Bragaw, Jr.
John S. Mahon
Frank S. Kapral
Thomas D. Combs, Jr.

The following-named Reserve officers to be permanent commissioned officers of the Coast Guard in the grades indicated:

Lieutenant commander

Hugh J. Milloy

Commander

Charles A. Biondo

Lieutenant

Arthur D. Hoppe
Harold C. Messenheimer

The following-named officer to be a permanent commissioned officer of the Coast Guard in the grade of commander, having been recalled to active duty from the temporary disability retired list:

Hugh J. LeBlanc

The following-named officer to be a permanent commissioned warrant officer in the Coast Guard in the grade of chief warrant officer, W4, having been recalled to active duty from the temporary disability retired list:

Merle L. Cochran

DISTRICT OF COLUMBIA COMMISSIONER NOMINATION

Nomination received by the Senate March 18, 1970, from the Commissioner of the District of Columbia:

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

Stephen S. Davis for reappointment as a member of the Board of Directors of the District of Columbia Redevelopment Land Agency for a term of 5 years, effective on and after March 4, 1970, pursuant to the provisions of section 4(a) of Public Law 592, 79th Congress, approved August 2, 1946, as amended.

HOUSE OF REPRESENTATIVES—*Wednesday, March 18, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Behold, God is my salvation; I will trust and not be afraid—Isaiah 12: 2.

Eternal Spirit, who art the hope of the world and the help of all who put their trust in Thee, be Thou our hope and our help as we come to Thee in this our morning prayer. Lead us to the rock that is higher than we, and there may we find strength for each day, courage for each hour, confidence for each minute, and faith for each second. Thus may we defeat the foes that would conquer our spirits by being strong in Thee.

Our prayer leaps across the boundaries of color, creed, and culture to include the world in which we live. In spite of differences, bind us together in a common obedience to the moral law and make our faith real enough and strong enough to unite mankind in a fellowship of kindred minds. While it is yet day may we choose light and not darkness, love and not hate, truth and not falsehood, peace and not war—to the glory of Thy holy name. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3786. An act to authorize the appropriation of additional funds necessary for acquisition of land at the Point Reyes National Seashore in California.

The message also announced that the Vice President, pursuant to Public Law 84–372, appointed Mr. GOODELL to the Franklin Delano Roosevelt Memorial Commission in lieu of Mr. BROOKE, resigned.

The message also announced that the Vice President, pursuant to Public Law 91–129, appointed Mr. JACKSON and Mr. GURNEY as members on the part of the Senate and Mr. Richard E. Horner as a member from outside of the Federal Government to the Commission on Government Procurement.

ORT DAY—WOMEN'S ORGANIZATION FOR VOCATIONAL REHABILITATION THROUGH TRAINING

(Mr. ADDABBO asked and was given permission to address the House for 1 minute and to revise and extend his remarks, and include extraneous matter.)

Mr. ADDABBO. Mr. Speaker, today marks the observance of ORT day across the country by chapters of Women's American ORT—Organization for Rehabilitation Through Training. This is the vocational training program for Jewish people which has helped more than 1 million persons of the Jewish faith since it was established in 1880.

During the month of March ORT chapters across the Nation will sponsor rallies, telethons, and other activities to publicize and bring public attention to these important civic programs.

Mr. Speaker, this membership drive by ORT deserves special recognition which is why I am raising this subject for discussion in the House at this time. I wish Women's American ORT every success in recruiting new members to strengthen the organization and enable it to continue the fine community work which has earned it an outstanding reputation.

I especially commend all the dedicated members of ORT in my district.

JAPAN REJECTS TEXTILE AGREEMENT

(Mr. DORN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORN. Mr. Speaker, the time has come when the Congress should pass legislation to save our textile industry from excessive low-wage imports. Such legislation will be introduced, and I predict its early consideration and passage. Time has indeed run out and action will be taken by the Congress. Thirteen months of discussions and negotiations with our Japanese friends have proven to be fruitless. No concrete proposal to relieve the unfair pressure of imports on our industry has been advanced by Japan. The situation is growing daily worse with unemployment, curtailment, and part-time employment. We much preferred a voluntary comprehensive agreement with Japan covering all categories of imports including manmade fiber, staple, and filament yarn.

In view of Japan's favorable trade balance of more than $1 billion and the injurious effects of skyrocketing textile imports on the future of our industry, we believed that Japan would be receptive to an agreement holding her imports to the present level plus a fair share of our annual market growth. This type of agreement would not cause Japan to lose one single textile job but, on the other hand, would guarantee the health of her textile industry and guarantee its reasonable growth. This fair, honest, and sincere proposal has been rejected by Japan.

The leaders of our informal textile committee met here in Washington with the Members of the Japanese Diet. We welcomed Mr. Sato to the United States. We did not press textile issues while elections were underway in Japan. We did not insist that relief for our industry be tied to the Okinawa question. We have waited patiently and long—still no agreement or definite proposal from Japan to help preserve our industry and the jobs of its employees. Now, we must proceed with the legislation which would save our textile industry, the jobs of its more than 2 million employees, and preserve its vital role in the defense and security of our Nation and the free world.

JETS FOR ISRAEL

(Mr. FARBSTEIN asked and was given permission to address the House for 1 minute.)

Mr. FARBSTEIN. Mr. Speaker, I am shocked and concerned at what I believe are authentic radio reports this morning that the President has decided not to make jet aircraft available to Israel at this critical time in the life of that small, brave country.

I know that the President has said on a number of occasions that he would help Israel when needed and that Israel must and will survive as a nation. These are mere words. Unfortunately, actions speak louder than words.

Mr. Speaker, Israel needs those airplanes. She needs them to survive. And irrespective of pious phrases and good intentions, the fact remains that unless the Soviet Union agrees to suspend the shipment of defense articles and services to the Arab States, the military balance in the Middle East will tilt in favor of the Arab States. The result will be the destruction of Israel and, most of all, the