By Mr. OTTINGER (for himself, Mr. SCHEUER, Mr. PODELL, Mr. ADDABBO, Mr. BRASCO, Mr. BIAGGI, Mr. RYAN, Mr. HALPERN, Mr. FARBSTEIN, Mr. KOCH, Mr. BINGHAM, Mr. GILBERT, Mr. PEPPER, Mr. POLLOCK, Mr. MOORHEAD, Mr. FRIEDEL, Mr. VANIK, Mr. STOKES, Mr. LUKENS, Mr. BROWN of California, Mr. BURTON of California, Mr. LEGGETT, Mr. REES, and Mr. EDWARDS of California):

H. Con. Res. 556. Concurrent resolution on the Middle East; to the Committee on Foreign Affairs.

By Mr. PATMAN:

H. Res. 890. Resolution authorizing the printing of additional copies of the "Report of the Joint Economic Committee"; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GUDE:

H.R. 16613. A bill for the relief of Rea Republica Ramos; to the Committee on the Judiciary.

By Mr. KOCH:

H.R. 16614. A bill for the relief of Mrs. Maya Jabbour Grigg; to the Committee on the Judiciary.

By Mr. PEPPER:

H.R. 16615. A bill for the relief Dr. Clara Satanowsky Becker; to the Committee on the Judiciary.

H.R. 16616. A bill for the relief of Luc Pal Emil Fafard; to the Committee on the Judiciary.

H.R. 16617. A bill for the relief of Dr. Kazi Mobin-Uddin; to the Committee on the Judiciary.

By Mr. ROONEY of New York:

H.R. 16618. A bill for the relief of Virgilio Cruz Leynes; to the Committee on the Judiciary.

By Mr. VAN DEERLIN:

H.R. 16619. A bill for the relief of Victoria B. Toia; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

338. By the SPEAKER: A memorial of the House of Representatives of the Commonwealth of Pennsylvania, relative to restoring funds for the agricultural conservation program; to the Committee on Agriculture.

339. Also, a memorial of the General Court of the Commonwealth of Massachusetts, relative to providing import quotas to aid the shoe industry; to the Committee on Ways and Means.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

420. By the SPEAKER: Petition of Henry Stoner, York, Pa., relative to calling an advisory conference to meet on wages, prices, and profits; to the Committee on Banking and Currency.

421. Also, petition of the council of the city of Philadelphia, Pa., relative to ending the tragic waste of American lives and resources in Vietnam; to the Committee on Foreign Affairs.

422. Also, petition of the central council of the Popular Democratic Party of Puerto Rico, San Juan, P.R., relative to the designations to ad hoc committees for the integral growth of the Commonwealth of Puerto Rico; to the Committee on Interior and Insular Affairs.

423. Also, petition of the council of the city of San Diego, Calif., relative to repealing the provisions of the Emergency Detention Act of 1950; to the Committee on Internal Security.

SENATE—*Monday, March 23, 1970*

The Senate, as in legislative session, met at 11 o'clock a.m. and was called to order by Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri.

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

Lord of life and God of our salvation, who has brought us to this week of holy recollection, grant that in our work and in our meditation we may be aware of Thy presence, strengthened by Thy power, and guided by Thy spirit. Give us eyes to see that the cycle of death and resurrection is the law of life, that to lose life for others is to find it again in service to Thee.

Teach us, O Lord, that suffering can be redemptive, that truth is invincible, and life impervious to physical death. Let the life of the spirit be nourished in us, that being made new by Thy grace we may serve Thee and this Nation for the welfare of all Thy children and for the establishment of that kingdom whose builder and maker is God. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 23, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. THOMAS F. EAGLETON, a Senator from the State of Missouri, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

THE LEGISLATIVE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the legislative Journal of the proceedings of Friday, March 20, 1970, be dispensed with.

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

ORDER DISPENSING WITH THE CALL OF THE CALENDAR UNDER RULE VIII

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent to waive the call of the calendar of unobjected-to bills under rule VIII.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

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

ORDER FOR ADJOURNMENT UNTIL 10 O'CLOCK TOMORROW MORNING

Mr. MANSFIELD. Mr. President, because of a change in plans of a Senator, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning, rather than 9:30.

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

ORDER FOR RECOGNITION OF SENATOR SMITH OF MAINE FOR 10 MINUTES TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Maine (Mrs. SMITH) be recognized for not to exceed 10 minutes tomorrow morning, after the prayer.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW AND CONSIDERATION OF CONFERENCE REPORT ON ELEMENTARY AND SECONDARY EDUCATION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business tomorrow morning, as in legislative session, not to exceed 15 minutes, and that statements therein be limited to 3 minutes.

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

Mr. MANSFIELD. I also ask unanimous consent that at the conclusion of morning business tomorrow, within a 15-minute limitation, the Senate proceed to the consideration of the conference report on the elementary and secondary education bill.

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.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. MANSFIELD. Mr. President, in executive session, I ask unanimous consent that the Senate proceed to the consideration of the nomination on the Executive Calendar under new report.

The ACTING PRESIDENT pro tempore. The nomination on the Executive Calendar will be stated.

The assistant legislative clerk read the name of Robert Harry Nooter, of Missouri, to be an Assistant Administrator of the Agency for International Development.

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

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

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

ORDER OF BUSINESS

Mr. SYMINGTON. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

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

THE NOMINATION OF JUDGE GEORGE HARROLD CARSWELL

Mr. SYMINGTON. Mr. President, an appointment to the Supreme Court should be one that would heal, rather than further fragment, the restless mood currently characteristic of America.

Such an appointee could well come from the many distinguished and outstanding lawyers or jurists in any section of the country—North, South, East, and West; and because an otherwise qualified preeminent southern jurist or lawyer could serve to enhance the esteem of and confidence in the Court, such an appointee would have my support.

Judge George Harrold Carswell of the U.S. Court of Appeals for the Fifth Circuit has been nominated by the President and approved by a majority of the Senate Judiciary Committee. We are now called upon to assess the merits of this nomination.

In the dry statistics of the matter, Judge Carswell's career may be briefly summarized as follows: After graduation from Duke University in 1942, he served as a lieutenant in the Navy in World War II. He ran for public office once—for the State Legislature of Georgia—and during the course of that campaign made a speech with which all are now familiar. Upon passing the bar in Georgia in 1948, and in Florida in 1949, he practiced law for 4 years. In 1953, he became a U.S. attorney for the northern district of Florida.

After 5 years' service in that post, Judge Carswell became a U.S. district judge in 1958 and served for 11 years until last year, when he was named to the appellate bench of the fifth circuit.

As one reads the testimony before the Judiciary Committee, it is clear that the service of Judge Carswell as a district judge has been without any discernible distinction. His performance as a district judge offers no seeds of promise that he has the much larger and much greater wisdom that will be needed as one of nine men who, when necessary, determine the constitutionality of the Nation's proceedings.

A dean of one of the Nation's outstanding law schools, Louis H. Pollak, Yale Law School, who canvassed a wide range of Judge Carswell's district court opinions stated:

> There is nothing in these opinions that suggests more than at very best a level of modest competence, no more than that, and I am talking now about the general run of contract, of tort, of Federal jurisdiction, of tax cases, the run of cases which a District Judge has before him.

And in regard to civil rights cases, he found a propensity to dispose of cases through techniques that avoided hearings. As a result, litigants could have been deprived of a day in court. Dean Pollak concluded that—

> The nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

Perhaps, however, the most disturbing testimony before the committee was that of a former litigant in civil rights matters who appeared before Judge Carswell's court and who presently is an associate professor of law. Leroy D. Clark, associate professor of law, New York University Law School, who was representing the National Conference of Black Lawyers, discussed the long period of delay and dilatory tactics which he found characteristic of Judge Carswell's rulings. He also told the committee:

> 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. . . . 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. . . . Judge Carswell was the most hostile Federal District Court Judge I have ever appeared before with respect to civil right matters.

There was similar testimony from other attorneys.

We know that a trial judge's job is not an easy one. He is human. He will at times appear gruff and arbitrary. The testimony is nevertheless disturbing and my feeling about it was not relieved by Judge Carswell's general reply as to his belief that a judge should be courteous to counsel.

The Supreme Court is a high and independent branch of Government, which deserves the best talent that America has to offer. Particularly now when our country is torn by rifts and doubts, those who are to serve this Nation on that High Court should be capable of commencing that service in the knowledge that they can and do inspire confidence and unity.

We may hold a jurist in high honor even though we disagree with his decisions. In light of all the circumstances, the kind of stature that brings the respect of all Americans does not appear to be present in the professional credentials and attainments of Judge Carswell. For these reasons, I shall vote against confirmation.

VETERANS EDUCATION AND TRAINING AMENDMENTS ACT OF 1970—CONFERENCE REPORT

Mr. CRANSTON. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment 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. I ask unanimous consent for the present consideration of the report.

The ACTING PRESIDENT pro tempore. The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of March 18, 1970, pp. H1891–H1894, CONGRESSIONAL RECORD.)

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

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

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

Mr. CRANSTON. I yield.

Mr. SCOTT. I am happy to say that I know of no objection on this side to the immediate consideration of the conference report.

I congratulate the Senator from California for bringing it up at this time. I am in favor of it.

Mr. CRANSTON. Mr. President, I express my thanks to the distinguished minority leader.

There has been a bipartisan approach in the Senate, and I am delighted that this has been true, all the way through to final action.

Mr. President, today is a momentous day for all Vietnam veterans as this most comprehensive piece of veterans education and training legislation reaches the culmination of a long process that began well over a year ago. Final congressional action on this landmark bill is surely an appropriate event to mark the first legislative day of a new season—a season of growth and life just as the GI bill has meant so much growth and advancement for more than 8 million veterans since World War II.

It has been a great privilege for me over the past year to serve as chairman of the Veterans' Affairs Subcommittee of the Labor and Public Welfare Committee, following in the footsteps of the illustrious leadership provided by three former chairmen and present fellow members of that committee who have been of such great assistance in passing this measure. So I wish to pay especial tribute and express my deep appreciation today to these three colleagues: the full committee chairman (Mr. YARBOROUGH), my immediate predecessor as subcommittee chairman (Mr. KENNEDY), and the

ranking majority member of the full committee (Mr. RANDOLPH).

Particularly, I want to call to the attention of the Senate the deep devotion and dedication brought to the work of writing, considering, and passing this measure and then hammering out an equitable compromise in conference by my distinguished friend from Texas (Mr. YARBOROUGH). His unceasing championship of veterans benefits, especially those relating to education and training needs and rights in three decades has brought us to the point we have reached today—where we are finally to offer Vietnam era veterans a really viable GI bill program, suited to the demands of the 1970's and with benefits approximating the degree of coverage under the Korean conflict program. Senator YARBOROUGH deserves the highest praise from all veterans for fighting to insure that these benefits are being raised to levels reasonably commensurate with the enormous inflation in education costs over the last 20 years. In working out a final resolution in the conference, he has been a valiant fighter, a shrewd negotiator and a wise counsellor, and I thank him for all this.

Also deserving special consideration for his great work on this bill is the most able assistant majority leader (Mr. KENNEDY). His sensitivity and insight in introducing S. 2361 a year ago served as an inspiration for and forerunner of S. 2668 which I subsequently introduced last June and the basic provisions of which are today traveling the next to last step toward enactment into law. Senator KENNEDY worked with me closely in developing the legislative scheme of the bill's title II programs aimed at dramatically improving opportunities for educationally disadvantaged and academically deficient veterans. And so I specially thank him today, also.

Senate consideration of this bill has been characterized by bipartisan and unanimous support and cooperation from subcommittee—October 6—and full committee—October 9—consideration to floor consideration—77 to 0 on October 23 and again on December 18—through the three long conference sessions—February 5, March 10 and March 17—and on to the floor today for final action. Indispensable to securing this bipartisan approach has been the most effective leadership of the ranking minority member of the subcommittee (Mr. SCHWEIKER) and the ranking minority member of the full committee (Mr. JAVITS), both cosponsors of virtually all the Senate measures in the bill. I thank them for the extremely valuable work they have contributed to this bill and our Vietnam veterans.

The remaining Senate conferees on the bill—Mr. MONDALE, Mr. HUGHES, Mr. DOMINICK, Mr. SAXBE, and Mr. SMITH—also contributed substantially to the ability of the Senate conferees to present a united, firm, yet reasonable position in the negotiations. They were most dedicated and generous with their valuable time. And I thank and congratulate them all.

Finally, and perhaps of greatest note is the most helpful attitude and conciliatory spirit and approach of the chairman of the House Committee on Veterans' Affairs, OLIN E. TEAGUE, who chaired the conference with such outstanding assurance, equanimity and openmindedness. Without his advice, forbearance, and leadership of the House conferees, ably assisted by his ranking majority and minority members and the outstanding work of the House committee staff director and his staff, there would be no bill today.

Although the conference required three long sessions and countless hours of staff work over 40 days and 40 nights to iron out the 19 differences between the House and Senate versions, I hope everyone will agree that the results were well worth the effort in order to bring to rest—so to speak—legislative ark and discharge these many new programs to the world. After I have described the provisions in the bill, I believe all will agree that their significance justifies my rhetoric.

TITLE I

Senator YARBOROUGH will speak about the GI bill rates in title I of the bill, but as chairman of the Senate conferees, I wish to report some basic matters to the Senate in justification of the conference recommendations.

The basic GI bill rate—the educational assistance allowance rate—would be increased by 34.6 percent under the conference bill. For the veteran with no dependents, studying full time, this means an increase from the present $130 per month to $175. For a veteran with two dependents, for example, this bill will mean an increase from the present $175 to $230 if he is studying full time. The same 34.6-percent rate increase also applies to the apprenticeship/on-job-training allowance and the farm cooperative education assistance allowance.

This amount of increase represents a compromise between the 27-percent increase proposed in the August 4 House bill and the 46 percent in the Senate October 23 bill. Although there was general agreement among all the conferees that it was vital to increase allowances to provide a comparable degree of coverage of comprehensive education costs—room, board, and tuition—to the proposition covered under the Korean GI bill program, initial disagreement arose in the conference about how most accurately to compute the cost figures in order to achieve this comparability. I believe we have struck a balance which is reasonable and equitable, although the Senate conferees fought tenaciously for higher rates.

According to Office of Education statistics, the average comprehensive college education costs in 1952–53 were $718. The nine monthly payments of the $110 allowance then in effect covered 138 percent of those costs for the veteran attending a public institution. The comparable 1969–70 public education costs are $1,110, and nine $175 monthly payments will cover 142 percent of those costs; this provides somewhat of a hedge against the expected education cost inflation for the first year.

So, as far as veterans in public schools are concerned, there can be no dispute that the results of the conference are completely appropriate. With reference to veterans attending nonpublic schools, however, the results are not quite so satisfactory. For 1952–53, comprehensive education costs at nonpublic institutions were $1,219, and the GI bill payment then covered 81.2 percent of those costs. Whereas the $175 monthly allowance recommended by the conference will cover only 65.9 percent of 1969–70 nonpublic education costs of $2,391.

A very substantial mitigating factor regarding coverage of nonpublic education costs is that whereas 37 percent of Korean veterans attended nonpublic institutions under that GI bill, the proportion has dropped to 27 percent under the present program. Admittedly, this is due in part to the fact that the rates have been wholly inadequate to cover private college education costs. But it also is undoubtedly a function of the vast improvement in the quality of public higher education and the tremendous competition for admission to private colleges.

Then Senate conferees would certainly have preferred an education assistance allowance rate, which would have been more equitable across the board. A more appropriate increase, taking into consideration the proportion of veterans attending nonpublic institutions, would have been a flat 40-percent increase—to $182. This figure would have almost exactly approximated the proportion of coverage of 1952–53 education costs averaged between public and nonpublic institutions on a weighted basis, counting 63 percent of public costs and 37 percent of the nonpublic. This formula shows coverage in 1952–53 of 113 percent of the average education costs so weighted. Whereas, in order to cover a 1969–70 weighted average, counting public costs as 73 percent and nonpublic as 27 percent, an $183 allowance is required.

With regard to the vocational rehabilitation subsistence allowance, now $110 a month for a veteran who has a 30-percent or greater service-connected disability, who is taking full-time institutional study, the conferees agreed upon a $25 increase, or 22.7 percent, to $135. The disparity between the House and Senate versions was very substantial on this provision, the Senate having increased the allowance to $160 per month and the House to $127. It was recognized that this allowance is intended for living purposes since the Veterans' Administration under chapter 31 of title 38, United States Code, pays the full education and training costs for such veterans. Because these rates were last increased in 1965, a cost-of-living increment was added to overcome the 20.6-percent increase since then in cost of living, according to the most recent Consumer Price Index figure. The additional 2.1 percent provides a small hedge against inflation.

The need for a significant increase in this subsistence allowance is well documented in the following excerpts from a recent letter to the subcommittee:

I attend Baylor University as a disabled veteran seeking vocational rehabilitation.

In favor of giving additional training allowances to our class are these facts:

1. While we do receive free tuition and text books, we have to buy many supplementary books (over $100 in one education class), supplies, fees, dues, etc. not paid for by the VA.

2. The VA pays the "going rate" at the school for tutors. This in Baylor's case is $1.75. I have had to pay the difference between $1.75 an hour and $5.00 an hour for several tutors. Tutors are not easy to come by. I am 55 years old and did not complete the third year of high school during the depression.

3. Disabled veterans frequently cannot drive cars or get driver's licenses. This has the double effect of making transportation to school more expensive and causing—in my case—the purchase of many supplementary texts and professional journals that are on reserve lists or not available at the library during the hours I am on campus. There is no public transportation available after 5:30 p.m. nor on Sundays in Waco, (and many other small cities).

4. The younger Viet Nam and Korean veterans (and Cold War), are likely to be able to hold part time jobs. The reason the VA is sending me to school is that I am "unemployable." I am unable to locate part time work. . . .

5. When I started to Baylor on the VA program, Cokes were 5¢. Now they are 15¢. Bus fare was 20¢. Now it is 35¢. To change a course was $5.00 and I was billed. Now it is $10 and cash must be on the barrel head. . . .

6. Once I get thru college, I'll probably be off the VA rolls. The government will likely gain substantial taxes from me whereas now my entire income is tax free—and at government expense.

To meet these escalating needs of vocational rehabilitation trainees, the Senate conferees sought to achieve a substantially higher increase than 22.7 percent, but were unable to prevail on the House conferees.

Finally, regarding the overall rate structure, it is important to point out that despite a substantial influx of Vietnam veterans into GI bill training over the past 8 months, the absolute proportion of participation in GI bill training has increased only slightly—about 10 percent—since June of 1969. At that time, only 20.7 percent of post-Korean veterans had participated as compared with 26.5 and 25.9 percent after 36 months of operation of the Korean conflict and World War II GI bill programs, respectively.

Through November 1, 1969, 23 percent of post-Korean trainees had entered training under the present GI bill, as compared with 30.5 and 30.3 percent after 41 months of operation under the prior two programs, respectively. So actually, despite some absolute increase in the current participation rate, that rate is now considerably further behind the Korean and World War II program rates than it was last June. In fact, it is now lagging by about 33 percent.

It is the hope of the Senate conferees that participation will be greatly encouraged and expanded by the new rate schedules.

Before leaving title I of the bill, I wish to report to the Senate with regard to the new farm cooperative and private pilot training loan programs contained in sections 102 (d) and (c), respectively, of H.R. 11959 as it passed the Senate on October 23. Although the Senate conferees eventually receded on these programs, neither of which was contained in either the August 4 or December 18 House bill, we did so only after the most extended debate and consideration in the conference and after every effort was exhausted to convince the House conferees of the need for these programs. In this effort, Senator YARBOROUGH, the author of these two provisions, did valiant service. And I think it is a great credit to him that despite his very strong personal convictions regarding these programs, when he saw no glimmer of compromise from the House side on them he placed as the highest priority the welfare of all Vietnam era trainees and the need to move this bill out of conference. In return for Senate recession on these provisions, however, the House conferees agreed to hold hearings promptly on a House bill containing the Yarborough farm cooperative program to be introduced by the chairman of the House committee.

Now, I will turn to title II of the conference bill.

TITLE II

Title II of the bill will, I believe, prove to be of enduring significance for many of the 1 million educationally disadvantaged veterans who will have separated from the service in the 5 fiscal years through fiscal 1971. The provisions to which I am referring arose out of S. 2668, S. 2506, and S. 2700 which I introduced last summer. They constitute the first major programs for academically deficient and culturally and educationally deprived veterans ever enacted in a GI bill.

The greatest need for these special programs and provisions is illustrated in a great variety of ways. First, despite the slight absolute increase, described earlier, in the present GI bill overall participation rate, there is no indication whatsoever that participation by those who need education and training the most, the high school dropout veteran has increased above the level in June 1969. Then that rate was only 6.1 percent of all post-Korean veterans without high school diplomas, three times lower than dropout participation in the two prior programs.

The result of this enormous underutilization is that, based on a recent study of 114,000 men recently separated from the Army after one term, unemployment among high school dropout veterans is 9.2 percent, considerably more than twice as high as the 3.5 rate for the total population at the time these figures were compiled. And the unemployment rate for black dropout veterans—18.4 percent—is twice again as high as the rate for all dropout veterans. A remarkable and highly disturbing statistic is that among black veterans with Armed Forces qualification test scores in the three highest percentiles, the employment rate averages more than 10 percent. This demonstrates graphically that our society is letting a most valuable potential resource be dissipated.

Further indication of the disadvantages of untrained veteran dropouts, especially blacks, is provided by the study's data on postservice occupations and average earnings. These are discussed in an excellent column by Richard Harwood, entitled "Greater Commitment Needed To Assist Vietnam Veterans," which appeared in the Washington Post on March 18. Mr. President, I ask unanimous consent that this article be printed in the RECORD at this point.

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

GREATER COMMITMENT NEEDED TO ASSIST VIETNAM VETERANS

(By Richard Harwood)

At least one version of the unpublished report of the President's Committee on the Vietnam Veteran is in circulation here and it contains a poignant paragraph on the plight of the poorly educated foot soldiers who have been saddled with the burden of this unpopular war:

"They return to civilian life very much the same as when they entered active service, except that they are a bit older, perhaps more cynical and more poorly motivated for readjustment. The alternatives available to such persons are very limited."

How limited these alternatives are is reflected in some post-service studies of what happens to these young men after they come home. If they are black and have less than a high-school education, 12 per cent find themselves unemployed, a rate that is three times the national average. The rate for the same class of white veterans is also high—5 per cent.

Those among the least educated who find jobs are not made affluent overnight by a grateful society. The black veteran without a high-school diploma averages $104 a week; his white counterpart averages $120. The situation is not much different when all returning veterans are considered—the well-educated as well as the poorly educated. Their average wage is $125 a week.

The explanation is simple. Only 5 per cent of these men wind up in the desirable professional and white-collar jobs this society has to offer. Out of 105,688 ex-service men covered in a Defense Department job survey 18 months ago, only 92 became lawyers or judges; 391 went into the medical and health fields; fewer than 1,600 went into architecture and engineering.

The rest wound up in the obscure clerical and blue-collar jobs that are the lot of Middle America—in factories, on construction gangs, in record-keeping, warehousing and truck-driving.

Only 12 per cent of the white veterans with high school diplomas and only 9 per cent of the blacks go on to college. And among those who take that step the going is rough. The government gives the single veteran $130 a month to buy higher education and to support himself, a figure that was settled upon as "non-inflationary" in 1967 and that has since been eroded by a 15 per cent increase in educational costs.

When President Nixon appointed his Committee on the Vietnam Veteran in June, 1969, he said he was "shocked and surprised" at the small number of veterans—between 20 and 25 per cent—who were taking advantage of the current version of the GI bill. One reason for this, his committee has learned, is that about half of the 800,000 or so men sent back to civilian life each year are never counseled or advised of their opportunities.

Moreover, the most handicapped GIs—those with the lowest IQs and fewest educational credentials—needed more than a friendly chat and a handful of pamphlets churned out by the Veterans Administration. They need, one critic of the present system

has written, "convincing" forms of help that will enable the man on the bottom rungs of society to overcome "his cynicism by persuading him that he really does have a chance to obtain an education, acquire status, and become a productive member of the society from which he has been almost completely alienated . . . Regretfully, I find very little of this consciousness or planning in the President's Committee Report."

"Convincing" forms of help for these men will cost money and up to now there has been no suggestion whatever from the Nixon administration that it is prepared to raise the ante for returning GIs.

That was the attitude of the Johnson administration, too. It opposed efforts to provide more liberal education and training allowances in 1967 and continuing pressures from this administration to hold down costs are reported on Capitol Hill. There are strong arguments that this may be a shortsighted policy.

Stuart Feldman, a recent consultant to HEW Secretary Robert Finch on veterans problems, has written:

"Our continuing prosperity since 1945 has occurred on such a grand scale because of the trained labor force and management that the GI bill provided. The Vietnam returnees represent this same potential. The 80,000 black returnees discharged each year especially do. They are among the country's best chance to obtain black leaders. If the black veterans get an adequate education, they will provide the potential black lawyers, teachers, principals, corporate officials and technical employees the nation seriously needs if it is to become truly integrated."

The amount of money required is small as the bureaucracy measures money. What is needed is a commitment from Congress and the administration to do the right thing for people who have done the hard thing for this country since 1965.

Mr. CRANSTON. Moreover, this study shows that 10 months after service only 29.5 percent of these 1968 separatees were in school or training programs, and the figure for those using their G.I. bill benefits is only 26 percent. This is slightly higher than the overall 23 percent participation rate for the post-Korean program, but the significant factor is that almost all of the 114,000 men surveyed were 25 years old or under, and the participation rate for that same age group in the World War II program was 61 percent.

This study further shows that a veteran's likelihood of taking advantage of GI bill benefits is determined almost entirely by his preservice educational achievement rather than by his aptitude. For example, three times more veterans with some prior college experience returned to school than those who had not gone to college. Yet both groups were found to be equally intelligent.

Similarly, high school dropouts are four times less likely to take any further education or training than men who have had 2 or 3 years of college. Men of average intelligence who complete high school are twice as likely to further their education as high school dropouts with the same aptitude.

An excellent discussion of the problems and attitudes of returning black veterans appeared in the March 1970 issue of Trans-Action, and I ask unanimous consent, Mr. President, that this article, entitled "Black Veterans Return," by James Fendrich and Michael Pearson be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered. (See exhibit 1.)

Mr. CRANSTON. The new programs contained in title II of the conference bill were fully explained and justified on pages 30 through 63 of Senate Report No. 91-487, to which I would refer all those seeking specific guidance.

SECTION-BY-SECTION ANALYSIS OF TITLES II AND III

In the section-by-section analysis of titles II and III I have discussed only those provisions in which changes of substance are made in the conference bill.

Section 201. Subsections (a) and (b), which were originally contained in sections 201 (a) and (b) of the Senate version, were accepted by the House in section 201 (a) and (b) of its December 18 amendment to the Senate amendment to the bill.

Section 202. Subsection (a) was originally contained in section 2 of H.R. 6808—which passed the House on May 19, 1969—and was also contained in section 202(a) of the House December 18 amendment. The Senate accepted the House provision with the modification contained in the "unless" clause in paragraph (2) which is intended to embody the qualifying language set forth on page 3 of the House committee report on H.R. 6808—House Report No. 91-243, 91st Congress, first session, 1969.

Subsection (b) was inadvertently included in the conference bill as it was accepted by the House on March 19, 1970. This provision was originally contained in section 2(b) of H.R. 6808 and was also contained in section 202(b) of the December 18 House amendment. A concurrent resolution to correct this technical error by directing that in the enrollment of the bill this subsection be deleted will be introduced and, it is expected, passed, in the House of Representatives today. As soon as it reaches the Senate, I plan to ask unanimous consent for its immediate consideration. The House conferees agreed to recede on this provision and instead to treat this issue by the amendment contained in section 212 of the conference bill. The Senate conferees objected to this provision because of its intended effect to permit the Veterans' Administration to disregard a State law requirement that certain periods of apprenticeship or on-job training were necessary.

Section 203. Subsection (a) was originally contained in section 102(a) of the October 23 Senate amendment to H.R. 11959 and was accepted by the House in section 203(a) of the December 18 amendment.

Subsection (b), which was originally contained in section 2(c) of H.R. 6808, was contained in section 205 of the Senate October 23 amendment and was accepted by the House in its December 18 amendment.

Section 204. Subsections (a) (1) and (2) were originally contained in section 202(a) of the Senate October 23 amendment.

Subsection (a) (3) was added in conference in order to require that educational assistance allowance payments in the predischarge education program be advanced in a lump sum after the first month's payment and to permit similar educational assistance allowance advances to be made to eligible veterans pursuing training on less than a half-time basis under the regular GI bill. The required advances for PREP trainees were thought necessary to insure that trainees would receive their allowances under the PREP program in time to pay the approved charges to the school prior to the discharge of the "preveteran."

Subsection (a) (4) is substantially the same as subsection 202(a) (3) of the Senate October 23 amendment except as I shall indicate. This subsection adds two new subchapters to chapter 34 of title 38, United States Code.

Subchapter V—Special Assistance for the Educationally Disadvantaged. Section 1691. Clause 2 in subsection (b) of this section in the October 23 Senate amendment was deleted in light of assurances from the Veterans' Administration that its regulations were sufficiently flexible to permit substantial latitude to educational institutions designing college preparatory programs for eligible veterans under this provision. For example, the language regarding "supervised program work" in the original Senate measure was intended to permit approval of courses taught in other than a strict classroom setting. Under this provision in the conference bill, such a course may be part of an approvable precollege program if the college grants credit for it; and, by virtue of the "notwithstanding" provision and the new definition of full-time college training in section 206(a) of the conference bill, a full-time allowance could be received by the enrolled veteran if he was carrying 6 credit and 6 noncredit hours of courses—or their equivalent on a nonsemester semester basis—and the institution considered 12 hours or its equivalent a full-time load. If a veteran in this college preparatory program is fully occupied in the education program designed by the institution, in accordance with VA regulations permitting maximum flexibility, it is intended that he should be able to receive a full-time educational assistance allowance.

Section 1692 provides for payment of a special supplementary assistance allowance to a veteran enrolled in a post-secondary course at an educational institution on a half-time or more basis in order for him to purchase individualized tutoring services essential to correct a marked deficiency in a subject which is part of prerequisite or indispensable to his satisfactory pursuit of an approved program of education at that institution. When the educational institution properly certifies to the Veterans' Administration as to the essentiality of the tutorial assistance to correct such a marked deficiency, the qualifications of the tutor and the reasonableness of his charges, the veteran is entitled to receive a supplemental payment to his regular educational assistance allowance to purchase those services. The tutor could

either be arranged for by the veteran, the school or perhaps a veteran's voluntary service group on the campus, as long as the institution makes proper certification.

Regarding section 1692, the House conferees believed strongly that, as with the modified PREP program in section 1695 et seq., payments should be made to the individual veteran under the GI bill rather than directly to an educational institution on the veteran's behalf, as was provided for in the Senate October 23 amendment. Also, the conferees agreed that the inclusion of remedial or refresher courses in this section was unnecessary in light of their coverage under the "notwithstanding" provision, permitting counting noncredit courses for payment of educational assistance allowance purposes, which is contained in section 206(a) of the conference bill; and that such an allowance was not needed for students at lower than a post-secondary level in light of the generally free or very low cost education available to them.

The words "marked deficiency" are intended to limit the tutorial assistance to veterans in academic difficulty for the purpose of preventing them from failing courses and permitting them to make satisfactory progress in them, rather than permitting them to achieve academic excellence or merely improve already satisfactory academic performance. For example, supplementary assistance would be available for a veteran needing tutoring in a subject prerequisite to taking a college credit course needed for graduation; a veteran needing tutoring in such a credit course itself; or a veteran needing tutoring in language skills, such as for a veteran of foreign descent, in order to pursue satisfactorily any college-level work taught in the English language.

The tutorial assistance may be provided by a qualified, certified tutor at the same time to two or three veterans requiring such assistance. But the clear purpose of the provision is that individual, special tutorial attention be available to the academically deficient veteran, and, therefore, no larger groups should be approved.

The tutoring allowance was limited to $50 per month for a total entitlement period of 9 months during a veteran's GI bill training. This should allow about 20 hours of tutoring per month at present going rates for undergraduate tutors—$2.50 per hour. It is recognized that some veterans may require more than 20 tutoring hours per month for more than 9 months during the period of their post-secondary education. The conferees felt, however, that in the case of a new, untried program it was more prudent to begin at a somewhat lower than optimum level of benefits and, after some experience in administering the program has been acquired, review the sufficiency of the benefits and entitlement, determine how carefully schools are carrying out their certification requirements, and whether there are abuses under this new program. Toward this end, the Veterans' Administration should consider the desirability of providing by regulation a reasonable limitation on the monthly tutorial hours for which one tutor can be certified by the educational institution.

Section 1693 contains the basic provision which was contained in section 1694 in section 202(a)(3) of the Senate October 23 amendment. The Senate receded on the proposed section 1693 contained in section 202(a)(3) of the Senate version, regarding grants and contracts for special veterans educational programs. The conferees were generally in agreement as to the desirability of these types of special educational programs for educationally disadvantaged or academically deficient veterans, and the agreed-upon conference language for section 1690 includes a specific encouragement to educational institutions to develop varieties of special educational assistance programs for veterans. However, the House conferees believed that the Veterans' Administration's general method of operation was not well suited to a grant or contract approach for such programs. Rather, it was felt that the VA format of individual veterans' entitlements should be maintained, and that many of the programs which the section 1693 provision would have authorized were covered under sections 1691, 1692 and the PREP program in section 1695 et seq., as they were modified in conference, as well as by existing VA contract authority under section 213, title 38, United States Code.

Subchapter VI—Predischarge education program. This program is substantially the same as, and even somewhat expanded over, the original provision in the Senate October 23 amendment. Three adjustments were made to tighten the program administratively and accord more with the philosophy of the House conferees. First, as with the special supplementary assistance allowance, payments would be made directly to the individual "preveteran" under the GI bill rather than directly to an educational institution on the veteran's behalf, as was provided for in the Senate October 23 amendment. Payments would be gaged to cover the cost of tuition and fees—including all reasonable admissions costs and those for determining suitability for enrollment—and necessary schoolbooks and supplies up to $175 per month. Under section 204(a) of the conference bill, these payments would be required to be advanced for the full term to the "preveteran" after the first month's payment.

The new subsection (b) in 1696 is intended to provide maximum flexibility to educational institutions in designing PREP training, just as with the college preparatory program in section 1691(a)(2) and (b), except that the language of section 1696(b) recognizes that there are unlikely to be any "same" programs in which "similarly circumstanced nonveterans" are enrolled and so leaves discretion to the Veterans' Administration to compute allowable rates in accordance with charges for similiar programs, a legislative gloss already placed on the present section 1682(b), on which this subsection was modeled. The reference in section 1696(a) to "in section 1682(b) of this title" should read "in subsection (b) of this section," and this will be rectified by authority of the concurrent resolution I alluded to earlier.

The PREP program contemplates that participating educational institutions will be able to recoup the full, reasonable costs entailed in providing predischarge education or training. Although it is recognized that some institutions may not generally charge tuition or fees for regular courses, it seems unreasonable that such institutions would be expected to provide special programs, such as PREP, without charging enrolled students appropriately.

Second, the role of the Commissioner of Education is eliminated, although the Administrator may, of course, utilize the resources of the Office of Education in establishing regulations.

Third, as insisted upon by the House conferees, the exemptions from present sections 1673(d) and 1675, which were in section 1697 in the Senate October 23 amendments, have been eliminated so as to exclude proprietary institutions from PREP participation unless the requirements of those sections are met; and correspondence courses are explicitly excluded in light of the availability to servicemen of the excellent U.S. Armed Forces Institute correspondence program.

On the other hand, the PREP program in the conference bill permits any serviceman after 180 days of active duty to enroll in an elementary or secondary school level program without charge to the regular GI bill entitlement under present section 1661, in the same manner as is provided for veterans under section 1691(a)(1), and to receive an educational assistance allowance computed to cover the costs of such education up to $175 per month.

It is important to stress that section 1697, which is derived from section 1698 of the Senate October 23 amendment, contemplates that educational and vocational guidance will be provided by the Veterans' Administration, through contract with the educational institution providing PREP or otherwise, at both ends of PREP programs: first, to counsel and assist the serviceman in enrolling in a PREP program and, second, at the end of the PREP program to insure that the then PREP'ed "preveteran" will be motivated and able to carry out the purpose set forth in section 1695—that he then go on to pursue future education or training under the GI bill.

Section 205, which was originally contained—with somewhat different language—in section 2(d) of H.R. 6808, was contained in section 206 of the Senate October 23 amendment and was accepted in section 204 of the December 18 House amendment.

Section 206. Clause (3) to be added to the present section 1684(a) of title 38, United States Code, was originally contained in section 3(c) of H.R. 11959 as it passed the House on August 4. It was accepted in section 203 of the Senate October 23 amendment. Clause (4) and the "notwithstanding" provision were originally contained in section 203 of the Senate October 23 amendment. The

"notwithstanding" provision was accepted in section 206 of the December 18 House amendment. The House conferees receded on clause (4).

Section 207 was originally contained in section 208 of the October 23 Senate amendment, and the House receded on that provision. However, as to the implementation of this provision, see the discussion under section 301 below.

Section 208, which was originally contained in section 3 of H.R. 6808, was contained in section 207 of the October 23 Senate amendment and was accepted in section 207 of the House December 18 amendment.

Section 209, which was originally contained in section 3(c) of H.R. 6808, was contained in section 208 of the House December 18 amendment, and the Senate receded on this provision with the same amendment added to section 202(a) of the conference bill.

Section 210, which was originally contained in section 3(d) of H.R. 6808, was contained in section 209 of the House December 18 amendment, and the Senate receded on this provision. Regarding section 205 in the House December 18 amendment, applying the same Philippines peso treatment to chapter 34 as section 210 of the conference bill applies to chapter 35 and originally contained in section 2(e) of H.R. 6808, the House receded on this provision in view of the Senate's view that any such restriction applied only to those overseas veterans residing in the Philippines was unfairly discriminatory.

Section 211, which was originally contained in section 4 of H.R. 6808, was contained in section 209(1) of the Senate October 23 amendment and was accepted in section 210 of the House December 18 amendment.

Section 212 was added in conference as a substitute for the amendment to section 1673—which through inadvertance appears in section 202(b) of the conference bill. This provision was originally contained in section 2(b) of H.R. 6808 and was contained in section 202(b) of the House December 18 amendment. The addition of "and supervised" to the present section 1777(a) is intended to make clear that, in order to be approved for GI bill training, an on-the-job training program must have genuine on-job supervision of the trainee by a qualified instructor.

Section 213, which was originally contained in section 5 of H.R. 6808, was contained in section 209(2) of the Senate October 23 amendment and accepted in section 211 of the House December 18 amendment.

Outreach services program. Section 214 was basically contained in section 204 of the October 23 Senate amendment and the House receded on this provision with certain amendments. Provisions from section 241 of the original Senate provision are contained in sections 241 and 242 of the conference bill.

Section 241. Clause (1), regarding written advice of benefits at discharge, especially to dropouts, expands on the clause (1) contained in section 241(d) in the original Senate provision and generally codifies present Veterans' Administration practice.

Clause (2), regarding distribution of full information on VA and other benefits, is substantially the same as clause (1) in the original Senate provision.

Clause (3), regarding provision of aid and assistance to veterans, eligible dependents and Armed Forces members, is substantially the same as clause (3) in the original Senate provision. It also includes the crux of subsection (4) in the original Senate provision as well as the basic personal-interview requirement contained in clause (2) of that provision.

Clauses (3), (4), and (6) in section 241(d) in the original Senate provision were not retained, essentially because they are subsumed under other included provisions: as to clause (3), clauses (1) and (3) in section 243 in the conference bill include its basic thrust; as to clause (4) it is subsumed under aid and assistance in clause (3) in the conference bill; and as to clause (6), its substance is implicit in section 244 in the conference bill requiring an annual report to Congress.

Section 242. Subsection (a) is virtually identical to the original Senate section 241(a), except that the addition of the parenthetical carriers over the thrust of subsection (b) in section 241 in the original Senate provision. The words "need for" were inadvertantly omitted from the parenthetical after "including their", and this will be rectified by authority of the concurrent resolution I alluded to earlier. The new subsection (b) in section 242 of the conference bill was added to provide clear authority for the use of special telephone tielines to provide outreach services to more remote cities and communities.

Section 243 is substantially the same as section 242 of the original provision except that clauses (1) and (2) of the original Senate provision are merged in clause (2) of section 243 in the conference provision, and clause (5) of the original Senate provision was not included since basic contract authority is already contained in section 213, title 38, United States Code.

Clause (1) of section 243 in the conference bill provides clear recognition of the Veterans' Administration's responsibility to negotiate with and oversee the Department of Labor's veterans' employment and training functions and carries over the thrust of clause (3) in section 241(d) in the original Senate provision.

Section 244 carries over the thrust of section 243 in the original Senate provision and subsumes the followup requirements contained in clause (6) of section 241(d) in the original Senate provision.

The Senate conferees receded with respect to the relocation assistance allowance provision contained in section 241 (e) of the Senate provision. The House conferees believed that such a measure was more appropriate for inclusion in general manpower and training legislation. A general relocation assistance provision is contained in the administration's proposed comprehensive manpower bill, S. 2838, section 101(8), currently pending in the Employment, Manpower, and Poverty Subcommittee. However, there was agreement that job assistance for veterans and identification of veterans special employment and training needs was highly desirable and that the budget of the veterans employment service requires substantial expansion. And I am currently preparing amendments to S. 2838, in cooperation with that bill's sponsor, Senator JAVITS, to accomplish these and other purposes.

Overall, the veterans outreach services program which would be established by section 214(a) of the conference bill represents a clear congressional determination that a more extensive and intensive program of veterans' benefit counseling and outreach efforts is badly needed. Such a program can be of great service, not only to the educationally disadvantaged veteran, but also to any veteran who is unclear about the extent of his entitlements and where his future lies.

As the Senate report makes clear, the present VA USVAC program is not doing the necessary job, largely because of unreasonable budgetary and personnel restrictions imposed upon the VA by the Bureau of the Budget. A hopeful approach is represented by the Veterans' Administration's recent steps to cooperate with the Department of Labor, the California Department of Human Resources, and the County of Los Angeles in the establishment of a Veterans Service Center in the East Los Angeles, Calif., community in order to meet the needs of Mexican-American veterans residing in that area. Such intergovernmental and interagency programs may be an excellent method of effectively carrying out the new outreach functions.

The overall cost estimate of the bill for fiscal year 1971 does not include a figure for this program, because it is expected that the Veterans' Administration will proceed to survey its present contact and outreach facilities and develop plans for expanding these services in line with the provisions of this new subchapter. It is then expected that the Veterans' Administration will promptly submit to the appropriate congressional committees these plans and a recommendation for an expanded budget for this program in fiscal year 1970.

Section 215, which was originally contained in sections 6 and 7 of H.R. 6808, was contained in section 212 of the December 18 House amendment, and the Senate receded on this technical change.

TITLE III

Section 301. Regarding the effective date of the rate amendments in title I, the Senate October 23 amendment was retroactive to September 1, 1969, 7 weeks prior to passage, and the House actions were both prospective by about 2 months. The February 1 date retains almost exactly the same 7-week retroactivity originally provided for in the Senate October 23 amendment and should permit coverage of most of the second semester of the 1969–70 school year for most trainees.

Regarding sections 204(a), 206, 210, and 213, it is understood by the conferees that the Veterans' Administration will

be able to implement the immediate effective date as to educational assistance allowance checks issued in May for April entitlements, assuming the bill is not signed until April. It is recognized, however, that certain administrative difficulties may be unavoidable and that some retroactive payments may have to be made.

Regarding section 207, the original Senate provision was made effective July 1, 1970, by section 210 of the October 23 Senate amendment. It is understood that the Veterans' Administration will be able to implement this provision fully on a current basis in May 1970 and that at that point it will provide retroactive notification for any eligible person who may have been missed between the effective date and that time.

Finally, regarding the PREP program in section 204(a) of the conference bill, it is recognized that that program cannot be implemented until the Veterans' Administration issues the regulations required under section 1696(a); it is understood, however, that those regulations will be promulgated, after consultation with the Secretary of Defense, at the earliest possible date.

EXAMPLE OF TITLE II BENEFITS

Before concluding discussion of title II of the bill, I think it would be most helpful to an understanding of the scope and sweep of the new special benefits and programs established in that title if I traced how they might affect one hypothetical veteran exposed to all of them.

Let us take a Mexican American from east Los Angeles who dropped out of high school after the 10th grade and was drafted at age 19. After he completes his 6 months basic training, he is approached by a college counselor under PREP who convinces him of the importance of continuing his schooling and he enrolls under PREP in a special accelerated program at a nearby private college to assist him in securing credits toward his high school diploma. He makes significant progress but is held back by his lack of facility in spoken and written English.

He then is sent to Vietnam; and after his tour, while awaiting discharge, is again recruited into a special 4-month college preparatory PREP program run by a nearby community college on the base where he is stationed. He shows such sufficient promise that the school suggests he enter their special college preparatory program for one semester, after which, should he perform satisfactorily, he would be granted an equivalency certificate and enrolled in the regular college program. However, during the end of the PREP program he becomes disillusioned due to his English language deficiencies, and fails to follow through despite the urging of the counselor working with the program that he go on to the college preparatory program.

He is discharged, after receiving the basic Veterans' Administration packet of materials about his benefits, to which, unfortunately, he is in no frame of mind to pay attention, and he returns home to East Los Angeles to search for a job. But to no avail; his lack of a high school diploma, his language deficiency, and his overall alienation and frustration at this point make him a very unsalable commodity on a job market already oversupplied with veterans and others with his same limitations.

One day in his 20th year, 6 months after his discharge, after having just exhausted his entitlement to veterans unemployment compensation, he is visited at home by another Chicano whom he remembers from his high school class and who is now enrolled in the nearby State college, having recently returned from the service. He is employed part time in the East Los Angeles Veterans Service Center, performing the outreach activities assigned to the VA in the new legislation. He empathizes with our veteran and vice versa; they share their common high school, Army, and Vietnam experiences; and before long our veteran has applied to the special veterans preparatory program at UCLA. There he takes sufficient psychology and sociology credit hour courses and enough remedial and refresher math and English courses to qualify for a full-time GI bill allowance under the new full-time definition and noncredit/credit provision. He also has some time available to work part time to help out with his family's finances.

After one semester, he is granted a G.E.D. equivalency certificate and enrolles in UCLA, where he begins to use his 36 months of regular GI bill entitlement, all prior benefits not having been charged against that entitlement. He carries the minimum number of hours to qualify for a full-time GI bill allowance, for he is uncertain of his ability to succeed. Because his English is still weak, UCLA certifies to the VA the essentiality of correcting that deficiency as prerequisite to his satisfactory performance in college undergraduate work, and secures for him an excellent tutor for 5 hours per week, whom he pays with his supplementary assistance allowance from the VA. He begins to improve markedly in the overall stimulating college environment—he has moved onto the campus—and at the end of his first semester, after 4 months of tutoring, his classwork has picked up and he has earned a "B" and three "C's" in his college course.

He then proceeds through college rather uneventfully except when, during the last semester of his senior year, he falls in danger of failing a European history course required for graduation. The university again assigns him a tutor, and he receives a supplementary assistance allowance from the VA for 3 more months, enabling him to pass the course and graduate from UCLA. He is then hired by IBM in a special junior executive minority hiring program.

Now, of course, it is highly unlikely that any one veteran would require or take advantage of all these special benefits; nor is it our intention that the assistance be quite so intensive in most cases. But all of this could happen, and who will say that producing this 24-year-old young man with a college degree from UCLA with a job and a starting salary of $8,500 per year, with a fine future and with self-esteem and dignity was not well worth all the effort and the relatively small extra Federal investment in his and our future. That total VA expenditure for this achievement, spread out over 6 years, was $8,580, $6,300 of which was for the 36 months of his regular GI bill entitlement. The total cost breaks down as follows:

Program, rate, and total cost	
Six months special precollege program under PREP at $100 a month	$600
Three months college preparatory PREP prior to discharge at $150 a month	450
Outreach worker efforts at $2.50 per hour for 2 hours	5
Regular GI bill under special $175 a month for college preparatory program at UCLA, 5 months	875
Regular GI bill, $175 a month for 36 months	6,300
Special supplementary assistance allowance, $50 a month for 7 months	350
Total	8,580

If these new statutory authorities are to have any real impact, it is up to the junior colleges, colleges, and universities of our land—public and private—to develop these special veterans programs—under PREP, the college preparatory on-campus provision, the noncredit/credit provision and the special supplementary assistance provision—as well as cooperating closely with the local VA outreach services program.

There has already been recognition of the potential of these programs in the junior college community. The Carnegie Corp. recently granted the American Association of Junior Colleges $293,000 to extend and expand community college services to military personnel and veterans.

Mr. President, the AAJC/Carnegie program is described in a December 14 press release, which I ask unanimous consent be printed in the RECORD at this point.

The AAJC effort is an important start, but a major nationwide effort is urgently needed.

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

WASHINGTON, D.C., December 12.—G.I.'s will receive assistance in making education and career plans under a new $293,000 national program announced today by the American Association of Junior Colleges.

The program, funded by Carnegie Corporation of New York, will concentrate on extending and expanding the services of junior and community colleges for military personnel prior to and after separation from the services, according to Edmund J. Gleazer, Jr. executive director of AAJC.

In general, the program will aim at increasing the employability or educationability of military personnel through predischarge training programs, and will open doors to community colleges following separation, Gleazer said. He pointed out that most two-year colleges already have both academic and vocational programs to meet needs of returning servicemen, but that military personnel are often not aware of the available opportunities.

AAJC will work closely with the Department of Defense and the U.S. Office of Education in developing necessary liaison with

military separation centers, and with member community colleges in strengthening education and training programs. Project Transition, a Defense Department program for service people, provides a base for organizing of the AAJC effort.

"More than 1,000 community colleges are now operating," said Gleazer, "and most of these institutions offer a wide variety of programs through which veterans may further their education and improve their chances for rewarding jobs or advanced studies. Low costs and flexibility of admissions also add to their appeal for returning servicemen."

Under the Carnegie grant, AAJC will establish a national office to coordinate the program and will engage regional consultants to act as program expediters in assisting individual community colleges with program development. A series of regional conferences will be held to identify common problems and to effect cooperation among military commanders, military separation officers and college officials. The project will also include development of publications to guide servicemen in making appropriate choices, and to assist colleges in the developing and funding of new programs.

Gleazer pointed out that over three million men have been separated from the military during the Vietnam era—and that about 900,000 men are being discharged yearly. "While the military separation centers and the Veterans' Administration, as well as other government agencies, have tried to ease the transition from service to civilian life, the job is large, the job is personal, and all the resources of the nation are needed to bring it off," he added.

"The community colleges of the nation constitute one of the resources that has not been fully utilized. We believe the new AAJC program will be a step toward bridging an important gap between military and civilian life."

Mr. CRANSTON. The AAJC effort is an important start, but a major nationwide effort is urgently needed. At the same time, a major commitment will be needed from the Department of Defense to establish participation in PREP as a major national priority so that military base commanders will accord maximum cooperation to schools wishing to establish PREP programs.

CONFERENCE RECAPITULATION

In summary, Mr. President, in the conference negotiations, I think it can fairly be said that the Senate conferees were true to the mandate afforded by the 77-to-0 vote in the Senate on October 23. The Senate conferees prevailed in whole or with minor modifications on six of the 19 differences between the versions—Nos. 7, 8, 10, 11, 12, and 13—the four rate differences and the effective date—Nos. 1 through 4 and 19—as well as three other provisions, were compromised—Nos. 14, 15, and 16—the Senate conferees receded from three provisions—Nos. 5, 6, and 9—and accepted two House provisions. These differences and a brief outline of them are shown on a chart, H.R. 11959, "schedule of differences and conference action," which I ask unanimous consent, Mr. President, be printed in the RECORD at this point.

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

H.R. 11959—SCHEDULE OF DIFFERENCES AND CONFERENCE ACTION

Provision	Senate	House	Conference Action
1. Vocational rehabilitation subsistence allowance rates.	46 percent increase for single veteran w/no deps. from present $110 to $160/month for full-time training. Increases in other columns are straight 46 percent in all categories.	18 percent increase for single veteran w/no deps. from present $110 to $130/month for full-time training. Increases in other columns are straight 18 percent in all categories.	22.7 percent increase; to $135 per month Straight 22.7 percent increases in other columns.
2. Educational assistance allowance rates for veterans (including correspondence courses and flight training) and war orphans, wives and widows.	46 percent increase for single veteran w/no deps. from present $130 to $190/month for full-time training. Increases in other columns are based on flat dollar increase equal to amount of increase in col. 1 plus 10 percent cost of living increase in dependency add-on.	31 percent increase for single veteran w/no deps. from present $130 to $170/month for full-time training. Increases in other columns are straight 31 percent in all categories.	34.6 percent increase; to $175 per month. Straight 34.6 percent increases in other columns.
3. Farm cooperative educational assistance allowance rates.	46 percent increase for single veteran w/no deps. from present $105 to $153/month for full-time training. Increases in other columns are straight 46 percent in all categories. No part-time rates provided.	31 percent increase for single veteran w/no deps. from present $105 to $138/month for full-time training. Increases in other columns are straight 31 percent in all categories, including part-time rates.	34.6 percent increase; to $141 per month. Straight 34.6 percent increases in other columns.
4. Apprenticeship monthly training allowance rates.	46 percent increase for single veteran with no dependents from present $80 to $116 per month for full-time training. Increases in other columns are straight 46 percent in all categories.	31 percent increase for single veteran with no dependents from present $80 to $105 per month for full-time training. Increases in other columns are straight 31 percent in all categories.	34.6 percent increase; to $108 per month. Straight 34.6 percent increases in other columns.
5. Farm cooperative program stressing on-farm training.	Provision similar to Korean GI bill farm cooperative program with no part-time rates.	No provision	Senate recedes.
6. Flight training loan program for private pilot's license.	Provision for loans up to $1,000 or 90 percent of regular charges for private pilot's license course.	do	do.
7. Expansion of special assistance for educationally disadvantaged.	Provision substituting new subchapter in lieu of present § 1678 (special training for educationally disadvantaged) expanding GI bill payment without charge to entitlement to all pre-college academic training (including elementary) regardless of where offered and making more flexible measurement of full-time training in such courses.	do	House accepts modified Senate provision (sufficient flexibility of measurement of courses exists under present V.A. law and regulations).
8. Special supplementary assistance allowance.	Provision for supplementing regular GI bill allowance payments for remedial, tutorial counselling or other special supplementary assistance up to $100 per veteran/per month.	do	House accepts modified Senate provision (remedial and refresher courses adequately covered under other provision already accepted by House—section 206(a) of bill—; tutorial allowance paid as supplement to veteran's regular GI bill allowance—not directly to school—limited to $50 per month with a 9 months total period of entitlement when college or post-secondary technical school certifies to VA that tutoring is essential to correct marked deficiency in subject required as part of prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved education program).
9. Contracts and grants for special veterans' programs.	Provision authorizing appropriation of $15 million for fiscal year 1970 and $30 million for fiscal year 1971 for VA grants or contracts with educational institutions to plan and develop and in some instances conduct special educational programs for eligible veterans. Provision authorizing VA contracts and grants for private nonprofit organizations to conduct outreach activities (Diff. 12.).	do	Senate recedes (covered in part by provisions in 7 and 8 above and 10 below and existing V.A. authority).
10. Predischarge Educational Program (PREP).	Provision for payments up to $150 per month per veteran to educational institutions offering "pre-veterans" education or training prior to discharge to encourage them to prepare for further education under GI bill.	do	House accepts modified Senate provision (payments up to $175/month or cost of fees, tuition, books and supplies, whichever lesser, made directly to any "pre-veteran"—not to school directly—without charge to basic 36 months entitlement, after 6 months on active duty, with advance for full program required with second month's check).
11. Measurement of full-time college undergraduate courses under chs. 34 and 35.	Provision to liberalize 14-hour requirement for full-time study (and part-time requirements administratively) in general accordance with college's definition of full-time study.	do	House recedes.

H.R. 11959—SCHEDULE OF DIFFERENCES AND CONFERENCE ACTION—Continued

Provision	Senate	House	Conference Action
12. Veterans outreach services program.	Provision for expanded and reoriented VA outreach programs in local communities, employing former educationally disadvantaged veterans, to locate educationally disadvantaged veterans and advise them of their entitlements to GI bill and other benefits and assist them in gaining employment (including payment of relocation allowances).	do	House accepts modified Senate provision (basically shortened but not altered substantively except for addition of authority—already exercised to limited extent by VA—to use special telephone tie-lines to provide outreach services, and deletion of relocation assistance allowance provision believed more appropriate for inclusion in overall manpower bill).
13. Notification of children of eligibility under ch. 35.	Provision to require VA to notify eligible war orphans and children of totally disabled veterans of eligibility for GI bill benefits by their 13th birthday.	do	House recedes.
14. Bar to approval of bartending, personality development, or nonspecialized sales training courses for chs. 34 and 35.	No provision	Provision to add such specific prohibitions to ch. 34 for veterans in addition to existing bar against vocational or recreational courses; House report language permits nonspecialized sales management course to be approved if it can show placement of more than half its graduates in jobs. Provision to revise ch. 35 specific approval bars in present law to accord with proposed ch. 34 language, deleting present bar against dancing courses.	Senate accepts modified House provision (incorporating in provision House report language on exceptions for non-specialized sales management courses).
15. Apprenticeship limitation	do	Provision to prohibit State approving agency approval of apprenticeship training when VA judges trainee has achieved journeymanship level of capability regardless of State law determination to contrary.	Senate accepts modified House provision.
16. Philippines education payment	do	Provision to authorize 50 cents on the dollar payment of allowances to veterans residing in Philippines (including Old Philippine Scouts) and such veterans' war orphans, wives, and widows residing in the Philippines.	Senate accepts House provision on ch. 35 House recedes on ch. 34 provision.
17. Nonduplication of Federal benefits law repeals	do	Provision to repeal provisions of Public Health Service Act and Higher Education Act of 1965 (added in 1968) which are void as a result of modification of nonduplication bar in both versions of H.R. 11959.	Senate recedes.
18. Less than part-time training for war orphans, wives, widows under ch. 35.	do	Provision permits less than half-time training (now prohibited by subsec. (c) of sec. 1732 which is deleted) for war orphans, wives, and widows under ch. 35 and computes payments for such training on the basis of the lesser of (A) the cost of tuition and fees or (B) $170—the amount proposed in the House bill for full-time training.	Do.
19. Effective date:			
(a) Rates	Feb. 1, 1970	1st day of 2d calendar month beginning after date of enactment.	Feb. 1, 1970.
(b) Notification of children's eligibility (diff. 13).	July 1, 1970 (diff. 13)	No provision	Upon enactment.
(c) Farm cooperative: savings clause.	1st day of 3d calendar month after date of enactment (diff. 5).	do	Senate recedes.
(d) Other provisions			Upon enactment.

Mr. CRANSTON. Mr. President, the total fiscal year 1970 and 1971 estimated costs of the conference bill are as follows:

COSTS FOR CONFERENCE REPORT ON H.R. 11959

[In millions of dollars]

	January 1, 1970	Fiscal year 1971
Title I (Effective February 1, 1970):		
Chapter 31	3.0	5.9
Chapter 34	117.8	239.0
Chapter 35	10.5	22.4
Subtotal	131.3	267.3
Title II (Effective May 1, 1970):		
Tutorial assistance	.6	3.6
Ancillary flight training	(1)	.6
PREP	(1)	1.0
Full-time college measurement	.2	1.4
Nonduplication of benefits	.5	2.9
Philippines peso (savings) Chapter 35 only	(.2)	(1.3)
Subtotal	1.1	8.2
Grand total	132.4	275.5

[1] Nominal.

Mr. President, it would be a singular oversight if I did not recognize the invaluable assistance in drafting, analyzing, and revising the conference bill and all of the other bills, the provisions of which it now contains, on the part of Hugh Evans of the Senate Legislative Counsel's Office, and the fine cooperation and technical assistance throughout this long process of Alfred Bronaugh and Charles Johnston, Assistant General Counsel and Deputy Assistant General Counsel, respectively, of the Veterans' Administration.

The counsel for the Veterans' Affairs Subcommittee, Jon Steinberg, contributed immensely to the entire effort in a remarkably creative, dedicated, and effective way. His loyal assistants, Marian Mertens and Bette Noble, put in many early and late hours, too, for which I am most grateful.

Finally, I wish once more to express my appreciation for the leadership and assistance of Chairman TEAGUE and the House committee staff director, Oliver Meadows, who despite many years' work on improving the GI bill were able to bring to our deliberations a singular receptivity to new ideas and approaches. And, again, I thank Senator RALPH YARBOROUGH, chairman of the Labor and Public Welfare Committee, and all the members of that committee.

Mr. President, I recommend strongly to my colleagues that they agree to the conference report.

EXHIBIT 1

BLACK VETERANS RETURN

(By James Fendrich and Michael Pearson)

"In every period of historical crisis there are groups, occupations and classes who are 'accidentally' located in the nutcrackers of history. Such groups experience in extreme form all the cross-pressures, tensions and contradictions of a society in the process of tearing itself apart."—Joseph Bensman

Black veterans of Vietnam now number well over 100,000 men, and their ranks are growing every day. Their presence in the racially polarized United States is causing a good deal of nervous apprehension in some quarters, and not a little gleeful anticipation in a few others. The reasoning is the same in both cases: black veterans are assumed to be as alienated from American society as other young blacks, if not more so; and when push comes to shove, as many Americans on both sides of the color line believe it inevitably will, then the black veterans—trained, hardened and glamorized by the experience of combat—will naturally assume leadership in the racial struggle.

The analogy, of course, is the Algerian war of liberation against the French. In countryside as well as city, the Algerian leadership cadres were drawn from among those men who had served in French forces during World War II, and in Indochina. So too in America, it would seem only reasonable to suppose that leadership of an insurgent black movement would pass to men who, if they had gotten nothing else out of the Vietnam War, had at least received a (for once) truly relevant education.

Many people will probably dismiss the foregoing as alarmist nonsense, or wishful nonsense, which is often hard to distinguish from the alarmist variety. Most writing on radical social movements has suggested one of two answers to the question of where one should look to find the alienated core of activists that will provide the movement with its most dedicated leaders and followers. The first answer is psychological: leaders and followers are thought to be drawn from the "true believers," "misfits," "deviants," "marginal men" and other personally unstable members of the society. The second answer, of course, stresses the class basis of participation. The early Marxists emphasized the industrial proletariat as the major source of activism, but later theorists, looking at the experience of Third World countries, pointed to the cities' lumpen-proletariat and the peasants as the most promising recruits, led by disaffected or relatively deprived bourgeois.

All of these interpretations provide fruitful insights into the dynamics of leadership and participation in radical social move-

ments. We would simply like to suggest another line of investigation here, one that examines a particular social grouping within a social class, but a group whose members are subject to tremendous structural strains in a time of rapid social change. Few would deny that black members and veterans of the armed forces of this country constitute such a group.

Until recently, the black community placed high value on joining the military; it was an investment in upward mobility. The military was thought to be the most colorblind institution in white society, offering a way of life in which a man was evaluated and rewarded for his achievements alone. Then, not so long ago, values and beliefs began to emerge in the black community that conflicted with those that had supported military service. Black spokesmen excoriated the war in Vietnam. Military virtues came under heavy fire from all segments of the society. National leaders close to the civil rights movement pointed to the devastating distortion of national priorities allegedly brought about by the military industrial complex. In Vietnam itself, blacks did not fail to notice that they were suffering a disproportionate number of casualties, a function of the fact that black soldiers stood a much better chance of being sent into combat than whites did. Black leaders back home tasted the bitterness of seeing their people fighting for a so-called democracy abroad while democracy had not yet been realized in their own lives. In 1967 Martin Luther King spoke out with eloquence:

"We are taking the young black men who have been crippled by our society and sending them 8,000 miles away to guarantee liberties in Southeast Asia which they had not found in Southwest Georgia and East Harlem. So we have been repeatedly faced with the cruel irony of watching Negro and white boys on TV screens as they kill and die together for a nation that has been unable to seat them together in the same school. So we watch them in brutal solidarity burning the huts of a poor village, but we realize that they could never live on the same block in Detroit."

Evidence of the strain produced on the black soldier could be found everywhere. Reenlistment rates, once a source of pride and proof of opportunity for blacks, dropped by 50 percent between 1966 and 1967. In R & R (rest and recreation) areas in Southeast Asia, there have been repeated outbreaks of racial hostilities among the troops, and similar conflicts have plagued training camps in the States, especially those of that paragon of esprit de corps, the marines. Here and abroad there have been attempts to organize black power groups within the services.

Within the black community at home, opinion surveys such as Gallup's reflect increased ambiguities about black participation in the armed services. In 1966, 35 percent of American blacks opposed the war in Vietnam because they felt they had less freedom to fight for; in 1969 the proportion was 56 percent. Today, by a margin of two to one, blacks feel that their sons and relatives are fighting a disproportionate share of the war. Seven out of eight believe that Vietnam costs are hurting the war on poverty at home. Given this climate of opinion, it is little wonder that a large percentage of black soldiers have decided to leave military service.

Yet when a young black man is discharged, he is exposed to new sources of strain. After having served the military as best he could, he will doubtless have evolved a set of expectations of rewards and recognitions due him as a veteran. However unrealistic these expectations may be, the second-class citizenship that awaits him will be real enough. The black veteran returns to a society that is racist by its own admission, a society, furthermore, that is unwilling to reform itself even to the extent recommended by its own presidential commissions—unless the recommendations concern new ways of controlling civil disturbances. Moreover, although the data are incomplete, it appears that black participation in veterans' benefits is much lower than their participation in similar benefits after World War II and Korea. Such being the conditions of the blacks' rediscovered civilian status, one is surely justified in asking whether these conditions aren't likely to promote exceptionally high levels of alienation among black veterans, as well as strong identification with the most militant aims of the black power movment.

HOW ALIENATED?

The purpose of this study was to explore the independent variables associated with alienation among black veterans. We wanted to define the correlates of alienation first in the experience of blacks in the armed services, then in their experiences in adjusting to civilian life and finally in certain indicators of weak or strong social controls operating on them.

The data were collected during the fall of 1968 by interviewing a random probability sample of 199 black veterans who lived within the Jacksonville, Florida metropolitan area and who had been discharged from active military service since January 1, 1963.

Because of the unique difficulties in sampling and interviewing black veterans, we arranged for the cosponsorship of the Jacksonville Urban League. Black veterans were hired and trained to complete the enumeration: 25 pilot interviews under field conditions and the 199 cases used in this investigation. Before going into the field, our way was prepared by a local television station, two radio stations and the black weekly newspaper, which explained the general objectives of the study to the black community.

First, however, we had to weigh the truth of our assumption that black veterans are indeed alienated men. Black alienation here means, not political apathy, but an active rejection of white institutions and values, as well as support for those beliefs and representatives of the black community that encourage sentiments of black nationalism and separatism. We considered alienation to be high when a man expressed distrust in white political authorities because they are regarded as incompetent, stupid and opposed to the realization of the collective goals of black people. Such a man would reject a public philosophy that pays lip service to the beliefs of justice, equality and opportunity and replace it with a positive black identification, a set of attitudes that fosters a separate social psychological identity leading to demands for political and social separation of blacks from white America. At the same time he would express support for leaders and organizations that have rejected traditional militant reform efforts and advocated in their rhetoric and action the restructuring of American society. Finally, such a man could be expected to be sympathetic to the use of violence as a constraining influence on white society.

Having defined alienation in these terms, we then attempted to measure the degree to which our respondents could be said to fit the description. We did this by asking them to reply to a 29-item questionnaire. The results, which follow, were somewhat equivocal but clear.

The first dimension of alienation we measured was distrust in white authorities. The two most distrusted authorities were policemen (57 percent) and labor leaders (37 percent). There were only two white authorities that were trusted more than distrusted. They were congressman (37 percent compared to 22 percent) and members of a civil rights commission (56 percent compared to 13 percent) The latter was the only white authority that was trusted by more than 50 percent of the veterans.

The second dimension was rejection of the public philosophy. Seventy-seven percent of the veterans believed that this nation is more concerned with law and order than with justice. Sixty-seven percent believed the concept of equal opportunity was only a myth. Finally, only 40 percent of the veterans believed they were being judged on their abilities instead of their race.

The third dimension was favorable sentiment for political and social separation. This was a somewhat more extreme manifestation of alienation than the preceding dimensions. However, 40 percent of the black veterans prefer preferential hiring practices for blacks, 39 percent want blacks to run their own schools and 38 percent feel blacks should work separately outside the Democratic and Republican party in order to gain more political power. Possibly because the question was stated in absolute terms, only 11 percent agreed that blacks and whites could *never* live peacefully together.

The fourth dimension was sympathetic support for violence as a constraining influence against whites. Although 5.2 percent felt black leaders should only try to peacefully persuade white leaders to change their politics on race relations, 36 percent agreed that violence is the only way for blacks to obtain their rights. Fifty-eight percent agreed that a major race riot could easily break out in Jacksonville and 33 percent felt black-white relations are going to get much worse before they get better.

On the fifth dimension, positive black identification, the responses indicated a high degree of proud race-consciousness. Ninety percent agreed that African history should be part of the curriculum for black children. Sixty-five percent identified themselves first as black men and then as Americans. Fifty percent considered Afro-hairstyles appropriate for black women and 46 percent agreed to the principle that blacks should buy from black merchants.

THE BLACK VANGUARD

The last dimension was support for radical black leaders and organizations. Their leaders and five organizations were selected because of their public rejection of the traditional reform efforts of the black moderates and their advocacy of a radical restrucing of American society. None of the leaders and only two of the organizations were evaluated positively by a majority of the veterans. The latter were the Congress of Racial Equality (60 percent) and the Student Nonviolent Coordinating Committee (58 percent). In the summer of 1969 SNCC dropped the word "nonviolent" from its title and substituted "national.") While a majority of the veterans did not positively evaluate radical leaders and organizations, the lowest level of support was 33 percent for both the Deacons for Defense and Justice and the Black Muslims. It is also interesting to note the rather even split on the Black Panthers. Of those veterans who had opinions, 39 percent gave the Panthers a positive evaluation and 40 percent a negative evaluation. Of the three black leaders Stokely Carmichael was given a slightly more positive evaluation (43 percent) than H. Rap Brown (38 percent) or Malcolm X (37 percent).

Some precautions are necessary in interpreting the results. The sample was drawn from a list compiled in one large southern city and may not be representative of the larger population of black veterans. Studies of political participation do however suggest that urbanism is a more important source

of bias than regional differences; that, urban samples of blacks in both the North and South may be more similar in their degree of black alienation than rural and urban samples of southern blacks. Therefore, the findings of this study may reflect the characteristics of veterans who return to metropolitan areas rather than regional variations.

After examining our findings on alienation, it is possible to conclude that the majority of black veterans are not highly alienated and not likely to join a radical social movement, and therefore will not be a significant force in determining the future of black-white relations. It should be noted, however, that the course of the black protest movement during the last 15 years has never been determined by majority opinion. Instead, there have been vanguards of blacks that have been thrust into active forms of participation when their particular qualifications and skills became important to the protest movement as it evolved. The number of black Vietnam veterans is already substantial and can be expected to increase; if only 10 percent of these men became actively involved, they could provide a sizeable core of a radical movement.

ALIENATION AND MILITARY EXPERIENCE

Next, we looked into the question of the relation between these black veterans' alienation and their experiences in the armed services. As expected, there was a very strong correlation between their attitudes toward the military and their degree of alienation. Those who had the most negative attitudes toward the military were also the most alienated. But, beyond this, some interesting details were revealed in this second part of our survey.

Men who had been drafted were more alienated than those who had enlisted. Fifty-eight percent of those who were drafted fell into the highly alienated group compared to 34 percent who enlisted. Those who had achieved a rank of sergeant or above in the service were much less alienated than those in lower ranks. Only 39 percent of these men were highly alienated, whereas 47 percent of the privates and 54 percent of the corporals were highly alienated. Length of service was also related to alienation, with those who had served for two years or less being more highly alienated than those who had served three, four, five or more years. The most recently discharged veterans were also the most alienated.

Another factor we wanted to uncover was the relationship between a man's alienation and the amount of contact the veteran had had with whites. We expected that those black veterans who had made few, if any, white friends would be more alienated than those who had made more. This proved to be correct. However, our guess that the greater the proportion of blacks in the unit, the greater the alienation, proved to be wrong. So too was any association between alienation and combat duty in Vietnam, although those who had seen action in Vietnam did tend to be somewhat more alienated than others who had been sent there.

WHEN JOHNNY COMES MARCHING HOME

When a black man is discharged from the armed forces, he is exposed to a new set of experiences that can foster alienation. After fulfilling the requirements of being a soldier, there are the serious ambiguities of not receiving adequate recognition and rewards as a veteran. And our survey indicates that the black veterans' recognition and rewards are inadequate indeed.

Although the data are incomplete, it appears that black veterans' current participation in veterans' benefits is much lower than in previous years. The participation of World War II and Korean veterans in educational benefits was 53 percent for nonwhite veterans and 45 percent for white. In 1968, less than 20 percent of the veterans were taking advantage of the GI bill. Moreover, special programs such as Project Transition have not been very effective in helping Vietnam veterans readjust to civilian life because of various bureaucratic difficulties in getting release time to take advantage of the program. The lack of meaningful reforms and the strains of adjusting to second class citizenship suggest the development of alienation and potential participation in black radical movements.

We asked the veterans if they had been in contact with the local Veterans Administration office and whether they had received adequate assistance. Although the number of respondents is small, 73 percent of those who sought but did not receive adequate help from the VA were highly alienated. This is compared to 52 percent who did not contact the VA office and 40 percent of those who sought and received assistance. The same pattern exists for participation in educational and/or vocational training. Forty-one percent of those who had participated in the GI bill were highly alienated, as against 51 percent who had not participated. The veterans were also asked if they had sought and received adequate assistance in finding work from public and private employment agencies. Sixty-one percent who received an inadequate amount of help were alienated, whereas 53 percent of those who didn't bother to seek help were alienated, as compared with only 22 percent who sought and received help.

Why more of the veterans did not seek assistance is puzzling. It could be because they felt they had adequate incomes and jobs, or they didn't know about the available assistance, or the grapevine convinced them the help they were entitled to wasn't worthwhile. The first alternative is least plausible. Only 14 percent of the sample were in white-collar jobs, 16 percent were skilled workers, 51 percent were either semi-skilled or unskilled, 13 percent were unemployed and 6 percent were full-time students. Morover, the median income was less than $100 a week for those who were working. The second alternative would indicate insufficient outreach for those agencies authorized to assist veterans. Either because of insufficient resources or different priorities, VA and the employment offices were not encouraging black veterans to utilize these benefits. The third alternative could apply to those who had looked for help in finding work. Of this group, 49 receive adequate help, but 43 did not. With that large a minority, it is easy to see how the word could get around that would discourage others from seeking assistance. Whatever the reasons, a large proportion of these veterans are not participating in the benefits and rewards theoretically their due, and these are more alienated than participants.

The potential for alienation is also manifest in the veteran's background in the explosive ghetto. The ghetto has been decribed by David Boesel and his colleagues as a system for the maintenance of racial hegemony that is composed of a series of functionally reciprocal institutions that are run by whites, and control the black community.

The mutual reciprocity of those institutions has caused them to fit together as parts of a control system through which the decisions of white people with power determine the major outlines of the lives of black people without power.

Not surprisingly in such a system, there are only rather weak institutional forms of social control developed by the ghetto itself, for example, the family and the churches.

But unlike some elements of his community, the returning veteran is not totally subject to the full intensity of white social control. He is neither on parole nor up to his neck in debt, nor under the influence of white school and welfare officials. And he may well have only a marginal commitment to his job. Moreover, being young and frequently single, he is less likely to be under the influence of black institutional control as well.

Predictably, then, our survey showed that veterans under 22 were much more alienated (76 percent) than those who were 23 or 24 (52 percent), 25 to 28 (40 percent), and 29 and over (21 percent). Since a wife and family frequently act as a conservative influence on attitudes and behavior, single or divorced men were expected to be more alienated than those who were married. This pattern was confirmed. Sixty percent of the single or divorced veterans were highly alienated compared to only 38 percent of the married veterans. Active religious participation was also considered as exposure to a set of beliefs and practices that counteract the growth of alienation. We found that only 37 percent of the actively involved were highly alienated compared to 55 percent of the nonparticipants.

There is a good deal of debate these days about the possibility of an increasingly radical movement. Reports of planned subversive activities, sabotage and sniping have been proclaimed by segments of the news media as evidence of a new revolutionary direction of the black protest movement. Some social scientists have pointed out the sensationalism of the reports and the reasons why police and reporters would magnify the threat of violence, as for example Terry Ann Knopf's article in the July/August 1969 issue of Trans-action. And the cover letter to the *Riot Data Review* states these reports "have been composed of two parts fantasy to one part fact." While the *Review* and Miss Knopf give a good descriptive analysis of what actually occurred, the disclaimers in their interpretation have played down the existence of small-scale subversive attempts at spontaneous uprisings and terrorism.

We hold rather more realistic (some would say gloomy, others hopeful) views on the possibility of a black radical movement. If these assessments prove to be correct, we believe black veterans will contribute a significant proportion of the membership. Not only are they caught in the "nutcracker of history" while serving in the military, they also experience in their civilian adjustment strains that are most conducive to their involvement in a radical movement. Unless there is a significant reduction in the sources of strain and a more effective rather than repressive social control, veterans like Robert Williams and Ahmed Evans and veterans' organizations such as the original group of Deacons for Defense and Justice may be harbingers of a whirlwind of defensive and offensive violence.

We cannot help but wonder what Alexis de Tocqueville would say if he were to visit the United States today. But surely he might exclaim, "My God, the Americans are a peculiar people! They have set up a welfare system that penalizes any poor person who shows initiative. They have a Department of Agriculture that has destroyed the family farm. They develop a Peace Corps and yet spend 80 billion dollars on a war machine. They are legislated by a committee system of government, controlled by southerners who are frequently elected by a minority of their constituents. But most importantly of all, in their own unique form of social engineering, they train young black men in the armed forces, return them to a society that does not want to provide them opportunities, and then turn them loose in a volatile ghetto as eminently qualified black revolutionaries."

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

Mr. CRANSTON. I am delighted to

yield to the distinguished chairman of the full Labor and Public Welfare Committee who has done such distinguished work in this field of aid to veterans.

Mr. YARBOROUGH. Mr. President, today we have before us for consideration another landmark piece of legislation in the field of veterans education. After long and careful consideration, the conferees on H.R. 11959 were able to agree on a bill that makes significant increases in the education and training allowances provided for under the cold war GI bill. These increases are intended to fulfill three principal purposes:

First, to ease the financial burdens of those young veterans who are struggling to obtain an education;

Second, to provide reasonable allowance rates which will encourage more veterans to use their valuable educational benefits; and

Third, to restore comparability between the cold war GI bill benefits and those paid veterans under the Korean conflict GI bill.

With the consideration of this conference report, we are coming to the end of a struggle that began in January of 1969 when I introduced S. 338, the original rate increase bill. My reason for introducing this bill was because of my great concern over the lack of participation in the education and training programs under the cold war GI bill. Under the World War II GI bill, 50 percent of the eligible veterans used their benefits. Forty-two percent of the veterans of the Korean conflict participated in education programs under the Korean conflict GI bill. However, out of the over 7 million eligible veterans of the cold war and Vietnam era, only 1.3 million have used their benefits under the cold war GI bill. This constitutes a participation rate of only 20.7 percent, or one out of each five veterans. One cause of the low participation in the cold war GI bill education and training programs was stated by the Veterans' Administration to be the low allowance rates paid a veteran each month, which did not meet the inflationary costs of education. Evidence presented before our subcommittee revealed that the cost of tuition and fees in private colleges have increased by almost 107 percent since 1958, and that these costs in public colleges have increased by 67 percent during the same period. In addition, the cost of living has also skyrocketed. The evidence also revealed that monthly educational allowances paid veterans were woefully inadequate to meet these costs and in fact, the cold war GI bill was simply not doing the job the Korean conflict GI bill did. More specifically, the Korean conflict GI bill paid approximately 98 percent of the average tuition, board and room costs at public and nonpublic colleges whereas the cold war GI bill is presently paying only 67 percent of these costs. What this means is that the veterans of the cold war and Vietnam era are getting shortchanged in their educational opportunities.

After thorough hearings and study, the Senate Veterans Affairs Subcommittee unanimously reported out to the full Labor and Public Welfare Committee a comprehensive bill which not only included my bill to increase the allowance rates but also included several new programs designed to help the educationally disadvantaged veteran and to counsel veterans on their rights under the cold war GI bill. This bill received unanimous support in the committee. The Senate demonstrated an unusual display of nonpartisan support for this bill by passing it by a vote of 77 to 0 despite the threat of a Presidential veto. The House in the meantime passed a bill which contained much smaller rate increases than the Senate bill and did not contain the new programs.

In conference, the objective of the Senate conferees was to produce a bill that would benefit as many veterans as possible and retain the new programs which are badly needed. After long and hard bargaining, we believe we have accomplished a substantial part of that objective.

The bill that we are considering today provides for an increase of almost 35 percent in the monthly payments for veterans enrolled in the education, farm training, and apprenticeship programs. What this amounts to in dollars and cents is that a single veteran with no dependents who is attending college on a full-time basis will receive a monthly allowance of $175 instead of the present allowance of $130 a month. This is an increase of $45 over the present rate. Under this bill a veteran with one dependent will receive an allowance of $205 per month instead of $155 as provided under the present law. The veteran with two dependents will now receive a monthly allowance of $230 whereas the present law pays only $175 a month to those veterans.

Veterans with more than two dependents will receive an additional $13 per month for each such dependent instead of $10 as is provided in the present law.

Veterans who are enrolled on a full-time basis in the farm cooperative and have no dependants or in the training program will receive, under this bill, a monthly allowance of $141 instead of the present allowance of $105. Veterans with one dependent will have their monthly allowance rate increased from $125 to $165, and veterans with two dependents will now receive $190 per month instead of $145. For each dependent over two, the veteran will receive $10 per month under this bill instead of $7 per month as provided in the present law.

Single veterans who are enrolled in apprenticeship and other on-the-job training programs will receive $108 per month during the first 6 months training period instead of the present allowance of $80. During the second 6 months period the veteran will receive $81 a month instead of $60, for the third 6-month period he will receive $54 a month instead of $40, and the fourth 6-month period he will receive $27 a month instead of $20 a month. Like the other programs, the veterans with dependents will receive proportional increases for each dependent.

Veterans who participate in these programs on a part-time basis will, of course, also receive, on a proportional basis, the 35-percent increase. These increases are retroactive to February 1, 1970, so that veterans can participate in the expense allowances for the full spring semester of school.

In addition to these increases, the bill provides a 22.7-percent increase for funded veterans who are taking vocational rehabilitation training. A single veteran with no dependents who is participating in this program on a full time basis would receive an allowance of $135 a month instead of the present $110 a month.

In addition to the important allowance rate increases, the Senate conferees were successful in retaining the major portions of title II of H.R. 11959 which are intended to assist the educationally disadvantaged veteran obtain the education and training he needs to prepare him for a useful and productive career. Title II of H.R. 11959 contains three programs designed to carry out this purpose.

First, this bill provides for a special supplementary assistance program which would pay to a veteran who is having academic difficulty an amount not to exceed $50 per month for a maximum of 9 months for tutorial help. This program is intended to furnish a veteran who is having difficulty with a course the additional help he needs to prevent him from failing. In many cases, special tutoring will prove to be the margin of difference between success and failure in college.

Second, this portion of H.R. 11959 establishes a predischarge education program which is designed to assist servicemen in preparing for future education while they are still on active duty. Under the PREP program, the VA would pay to the veteran an amount which would reimburse him for the cost of tuition, fees, books and supplies he incurs in taking remedial or refreshertype courses prior to his discharge from the service. This program will prepare the veteran for advanced education and give him the confidence he needs to continue his education.

Third, title II establishes a veterans outreach program which would expand the VA's counseling services to insure that veterans understand their rights under the cold war GI bill. One reason for the low participation in GI bill education programs is that many veterans leave the service without knowing that these benefits are available to them. This program should prove to be of great benefit to all veterans.

These three new programs are the result of the thought, planning, and hard work of the distinguished chairman of the Subcommittee on Veterans' Affairs, Senator CRANSTON. I commend him for introducing these new measures which will increase participation in the cold war GI bill education programs. I also commend Chairman TEAGUE and the other House conferees for recognizing the need for these programs and agreeing to accept them.

I also wish to commend Senator CRANSTON for the leadership he has provided in obtaining this great veterans bill. As a result of his tireless efforts and great dedication, we were successful in obtain-

ing this bill which will mean so much to the veterans of America. American veterans are indeed fortunate in having Senator CRANSTON representing their interest in Congress. It has been a pleasure for me to work with him, and I encourage him to continue his fine work for better veterans laws.

I also wish to commend the excellent work of the members of both political parties of the Labor and Public Welfare Committee and especially the members of the Subcommittee on Veterans' Affairs. They have put aside partisan considerations and given their full support to this bill. I wish to commend Senator SCHWEIKER, the ranking minority member of the Subcommittee on Veterans' Affairs, and Senator JAVITS, the ranking minority member of the Labor and Public Welfare Committee, for their leadership and assistance on behalf of our veterans.

The bill that the conference committee has agreed to is sound, both financially and morally. Never has it been needed more. I urge all my colleagues to give it their full consideration and support.

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

Mr. CRANSTON. I yield.

Mr. MANSFIELD. Mr. President, how much of an increase in GI educational benefits was allowed by the Senate when the measure passed the Senate last October?

Mr. CRANSTON. The figure that is being paid now is $130 a month. The Senate passed a bill that would have provided $190 a month.

Mr. MANSFIELD. Was that a 46 percent increase?

Mr. CRANSTON. The Senator is correct.

Mr. MANSFIELD. And what is the final agreement of the conference committee?

Mr. CRANSTON. $175 a month, which is a 35-percent increase.

Mr. MANSFIELD. And now that the conference report has been approved unanimously by the Senate, it will go to the White House for final approval?

Mr. CRANSTON. The Senator is correct.

Mr. MANSFIELD. I congratulate the distinguished Senator from California for his tenacity and doggedness in this area. I also congratulate the distinguished Senator from Texas (Mr. YARBOROUGH) for the same attributes. They are both strong and effective advocates in behalf of veterans and they have shown it by their action—performance is always the true test of commitment. I recall the many years that the distinguished Senator from Texas (Mr. YARBOROUGH) fought to extend these educational benefits to veterans of the Armed Forces who served since the Korean conflict. I recall his great success in this endeavor. I am happy to vote that the able and distinguished Senator from California has joined this effort. As chairman of the Subcommittee on Veterans' Affairs he has performed splendidly.

Mr. CRANSTON. Mr. President, I thank the distinguished majority leader for his support and for his very welcome comments on the work we have been doing together on this measure.

I thank the distinguished chairman of the full Committee on Labor and Public Welfare, the senior Senator from Texas (Mr. YARBOROUGH), for his work and for his comments regarding my work. I congratulate him on the results today of the fine leadership he has offered.

Mr. YARBOROUGH. Mr. President, I join and associate myself with the remarks of the distinguished Senator from California.

The distinguished majority leader has been a bulwark of strength in the fight for justice for these cold war and Vietnam veterans.

This is another milestone in my 12-year fight for justice for the veterans of the cold war era. My first GI bill was passed in 1966, after an 8-year fight. We improved it by an amended GI bill in 1967, and then improved it further by another amendment in 1968. This is the fourth cold war GI bill. We are making some progress.

We have always had the aid of the distinguished majority leaders in our efforts. I thank him for his continued support. We are now up to 10 percent of the level of the payments made under the Korean GI bill. It is not enough; however, it is a major step forward. Many of the veterans have been denied an education because of the low payments allowed them. Only about 21 percent, or one out of five, of the discharged veterans have received any kind of educational training under the cold war GI bill.

I think this is a disgrace.

We must continue our efforts to obtain meaningful educational benefits for the veterans of the cold war and Vietnam era.

I again thank the distinguished Senator from California for his dedication and skilled leadership with regard to this measure.

CRISIS IN CALIFORNIA VETERANS' ADMINISTRATION HOSPITALS

Mr. CRANSTON. Mr. President, my colleague in the other body, the chairman of the Veterans' Affairs Committee, has been rendering a great public service in publishing the results of his committee's survey of the conditions in Veterans' Administration hospitals on a State-by-State basis. In every case the survey has shown a critical shortage in both funding and staffing.

Today, the survey results of Veterans' Administration health facilities in California were released. As with the surveys for the 28 States so far released, the one for California indicates "that California VA hospitals are not receiving sufficient support to provide the kind of medical care that California veterans deserve," and, in my mind, must have. An alarming funding deficiency of at least $5.6 million—the third largest deficiency in the Nation after New York and Pennsylvania—exists in California VA hospitals for the current fiscal year. This deficiency exists despite a January augmentation of $1,001,382 from the Veterans' Administration Central Office to California hospitals—based on the Congress unrequested additional appropriation of $17,600,000 for fiscal year 1970. This $5.6 million deficiency is a very conservative estimate; for example, many unreported deficiencies at the West Los Angeles Veterans' Administration Center are still under study; and a final tabulation will very likely show California's shortages to be the greatest in the Nation.

New figures just released by the Veterans' Administration, and hence not included in the results of the House committee survey, show that California VA hospitals have just been allotted $1,226,700 for the last quarter of fiscal year 1970. Of this sum, $821,100 is for fee dental services largely for Vietnam veterans. This additional money will be expended, with Bureau of the Budget approval, on a deficiency basis in anticipation of a supplemental fiscal year 1970 appropriation of $15,000,000 for medical care through an amendment to the President's March 12 Supplemental Appropriations Message to Congress. That the Veterans' Administration has been successful in squeezing even this amount from the administration is no small task, and I hope that the efforts of Chairman TEAGUE in the other body and our Veterans' Affairs Subcommittee's 6 days of oversight hearings were helpful in that budget exercise.

The fact remains, however, that the $405,700 augmentation for medical care other than dental services represents only a small portion of the California VA hospital deficiency—slightly more than one-quarter factoring through the 3 months' funding on the basis of a full year's deficiency of $5.6 million—not including dental care needs. Although fee dental needs, estimated by VA central as $2.5 million, seem to have been fairly well covered for the final quarter of fiscal year 1970 by the allocation of $821,000 for that purpose, there is no assurance that a similar level of funding will be carried over for fiscal year 1971 or subsequent years for that category or the general medical category. And I am continuing to study the dental care situation with respect to fiscal year 1971 needs. In sum, despite California's veteran population of more than 11 percent of our Nation's veterans, it has received only 8 percent of the supplemental $15,000,000 allocation to meet its great funding shortages.

These shortages mean the hospitals will be unable to provide needed drugs, medical and dental supplies, prosthetic arms, legs, artificial eyes, and other sensory aids to many veterans requiring them. Funds in the amount of over $2.8 million have not been made available to fill existing personnel vacancies, let alone to provide the 2,900 staff which would bring staffing ratios up to minimal levels to achieve some comparability with ratios in community hospitals.

These shortages demonstrate clearly that in our Nation's largest State, where more than 11 percent of our Nation's veterans reside, the Veterans' Administration health care situation is extremely grave. The deficiencies highlighted in the House committee survey are actually preventing the VA system from delivering the same level of care provided in fiscal year 1969.

Over $461,000 is lacking to meet the

costs of community nursing care expenses for those veterans who no longer need the intensive care provided in the hospital facility and should be moved to these less intensive and less expensive facilities.

These deficiencies in the ability of Veterans' Administration hospitals to provide high-quality medical care to California veterans are shocking. The commendably candid statement of the Director of the West Los Angeles Veterans' Administration Center, the largest single VA complex in the country, that a major crisis is impending, that morale is atrocious and that patient care is subminimal is unfortunately symptomatic of problems in many VA facilities across the Nation.

Recently, the Subcommittee on Veterans' Affairs, which I am privileged to chair, completed 6 days of oversight hearings on the quality and quantity of medical and hospital care in VA facilities. Testimony from some of the Nation's most outstanding medical experts, Veterans' Administration hospital staffs, service organizations, and individual veterans, clearly indicate that we are facing a nationwide crisis in VA medicine; that staffing ratios are at dangerously low levels; and that much needed renovations, equipment purchases, and construction have been put off far too long.

In short, as will be illustrated fully by a subcommittee report now in preparation, the hearings in the Senate completely corroborate the findings of the House survey.

The Senate Veterans' Affairs Subcommittee hearings revealed the California VA system is failing to operate or utilize fully highly expensive and urgently needed specialized medical units, for example:

At the Fresno VA hospital, the surgical recovery room is not being fully utilized because of a $31,000 deficiency. The inhalation therapy program and the mental hygiene clinic are both underfunded and underutilized—the inhalation therapy program short $32,000, and the mental hygiene clinic short $42,000

At the Livermore VA Hospital, the surgical intensive care unit, the pulmonary function laboratory, and a special nuclear medical unit are underutilized because of a staff shortage created by a deficiency of about $145,000.

At the Long Beach Hopsital, underutilized units because of staffing shortages are a surgical intensive care unit, a mental hygiene clinic, and a day treatment center. Funds were not available for approximately 40 positions to properly staff these units.

At the Martinez VA hospital, approximately $67,000 is needed for adequate staffing of special medical units specializing in speech pathology, nuclear medicine, cardiac catheterization, pulmonary function, and electron microscopy.

At Palo Alto, the VA General Medical Hospital, because of funding deficiencies, was unable to fill 12 nursing positions for special coronary care and intensive care units. As a result, these units are now operating at substandard levels.

At Sepulveda, the VA hospital has 18 vacancies which a deficiency of $200,000 prevents them from filling. These positions are needed to staff fully the hospital's surgical intensive care unit, the day treatment center, and the mental health center.

Several specialized medical programs for which construction has been completed and equipment made available were not activated until the last half of the current fiscal year, and were activated at that time only because of a Bureau of the Budget decision to release the $17,600,000 which congressional action restored to the VA appropriation to achieve the level originally requested by the Johnson administration. These programs included intensive care units at Palo Alto, Fresno, Los Angeles, San Francisco, and Sepulveda: an alcohol treatment program and an organ replacement program at Los Angeles; programs for electron microscopy and stereotactic brain surgery at the Long Beach hospital; and a special reference laboratory at the San Francisco Hospital.

In addition, utilization of some specialized units has been postponed entirely for fiscal year 1970. These are an intensive care unit, a coronary care unit, and a speech pathology program at the Long Beach VA hospital, for which staffing costs would total about $141,000; a prosthetic treatment center at San Francisco which would cost about $17,000 to staff; and a speech pathology program at Martinez which would require about $23,000 for staffing.

To meet these deficiencies, I intend to press for substantially increased VA funding, both in the expected VA supplemental budget request for the current fiscal year, and in the appropriations for the next fiscal year. I have been working closely with the chairman of the House Veterans' Affairs Committee, and we plan to develop a coordinated approach in both the House and the Senate.

It is essential to add supplemental funds in a number of areas not only to insure adequate continuation of vital fiscal year 1970 programs, but also to enable the VA to finance these programs at a supplemental level when it begins to operate under a fiscal year 1971 continuing resolution. Otherwise, under the terms of the expected continuing resolution, the VA will be restricted to the fiscal year 1970 level, and needed expansions in health care will be deferred still further.

Specifically, I feel we must supplement the VA's 1970 budget in at least three most critical areas: community nursing home care, Vietnam veterans' dental care, and hospital maintenance and essential equipment replacement costs. Supplemental funds are also needed to open and fully operate most of the 65 specialized medical programs in VA hospitals—four of which are in California—which are not planned for activation in fiscal year 1970 at all. Supplemental funds must also be provided to permit the understaffed spinal cord injury units—of which the only one west of the Mississippi is in California—which care for and rehabilitate some of our most severely disabled veterans, to operate at the staffing ratios recommended by the VA's own SCI medical advisory group. These seem to be the most acute needs requiring immediate action in the supplemental appropriation for the current fiscal year.

Turning to the budget for the next fiscal year as proposed by the administration, it offers no increased resources to meet the vast needs we have been uncovering. It is at best a stand-still budget in light of inflation in the cost of providing medical care and salary increases. Substantial additional money is needed in many areas. The following at least must be done: increase the medical care staffing ratio and appropriation item to make a significant start toward achieving an adequate staffing level; and catch up on long-deferred construction of new facilities and renovation of the old, and particularly, begin a stepped-up effort to air condition the 33 VA hospitals in the hottest parts of the country—some of the most critical needs are in California.

I also will recommend substantial increases for funding the VA health personnel training and education program, and shall seek to make that item a separate figure in the appropriation bill to permit an expanded, on-going effort. The same separate appropriations treatment should be given the research budget, rather than lumping it with education and training in the medical care appropriation item. It is widely recognized that as research, education, and training programs in VA hospitals improve, so will the quality of the care provided the veterans there.

I am giving serious attention to the need for an increase in VA research funds to study cost effectiveness in the delivery of care and to engage in substantial programs to monitor the provision of health services. Also, I am considering the need to establish a fourth VA blind center, to serve the Southeastern United States, as well as to insure that the West Haven Center is expanded to its full complement of 20 beds.

Although substantial appropriations increases will have a decided impact on improving the VA hospital and medical care system, I am also convinced that much new legislative authority is needed for the VA health care program. Among the measures I am planning to introduce soon are bills aimed at improving the staffing situation in VA hospitals. These bills will provide the VA with new responsibilities: first, to train and employ more doctors, nurses, and allied health professionals—especially physician's assistants; second, to revise personnel authorities to enable the VA to compete more effectively for scarce health professionals; third, to install an ongoing continued educational program for all such personnel with greater emphasis on career ladder development at all levels; and fourth, to require that every VA facility attain within 3 years, a staff-to-patient ratio comparable with an index community hospital. Present disparities are enormous: 1.5 to 1 for the VA general hospital, 2.7 to 1 for the average community hospital, and 3.5 to 4.0 to 1 for the university hospital.

Increased staffing and funding alone will not provide all the solutions to the

shortcomings the Veterans Affairs Subcommittee and the House Veterans Affairs Committee has documented. For the VA medical program to provide first quality care for our veterans I have become convinced that several principles should be followed, and I plan to introduce additional legislation to implement these principles. First, the VA system must be viewed as part of a larger pattern of community medical care if it is to prosper as a modern high quality health system. The VA's problems cannot be resolved in isolation. Thus, I will shortly introduce legislation to build upon the present VA relationships with regional medical programs and other community planning efforts.

Another principle I feel should be put into effect is that the VA system be more fully responsive to the medical needs of all veterans and their families. I plan to introduce a family bill which would provide VA hospital care for the dependents of totally and permanently disabled living veterans, as well as survivors receiving disability and indemnity compensation, and also enable the VA to treat a veteran's family where that is necessary for the veteran's total care and rehabilitation, as in the instance of mental illness, and physical disability. Provision will also be made for the VA to stress home care programs.

In line with the ideal of total health care of the veteran, I am considering another bill to amend present restrictions on the treatment of conditions which are unrelated to service-connected disabilities for which the veteran is hospitalized and to permit outpatient care for non-service-connected disabilities in order to prevent, as well as prepare for, reasonably foreseeable periods of hospitalization. Other bills I am working on would stress the provision of comprehensive restorative programs for the severely disabled veterans; would establish care in a VA nursing home as a clear component of hospital care; would greatly expand the present presumption of service connection for actively psychotic mental conditions; and would enable a doctor to satisfy his military obligation by serving as a VA hospital staff physician.

In coordination with Senator HAROLD HUGHES, chairman of the Special Subcommittee on Alcoholism and Narcotics, I am preparing a bill to provide for a comprehensive program of treatment and rehabilitation of chronic alcoholism and drug dependency for veterans in need of such services.

Enactment of these proposals coupled with substantially increased funding for VA medical programs will, I believe, go a long way toward remedying many of the deficiencies in the current program uncovered by the subcommittee's recent hearings as well as by the excellent House committee survey. I am sure there will be wide public and congressional support for these efforts to counteract the deterioration in the VA medical system which is so aptly illustrated by the California situation.

Mr. BYRD of West Virginia. Mr. President, in adopting today the conference report on H.R. 11959, a bill which would sharply boost the education and training benefits for our Vietnam veterans, the Senate will have taken final action on a most meritorious piece of legislation. It was adopted unanimously by the other body, and deserves our support.

The conferees recommended a 34.6 percent increase in the monthly allowances provided for under existing law for veterans participating in education and training programs under the GI bill. For the single veteran, this means an increase in benefits from $130 to $175 monthly. The same relative percentage increase is provided for the widows and children of brave Americans killed in combat or who died from service-connected disabilities. In addition, wives and families of totally disabled service-connected veterans will likewise benefit if they are enrolled in programs of education or training.

The conference report is a compromise between the pressing needs of our veterans, and the fiscal responsibility obligated to our hard-pressed taxpayers. I am sure all Senators wish that more could have been done for these gallant men. Yet, this legislation, based on the wishes, of the President, is a fair and reasonable increase in benefits.

Mr. President, if we are going to spend the taxpayers' money on the education of our youth, it is far better to do it for veterans who have served their country well, than on federally subsidized hippies, yippies, and leftwing professors who spend their time bent on destroying the basic structure of our educational system and our Government.

There are over 4,300 veterans attending colleges and universities in my State of West Virginia who will benefit from this legislation. I would hope that more of the 37,000 West Virginian veterans of the Vietnam war who have not participated and who are eligible, would take advantage of these programs. I am proud to state that West Virginians are men who are proud to stand and say that they fought in Vietnam, proud to say they served their country and their flag.

Mr. President, the Senate is about to complete work on this legislation, but its work on behalf of our veterans is far from done. We must not forget those veterans who cannot attend school, who cannot seek employment, and cannot start a family. For Vietnam is a modern war, where our boys wounded in action are but minutes from a field hospital where miracle drugs and modern medical techniques prevent death.

These brave Americans, sent to faraway lands, inflicted by wounds of horrifying weapons which would have killed in any preceding war, are cruelly crippled for life. These men return, not met by flags flying, or bands playing, or by patriotic citizens waving their hands in appreciation. They are shuffled off to hospitals or their homes, where they can lie forever watching on television the burning of draft cards, rioting in the streets, and the mockery made of our courts of law. All this in a country to which these men have given their most personal sacrifice.

Mr. President, we must not allow any veteran to become a second-class citizen. As they have willingly supported the commitments made by our Government we in turn must not forget them. They deserve the best in medical care and rehabilitation. The proper utilization of personnel, equipment and health care must continue to be improved. The Veterans' Administration must be afforded the continuing support of a grateful Nation, if it is to meet its obligation to all veterans and particularly to the 270,000 Americans wounded in Vietnam.

Mr. President, we owe our American veterans the best.

Mr. SCHWEIKER. Mr. President, I support the conference report on H.R. 11959, the veterans education and training bill.

As ranking minority member of the Subcommittee on Veterans' Affairs of the Committee on Labor and Public Welfare, it was my privilege to help fashion this legislation from the subcommittee level on and to be a cosponsor of many of the separate bills for innovative veterans' programs which became incorporated into this final piece of legislation. The Senator from California (Mr. CRANSTON) has done an outstanding job as chairman of the subcommittee, and we in the Senate have been fortunate on this bill to have the strong contributions of both the committee chairman, the Senator from Texas (Mr. YARBOROUGH), and the ranking minority member of the full committee, the Senator from New York (Mr. JAVITS). We have at all times approached this bill from a bipartisan viewpoint.

The bill approved by the conference committee will raise the GI educational assistance allowance by 34.6 percent. Applying this to a single veteran with no dependents, he presently receives $130 a month and now would get $175 a month. This represented a compromise between the 46 percent rise passed by the Senate and the 27 percent increase passed by the House. While it is not as great an increase as we in the Senate would have liked to achieve at this time, it goes a long way toward closing the gap between the GI allowances and the rising expense of getting a college education today.

The innovative provisions of title II of the Senate bill, while modified through the action of the conference, remain substantially intact. These are: a supplementary tutoring allowance to returning veterans in college, at the rate of $50 a month for up to 9 months; the PREP program of predischarge educational opportunities for servicemen; the extension of GI benefits to veterans enrolled in remedial or refresher courses, and the new outreach program.

As a cosponsor of these provisions when they first appeared as separate bills, I strongly support them and hope that these new programs, like the general increase in GI education benefits, will help close the growing education gap which our returning veterans have been encountering, particularly those who have educationally disadvantaged backgrounds.

I feel strongly that our returning Vietnam veterans, quite aside from the education opportunities they deserve from a grateful Nation, are a vital human resource. We must not allow our returning

veterans to lose out on the education and job opportunities that are only accessible to well-trained young men. We need a system that will not only reward the well-trained veteran but also help the educationally handicapped veteran to catch up. This legislation, with its new programs which I am proud to say have originated in the Subcommittee on Veterans' Affairs of this body, is a good beginning toward this goal.

Before concluding my remarks, I would like to mention action taken by the conferees to eliminate a provision from the bill affecting veterans who are apprentice barbers.

The House bill contained a provision which prohibited Veterans' Administration approval of a veteran's apprenticeship or on-the-job training where the Administrator "finds that by reason of prior training or experience such veteran is performing or is capable of performing the job operations of his objective at the same performance level as the journeyman in the occupation."

The Senate committee considered this provision after it was passed by the House as part of H.R. 6808, but the committee found insufficient justification for including it in its version of the bill.

This provision, according to the Veterans' Administration, would have resulted in a cutoff of VA on-the-job training payments to veterans in Pennsylvania who had completed their formal barber training in a 9-month school but who were still serving their 15 months of apprentice training to qualify for a journeyman barber's license.

The Veterans' Administration, if the provision became law, was prepared to rule that these apprentice barbers were performing at journeyman level once they finished school. Hence they would not be eligible for on-the-job training benefits. But in Pennsylvania, a barber does not receive his journeyman license until he has trained for 24 months—which usually comes as 9 months in a barber college, followed by the 15 months of apprenticeship. During the 15 months, the apprentice barber must work for an established barber. He is barred by law from going into business for himself, and he usually finds it difficult to attract customers during this period when he is still learning his craft.

The conferees resolved the disagreement by eliminating the provision. However, as a safeguard against paying VA benefits to barbers who might be "apprentices" in name only, a new requirement that on-the-job training must be "supervised" as well as "organized" was added to the law. I feel this is a solution that will allow barber apprentices in my State to continue receiving VA on-the-job training benefits, instead of having these benefits arbitrarily stopped. At the same time, we added new language to safeguard against abuses of this highly worthwhile assistance.

Mr. President, I urge that the conference report on H.R. 11959 be promptly adopted.

Mr. CRANSTON. Mr. President, I move the adoption of the conference report.

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

The motion was agreed to.

DELIVERY OF MILITARY MATERIEL TO THE GOVERNMENT OF CHIANG KAI-SHEK ON TAIWAN

Mr. HARRIS. Mr. President, I note with some alarm that efforts continue unabated with respect to delivering uncalled-for amounts of military materiel to the government of Chiang Kai-Shek on Taiwan. In testimony before the House Armed Services Committee last week, a spokesman for the Office of the Chief of Naval Operations called for loaning three U.S. submarines to Taiwan, in spite of the fact that the administration itself had not deemed it necessary to request them. The committee accepted this argument and added this provision to the bill it reported.

Representative DONALD M. FRASER has taken the lead in fighting this attempt to introduce a new weapons system into an already tense area under provocative circumstances, and I would like to commend him for this effort.

There are several reasons why I believe it would be unwise to allow this action of the House Armed Services Committee to stand. Nationalist China at present has no submarines, and no trained submarine personnel, I am informed. It would take a long period of time, perhaps as much as 2 years, to take the submarines in question from the reserve fleet, prepare them for active service, and train the necessary Chinese crews. Once in service with the Chinese Navy, the United States would retain little control over their use. It is one thing to use submarines to provide anti-submarine-warfare training for Chinese surface ships and aircraft, and another to employ such vessels in ways which might increase tension in East Asia. These submarines would not increase Nationalist China's security, would cost a considerable amount of money and time to place into active service, and might make us the reluctant beneficiaries of the byproducts of excess zeal on the part of the Nationalist Chinese.

Robert M. Smith of the New York Times has provided a useful summary of recent developments in this matter, and I commend it to the attention of Members of the Senate who may be distressed, as I was, to learn of this unnecessary initiative. I ask unanimous consent that Mr. Smith's article, which appeared on March 14, 1970, be printed in the RECORD.

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

LOAN OF THREE U.S. SUBS TO TAIWAN IS ASKED

(By Robert M. Smith)

WASHINGTON.—The House Armed Services Committee has proposed a loan of three United States submarines to Nationalist China.

The Administration, which proposed lending some vessels in the bill under discussion, had not included Taiwan on its list of recipients, and the addition seems likely to provoke a floor fight when the bill is considered in the House next Wednesday.

The Armed Service Committee, whose chairman is Representative L. Mendel Rivers, Democrat of South Carolina, sent to the floor an Administration-sponsored bill last month that extended the long-term loan of one submarine to Greece and one to Pakistan. The bill would also provide two destroyer escorts each to South Vietnam and Turkey.

In addition, however, the committee added the loan of two submarines to Turkey and of three to Taiwan.

Earlier this winter, a provision of the foreign aid bill that would have given Taiwan a squadron of Pantom jet fighters stirred such controversy that it was finally dropped.

Representative Donald M. Fraser, Democrat of Minnesota and chairman of the liberal Democratic Study Group, said today that he would offer an amendment to the committee's bill striking the loan of the submarines to Taiwan.

The Defense Department supports the loan of vessels to Greece, Pakistan, Turkey and South Vietnam but has not taken a position of those for Nationalist China.

The Defense Department's witness before the Armed Services Committee, Capt. G. M. Hagerman, director of the foreign military assistance division in the office of the Chief of Naval Operations, said that in his opinion the United States should lend Taiwan the submarines. The reasons he gave were stricken from the hearing report for security reasons.

Asked for its position on the loan this evening, the State Department said the issue was "under review."

"It has to be considered at a senior level," a department spokesman said.

VESSELS ON RESERVE

The action of the Armed Services Committee came to the attention of Capitol Hill today when the Democratic Study * * * summarizing the bill's provisions and pointing out that it would reach the floor next week.

The submarines involved are diesel-powered and would come from the Navy's reserve fleet.

According to Captain Hagerman's testimony, Taiwan has no submarines and no personnel trained to operate any.

The committee's report on the bill said the submarines would allow Taiwan to mount an antisubmarine defense in an area where the United States was cutting back on its own naval forces.

"In the over-all defense of the western Pacific," the report said. "The Republic of China had undertaken a role in participating in antisubmarine warfare activities." He continued:

"Permitting China to have three submarines does not introduce a new weapons system into the area, but lets China replace the United States in the localization of the defense of an area where the Communist Chinese have over 30 whiskey-class submarines provided by the Soviets and flying the Red Chinese flag." "W" class Soviet submarines are medium-range patrol vessels, although some have been equipped with missiles.

"In addition to helping to meet their threat, the report added, "providing the submarines to China at this time will permit China to continue having submarines to use in antisubmarine warfare training, since the services the United States has heretofore provided for this training are being curtailed.

"The area for which China is exercising some antisubmarine warfare responsibility is one of the areas where we will be providing reduced protection due to the cutbacks in our Pacific surface and submarine fleet."

An aide to Representative Fraser said that the Congressman opposed the loan of the vessels to Taiwan because he felt it would introduce another weapon in an already tense area, and would be a provocative gesture.

ADDRESS BY MAJ. GEN. CARROLL H. DUNN BEFORE THE ARKANSAS BASIN DEVELOPMENT ASSOCIATION

Mr. McCLELLAN. Mr. President, the Arkansas Basin Develoment Association has just completed its annual meeting in Tulsa, Okla., which I had the pleasure of attending. Maj. Gen. Carroll H. Dunn, Deputy Chief of the Corps of Engineers, was one of the featured speakers.

In his excellent speech, General Dunn illustrated the tremendous impact of the Arkansas River navigation project by calling attention to the fact that the project has already attracted industrial pledges for actual construction exceeding the $1½ billion mark. Although the navigation complex will undoubtedly result in unprecedented industrial growth and economic expansion, General Dunn stated that with effective management the Arkansas River project could prove that efficient navigation projects and the preservation of ecological and esthetic values can be compatible. Certainly, pollution control must be an integral part of the industrialization of the Arkansas River, and I shall do all that I can to insure that the water and air in the Arkansas River Valley remains clean and uncontaminated.

Mr. President, I ask unanimous consent that General Dunn's remarks be printed in the RECORD.

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

FOR A PROTECTED ENVIRONMENT

(By Maj. Gen. C. H. Dunn)

Senator McClellan, Senator Bellmon, Congressman Belcher, other members of Congress, honored guests, members of the Arkansas Basin Development Association, Ladies and Gentlemen: Even though today is Friday 13th, I consider it lucky to be here—not only to renew old and lasting friendships made during my years in the Southwestern Division, but to share a few thoughts with you along the lines of where we should go from here.

The Arkansas River Project today basks in the Nation's water resource spotlight. It has given meaning to President Theodore Roosevelt's great line: "Conservation means development as much as it means protection."

Even critics of damming rivers and digging navigation channels must be impressed with the size of this undertaking and the spirit with which it was pushed forward. Even those who want the Nation to march back to the wilderness must marvel at the foresight, enthusiasm, energy, and unity of purpose displayed by this Association and backed by the people of the Arkansas Basin in bringing this project to the threshold of completion. But, this project would have gotten nowhere had it not been for the impetus provided by such men as the late Senator Bob Kerr, Senator McClellan, Page Belcher, and other members of the Congressional delegations who provided the most essential element of all—support for the necessary appropriations. I hope you will join me in paying these men a debt of gratitude.

Even as an unfinished project, this waterway has attracted industrial pledges and actual construction which have already passed the one half billion dollar mark. Permits have been issued for construction of 35 ports and 17 marinas valued at more than $30 million. Last year, 76 million people visited the 53 reservoirs and six navigation pools completed in the basin, and increase of 10 million over 1968.

The wonders of the Arkansas River Project have been recognized on another front with its entry in the competition for the American Society of Civil Engineers Outstanding Civil Engineering Achievement for 1970.

No doubt it will take more years of observation and striking examples of project performance before there is a conversion of some of those who have in the past opposed river basin development. It does, at the same time, present a real challenge to build a better environmental "mousetrap." This project must be not only practical but also appealing.

People have to live and eat. To do this they must exist in a balanced environment, one which combines an adequate supply of good clean water, clean air, freedom from flood and drought, electricity, transportation, recreation—benefits you have here in ever growing abundance. In the crowded population corridors in the Boston-New York-Washington, and Cleveland-Detroit-Chicago areas, people are growing weary of the day-to-day drudgery, working to make a living in an atmosphere of smog-laden air, polluted water, and that hemmed-in feeling. Millions are gazing toward the Southwest. In Arkansas and Oklahoma, there have been more reservoirs built since World War II than in any other similar part of the country. This may well start an increasing population growth in the area, just the opposite of the migration of the thirties.

Rather than break our arms patting each other on the back, however, let's not forget that completion of the construction phase of this development is by no means the signal to disband and let the future take care of itself. Your President spoke of this in his report this morning. The big effort in the field of water resource development before, during, and after construction continues to be planning. The same applies to developing an effective management program for a newly completed project such as this one.

Waterway development presents many special environmental problems and the Arkansas Project is no exception. Some say efficient navigation projects and preservation of ecological and esthetic values can't mix. This project will be watched closely on this score.

You must protect what you have and one sure-fire way of doing this is to keep your environment in balance. In recent years, objectives other than engineering and economic ones have become increasingly important and competitive. Heavy emphasis is being placed on good stewardship of the natural environment, the conservation of fish and wildlife, the provision of expanding opportunities for healthful outdoor recreation, and other measures contributing to a better and happier life.

The rapid and massive expansion of our urban-industrial society keeps pushing the countryside—the open spaces—further and further back. Many people are deeply concerned that we may be sacrificing too much of the natural environment in order to fulfill our material requirements. This is particularly true in the more thickly populated portions of our country, where the tensions of modern life are generally greatest and the need for relaxation and recreation more pressing.

As cities continue to grow, residents will want to be able to leave their homes, leave their crowded highways, and find beautiful landscapes, green fields, wooded hillsides, and clean water somewhere nearby. Riverbank development must be controlled to insure that the air above and the water flowing by will remain clean. By comparison with many of our other major river basins, you now have little contamination from municipal or industrial wastes with which to contend.

A solution to the serious natural pollution problem posed by the salt content of the Arkansas River is required. I can assure you that the Corps of Engineers, other Federal agencies, and the States involved are doing their utmost to find a solution. In this connection, the Tulsa District has recommended a 250 million dollar project calling for construction of improvements in the Red and Arkansas River Basins to reduce brine pollution from natural resources. This is being coordinated at the Washington level. That salt pollution resulting from petroleum and natural gas operations is being dealt with through State action.

I am pleased to note that a bill designed to curb pollution of Oklahoma streams is now pending in your Legislature. You must have adequate regulatory safeguards and strict enforcement to insure that your rivers will not become polluted as new population centers and industrial development take place.

I mentioned earlier that effective management must go hand in hand with the planning necessary to protect your development and keep your environment in balance. The Arkansas River project must have an organization that will treat this region as an entity rather than leaving the planning function solely to each community along the river bank on a piecemeal basis.

Essentially then, there must be a broadly based organization which will consider all viewpoints objectively and without the personal, vested interests of a particular section. Such an organization will be called upon to weigh the merits of conflicting uses for the best overall public good. I urge that this Association be such an organization prepared to make recommendations to the Governors and State agencies involved. You have come too far and accomplished too much to stop now. You have the knowledge and the background as to the needs of this basin, both from geographic and use points of view. You constitute a natural body to continue an enlightened overview and to help plan the development as a whole.

In closing, let me tell you of a comment in one of the Washington papers last week quoting a college girl from Indiana who was one of the participants at a student-editor conference on the environment. She said: "If you lived in the Wabash Valley, you'd be very much against pollution. There are no pretty days in Terre Haute."

There are many pretty days and good times ahead for the Arkansas Basin. Let's make sure it is kept that way.

Thank you very much.

MOTION PICTURE CLASSIFICATION SYSTEM

Mr. McCLELLAN. Mr. President, I continue to receive a number of communications relating to my statements concerning trends in the motion picture industry, the film classification system, and the possibility that films which have been rated as not appropriate for minors may be performed on television. Recently the American Legion and the American Legion Auxiliary, Ninth District, Arkansas Department, adopted resolutions endorsing my efforts in this field.

In my previous statements I have not expressed my personal opinions about particular movies but have quoted the comments and observations of critics, performers, educators, and concerned parents. Dr. Benjamin Spock in his recent book "Decent and Indecent" discusses this subject in a section of the book entitled, "A Reactionary View of

Obscenity and Brutality." Dr. Spock and I are not usually in agreement concerning issues of public policy, however, his thoughts on this subject are very similar to the observations I have previously made. Since Dr. Spock is probably this country's best known authority on child care his views are of particular interest. He writes:

For decades I was an uncompromising civil libertarian and scorned the hypocrisy usually involved in the enforcement of obscenity laws. But recent trends in movies, literature, and art toward what I think of as shock-obscenity, and the courts' acceptance of it, have made me change my position somewhat, particularly in view of other brutalizing trends . . .

To justify legal or customary standards of decency I don't think it should be necessary to prove that adults have committed sex crimes or that adolescents have lost their virtue as a direct result of reading a story or looking at a picture.

No single experience will make that difference. However, various psychological observations have shown clearly that people's standards are always being modified—sometimes down, sometimes up—by the ethical atmosphere in which they find themselves. This applies to sexual behavior and to violence. Experiments have proved that after viewing films of violence, people become at least slightly more cruel in their relations with others. . . . Adolescents from even protective families are allowed to choose their own movies. Yet in a recent federal court decision concerning a film about delinquency that depicted "scenes of brutality, prostitution, homosexuality and sodomy," two of the three judges agreed that, though they were "revolted," the film was not obscene according to the stipulations of the Supreme Court because (1) it was not "designed to appeal to the prurience of the average American" and (2) was not "utterly without redeeming social significance." Another recent film showed a mother practicing a perversion on her child. . . .

I'd suggest that, for public presentations, there be levels of tolerance of taboo. What is allowed to be displayed openly on newsstands and in bookstores for children as well as adults to buy, and what is shown on television during children's viewing hours and in theaters open to all ages, should only be what average citizens would consider not disturbing to children, not debasing to their ideals. This would not mean that immorality, coarseness, or social wrongs could not be indicated, provided it was done in a way that would not crudely shock the average child. . . .

I agree that plays, movies, late television programs, books, magazines should be able to deal seriously or lightly with themes that involve sexuality and immorality—for the purpose of education, catharsis of the emotions, escape, or titillation—without harm to adults over eighteen. I appreciate and approve of all these kinds of works. But I think they should be labeled and reserved for adults. To be sure, some adolescents will see them but only after taking the initiative in circumventing the law or their parents—which will make the experience have a different meaning for them if society allows the producer to offer them such productions. . . .

I'd distinguish today a third category of movies, plays, novels, articles, and paintings in which a primary aim is to shock, revolt, or embarrass by explicitly depicting sexual intimacies—especially those of a loveless, perverse, or brutal kind—and other works that horrify with vivid details of nonsexual brutality. Most though not all of these works are obviously feeble in their artistic or social significance. . . .

Now it is mainly writers, artists and producers with little discernible artistic or social integrity who are leading the assault on standards. And the courts are using as their only criteria for guilt the "appeal to prurience" and the "utter lack of social significance," which are too limited and technical to bar the kinds of material I consider destructive.

Of course I'd be best satisfied if people would decline in such great numbers to support shocking presentations that the producers would give up in discouragement. This would be the ideal way to bring about change without submitting to the arbitrariness of laws and judges. But since I don't believe that an overwhelming revulsion is likely to occur for another ten years, I would now join a majority, if such developed, in favor of new laws which would determine guilt simply on the basis of judges' and juries' sense of shock and revulsion. . . .

I do recognize that what is considered shocking or brutalizing will vary with the times. I admit that the laws I suggest might delay the publication of a future "Lady Chatterly's Lover," which would be a substantial loss in the interval; but its worth would be vindicated in the end. I agree that my reasoning is the same that all censors and prophets of doom have used. On the other hand, nations and civilizations have actually disintegrated when their belief in themselves and their adherence to standards were lost.

Mr. President, almost every day I read in the press or receive in the mail news clippings which vividly describe the current situation in the motion picture industry. A recent issue of the Washington Daily News contained a description by columnist Don McLean of the film entitled "The Damned." Mr. McLean's column reads in part:

The other night I went to a movie that I don't think even I'M going to be mature enough to see for at least 10 or 15 years. The name of the picture is "The Damned," and it was produced by Warner Bros. I saw it at the Motion Picture Association screening room, a temple of entertainment built by MPA President Jack Valenti about a block from the White House. "The Damned" has been playing for about a week at the MPA, to selected audiences—namely the press and various embassy delegations. I attended on Italian night, along with a few other reporters and many people from the Italian Embassy.

And now to "The Damned." This is a heartwarming story about free enterprise carried to extremes. The main characters are part of an enormously wealthy German family that's in the steel and munitions business. It manages to survive all of Germany's wars and peacetimes and always gets along with the party in power. Naturally, this doesn't sound like any German family anyone has ever heard about, so the film must be sheer fiction. The movie family's name is von Essenbeck. The time is just as Hitler is solidifying his dictatorship.

As the story opens, the whole family is gathered for the birthday of Grandpa von Essenbeck. (He is later murdered in his bed and we get to see all the bullet holes.) Part of the entertainment consists of Martin von Essenbeck, the 21-year-old grandson, doing a female impersonation. (Right away we know he has problems.) There's a tremendous power struggle going on for control of the family business. There are a couple of nude scenes with Friedrich Bruckmann (Dirk Bogarde) and Baroness Sophie von Essenbeck in bed. Meanwhile, Martin von Essenbeck is attempting to fondle his 8-year-old niece. Later, we see Martin, who leads an incredibly varied sex life, violating a little girl; making love to a grown woman; AND raping his mother. (This is NOT a stag film.)

Meanwhile, the German SA has a homosexual orgy, with lecherous old men chasing around young boys wearing women's undergarments. All of them are machine-gunned by the SS (the only good idea it ever had) and we get to see punctured bodies stacked up and blood all over the falls. At the end of the picture, us newsmen and diplomats went out into the party room, swilled champagne and talked about the movie's socially redeeming qualities.

The Washington Evening Star recently published a review by their Drama Critic, Harry MacArthur, of the "R" rated movie "The Honeymoon Killers." A single paragraph of this review is adequate to appreciate the social and artistic values of this film. He writes:

You will not find much in "The Honeymoon Killers" to arouse empathy. Martha and Ray are a couple of vicious, amoral goons and their victims are just plain stupid, or at best pitiable. It is doubtful that you'd want to spend two minutes with anyone involved, even on a movie screen. To make the whole thing even less palatable, Kastle has taken full advantage of the current permissiveness to pursue realism by resorting to the crude and vulgar whenever possible. He finds it possible frequently. When you have a movie in which a leading character doesn't even bother to close the door when he rushes into the bathroom, you have a revolting movie.

These are examples of the "R" and "X" rated films, which motion picture companies clearly intend in the future to offer for sale to television—perhaps with one or two minutes of film deleted. According to the president of the Motion Picture Association, the production of such films is "enhanced" by the rating system. These films are examples of the industry's concept of "self-restraint." They are also evidence of why I have previously announced that I plan to conduct hearings on the entire subject of film classification.

Mr. President, I ask unanimous consent that the resolution of the Ninth District, Arkansas Department, the American Legion, be printed in the RECORD.

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

NINTH DISTRICT, ARKANSAS DEPARTMENT, THE AMERICAN LEGION RESOLUTION COMMENDING HON. JOHN L. MCCLELLAN, SENATOR

Whereas; Many films are being produced by the motion picture industry which are banned to youngsters under 17 years of age owing to "sexy scenes" and other permissive matter; and

Whereas; The United States Supreme Court, in recent years, has consistently ruled that adults can see and read whatever they choose; and

Whereas; The motion picture industry relied on the sales of films to the television media to recover some of the expenses of producing the films; and

Whereas; The showing of sex and violence films on television could be available to children to see without parental supervision; and

Whereas; The news media reports that Senator John O. Pastore (Dem. R.I.) last year began hammering away at "sex and violence" on television, leading the networks to pay closer attention to their regular programs; further that now Senator John L. McClellan, (Dem. Ark) is preparing to hold hearings later this year that will define the issues even more sharply and McClellan points out that

those X-rated films are going to be ripe for television sales and that if they weren't fit to be seen by youngsters in motion picture theatres they won't be fit to be seen by youngsters on television screens;

Be it therefore resolved by; The Ninth District, Arkansas Department, The American Legion, assembled in regular session, in Pine Bluff, Arkansas, on this 1st day of March, 1970, go on record as highly commending the Hon. John L. McClellan for his proposed plans to question the whole theory and practice of motion picture ratings and his intention of meeting with Dean Burch, Chairman of the Federal Communications Commission, to discuss possible course of action.

Copies of this resolution to be sent to the Hon. John L. McClellan; the Hon. J. Wm. Fulbright; the Hon. David Pryor and to Chairman Dean Burch of FCC.

Signed:

HOMER B. WEATHERFORD,
Ninth District Commander.

Official:

LARRY FRENCH,
Ninth District Adjutant.

ABA RESOLUTION REGARDING S. 2022—THE ILLEGAL GAMBLING BUSINESS CONTROL ACT OF 1969

Mr. McCLELLAN. Mr. President, I would like to bring to the attention of my colleagues here in the Senate and in the other body a resolution recently adopted by the American Bar Association which supports S. 2022, the Illegal Gambling Business Control Act of 1969. S. 2022 has, of course, now been incorporated into S. 30, the Organized Crime Control Act of 1969, as title VIII of that measure, which overwhelmingly passed the Senate by a vote of 73 to 1 on January 23 of this year and is now pending in the House Judiciary Committee.

I certainly welcome the formal support of the American Bar Association on this aspect of the legislation, which is, of course, representative of the major thrust of S. 30. I am hopeful that our colleagues in the House now will expeditiously act on this badly needed legislation and that their action will reflect the nearly unanimous thinking of the Senate when we passed this proposal after prolonged study, hearings, and debate.

Mr. President, I ask unanimous consent that a letter containing the American Bar Association resolution supporting S. 2022—title VIII of S. 30—be printed in the RECORD.

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

AMERICAN BAR ASSOCIATION,
Chicago, Ill., March 13, 1970.

Hon. JOHN MCCLELLAN,
Chairman, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: At the meeting of the House of Delegates of the American Bar Association held Februrary 23–24, 1970, the following resolution was adopted upon recomemndation of the Section of Criminal Law:

Resolved, that the American Bar Association approves and supports in principle legislation represented by S. 2022, 91st Congress, 1st Session, cited as the "Illegal Gambling Business Control Act of 1969," a Bill "To permit the Federal Government to further assist the States in the control of illegal gambling, and for other purposes"; and

Be It Further Resolved, that the Section of Criminal Law is authorized to indicate support of the Association for such legislation by appearances before Committees of the Congress or in such other ways as may be appropriate.

This resolution is being transmitted for your information and whatever action you may deem appropriate. We would appreciate your advising Donald E. Channell, Director of the American Bar Association Washington Office, 1705 De Sales Street, N.W., if hearings are scheduled on the subject of the resolution.

Sincerely yours,

WM. REECE SMITH, Jr.,
Secretary.

THE INVASION OF LEGITIMATE BUSINESS, THE ORGANIZED CRIME CONTROL ACT OF 1969, AND FALSE CLAIMS OF CIVIL LIBERTIES VIOLATIONS

Mr. McCLELLAN. Mr. President, the Wednesday, February 25, 1970—page 41, column 1—New York Times contained an article by Nancy Moran concerning the "big-time" criminal residents of Yonkers, N.Y. Toward the end of the article the following appears:

Former United States Attorney Robert M. Morgenthau once described John Jr.'s father (John Mariello) as "a prime example of a Mafia figure operating illegitimately in legitimate channels."

The article describes many instances of illegitimate operation of legitimate organizations by mob members. I commend it to each Senator for careful reading.

Mr. President, title IX of S. 30, the Organized Crime Control Act of 1969, which the Senate passed on January 23, by a vote of 73 to 1, is expressly aimed at removing the baneful influence of organized crime from our legitimate commercial endeavors that are all too often today conducted in an illegitimate manner by the forces of organized crime. Title IX, patterned on the antitrust laws, allows both civil and criminal actions to effect this removal. An action may be brought by the Government where a pattern of criminal activity is proven in connection with the conduct of the organization's affairs. The remedies available include divestiture, dissolution, criminal forfeiture, and prevention of return to the industry by the violators. As might be expected, there were attempts made to categorize our efforts as unconstitutional and to suggest that they somehow involved a violation of civil liberties.

During the debate on S. 30 on January 22, on pages 851–855 of the RECORD, a "detailed analysis of the manner in which the provisions of the proposed bill run counter to the law and spirit of the Constitution" was offered for the consideration of the Senate. In that analysis the following statement was made:

Although Title IX clearly contemplates that the records obtained in this dragnet fashion may be used in subsequent criminal as well as civil proceedings, no provision in the statute safeguards the individual's Fifth Amendment privilege against self-incrimination in a later proceeding. If material acquired in connection with a civil investigation can be used in a subsequent criminal case, any Fifth Amendment privilege would thereby be destroyed. Unless this privilege covers all prosecutions which result from the gathering of this information, broad civil investigative powers in an area involving criminal activity would clearly be unconstitutional. The question of availability of the privilege in such a case is currently pending in the Supreme Court, *United States* v. *Kordel,* 407 F. 2d 570 (6th Cir. 1968), *cert. granted,* 395 U.S. 932 (1969) (O.T. 1969, No. 87). (p. S425)

At hearings on S. 30, before the Subcommittee on Criminal Laws and Procedures, the following testimony was given by the same civil liberties organization that prepared the insert:

In addition, it is apparently contemplated that the material may ultimately be used in both criminal and civil cases. Subsection 4 of section 1968 provides that when any attorney has been designated to appear on behalf of the United States before *any court* or *grand jury* in *any* case or proceeding involving any alleged violation of this *chapter,* the custodian may deliver to such attorney such documentary material in possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. *This utterly destroys the Fifth Amendment privilege with regard to this material in a subsequent criminal proceeding, and we believe is clearly unconstitutional.* Just this week, the Supreme Court agreed to hear *United States* v. *Kordel* (No. 2191) in which this very issue is raised. It would, therefore, appear to be most *foolhardy* for Congress to rush to pass this legislation while a kingpin in its theory is being considered by the Court. (Hearings, p. 447) (italics added)

The Supreme Court on February 24, 1970—*Kordel* v. *United States,* 87 U.S. Sup. Ct. 2–24–70—has now determined that we were not as "foolhardy" when we placed our seal of approval on S. 30 as this civil liberties organization attempted to suggest. The Supreme Court confirmed by its decision in Kordel that the Senate was fully justified in giving short shrift to these fanciful "constitutional" objections when it stated:

It would stultify enforcement of federal law to require a governmental agency such as the FDA invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial. (p. 10)

In this decision, which was pending when the civil liberties organization wanted us to delay action, the Court responded, in effect, to the allegation of the organization that "this utterly destroys the fifth amendment privilege."—hearings, page 477—when it observed:

Without question he could have invoked his Fifth Amendment privilege against compulsory self-incrimination. Surely Feldton was not barred from asserting his privilege simply because the corporation had no privilege of its own, nor because the proceeding in which the Government sought information was civil rather than criminal in character.

Mr. President, the records of our hearings clearly demonstrate that each member of the Criminal Laws and Procedures Subcommittee is fully concerned that its work-product be in accord with our Constitution. I will take second seat to no man in the concern for the civil liberties of all of our citizens. But I also recognize that the Constitution does not prevent prosecution for crime, that it does allow for protection of society, and that not

every cry that a proposed item of legislation should be rejected because it is a violation of civil liberties must be blindly accepted at face value. There are among us today some who have gone far toward, in the words of Mr. Justice Jackson in *Terminiello* v. *Chicago*, 337 U.S. 1, 15 (1949):

> accepting the doctrine that civil liberty means the removal of all restraints . . . and that all . . . attempts to maintain order are impairments of the liberty of the citizen. The choice is not between order and liberty. It is between liberty and order and anarchy without either. There is danger that, if . . . [we do] not temper . . . [our] doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.

Mr. President, the Kordel case makes it all too clear that although an organization with the name of "Civil Liberties" may claim an invasion of those liberties it is not necessarily true. All too often, unfortunately, these so-called invasions are, as here, simply and patently ill-reasoned and wrong-minded.

Mr. President, I ask unanimous consent that the text of the New York Times article be printed in the RECORD at this point in order that the extent of infiltration of our legitimate organizations will be more apparent. I also ask unanimous consent that the Kordel opinion be printed at this point.

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

[From the New York Times, Feb. 25, 1970]

YONKERS IS BEDROOM AND OFFICE FOR MAFIA CHIEFS

(By Nancy Moran)

YONKERS.—"So many big-time Mafia members live in Yonkers," a law-enforcement officer familiar with organized crime said recently, "that we think of the city as a little Newark."

Last week Yonkers police broke up what was described as a $30-million-a-year numbers operation and arrested six men. Among those arrested was Sabato Milo, a nephew of Bo and Tommy Milo, who have been identified by the Justice Department as members of the Mafia family of the late Vito Genovese.

On March 4 John (Gentleman Johnny) Masiello and his 28-year-old son, John Jr., both Yonkers residents who have been identified as members of the Genovese Mafia family, are scheduled to be sentenced on a charge of bribing post office officials who supervised mail trucking contracts in New York.

A special Westchester County grand jury is now looking into racketeering, organized crime and official corruption in this city of 220,000 people. The grand jury was impaneled last month after the State Commission of Investigation charged that pressure from Mafia leaders and politicans had produced "intimidation, servility, favoritism, mismanagement, inefficiency and waste" in the Yonkers city government.

BOOKMAKING INQUIRY

A special Federal grand jury is hearing evidence on a national Mafia-controlled bookmaking operation frequently making its headquarters in Yonkers that is alleged to gross $70-million a year.

Sources close to the investigations say they could result in a scandal comparable to the one in Newark, where Mayor Hugh J. Addonizio and 14 other men, including a reputed Mafioso, Anthony (Tony Boy) Boiardo, and a number of city officials, were indicted last December on charges of sharing kickbacks totaling $248,000 from an engineering firm that had been awarded municipal contracts.

"Before last November's elections it was widely felt that no one could get a city contract in Yonkers without kicking back some of it," a Federal investigator said in a recent interview.

The investigator added that he believed that the new administration of Mayor Alfred D. DelBello, a former Democratic Councilman, was "scrupulously honest."

The most powerful of the reputed Mafiosi here is Nicholas (Cockeyed Nick) Rattenni, alleged to be a captain in the Mafia family formerly controlled by Genovese. According to Joseph Fisch, chief counsel for the S.I.C., Rattenni has moved up in the last few years from a "button man," or common soldier, to the captain's position formerly held by James Angeina, who died in 1967.

RATTENNI FREE ON BAIL

The 63-year-old Rattenni, who has a lengthy arrest record, but was convicted only once, in 1927, and sentenced to two and a half to five years for robbery, for which he served three years in Sing Sing. Arrested along with several other reputed Mafiosi last month and charged with conspiring to bribe Internal Revenue Service agents, he is now free on $20,000 bail.

Rattenni's name has long been linked with those of well-known gangsters. Federal investigators say that in the nineteen-thirties and nineteen-forties he was an associate of the late Frank Erickson, the New York bookmaker. In 1953 Herbert Brownell, Jr., who was then United States Attorney General, described him as a chief lieutenant of Frank Costello, the gambler.

When Rattenni moved to Yonkers from the Bronx 25 years ago and entered the private carting business, he rented garbage trucks from Joseph (Joey Surprise) Feola, who vanished in 1962 and is believed to have been murdered in a war between the Carlo Gambino and Genovese Mafia families over the refuse-removal contract at the Ford Motor Company assembly plant in Mahwah, N.J.

Over the years Rattenni's business prospered, and today 90 per cent of the private garbage collection here is done by his two firms, the Westchester Carting Company and the Fleetwood Haulage Company.

SON ENTERS BUSINESS

His 25-year-old adopted son, Nick Jr., entered the family business last year when he became president of A-1 Compaction, Inc., a new firm listed at the same address as Westchester Carting Company.

The Rattennis' business practices were a major subject of the recent S.I.C. investigation. The commission charged that Westchester Carting Company trucks had been allowed to use the city incinerator while the city's own trucks were forced to go elsewhere. The practice was said to cost Yonkers $1 million a year. The matter is currently under investigation by the Westchester District Attorney's office.

The S.I.C. was particularly disturbed by Rattenni's friendships with past and present city officials.

For example, during the Commission's investigation Councilman Frank Adamo, who was recently elected to a third term, testified that he had visited Rattenni at home, had frequently driven him to his office and had used the office telephone to call City Hall to inquire about zoning changes. The commission described the relationship as "unhealthy."

A $250,000 HOME

Despite his alleged Mafia connections, Rattenni leads many successful Westchester businessmen. He lives with his second wife, Evelyn, and their 12-year-old son, Robert, in a secluded $250,000 home at 107 Rockledge Avenue, in the exclusive western residential section of Yonkers.

The dark-red shingled house sits on 12 acres of land that includes a three-bedroom playhouse, a 200-yard driving range and a putting green. The Rattennis belong to the Willow Ridge Country Club in Harrison, where Nick Jr. is golfing champion.

The elder Rattenni is a far poorer golfer than his son, but, according to one story, he was good enough to beat Frank Erickson in a match where $100,000 was at stake. Erickson, law officers say, paid his debt by giving Rattenni 6,400 shares of Roosevelt Raceway stock. That was in the early nineteen-fifties.

Last year Rattenni sold the stock for $1,322,676. The sale came to light in a recent lawsuit involving the raceway's stock. Rattenni is in no way involved in the lawsuit.

One indication of Rattenni's power is the dozen "button men" who served as bodyguards or merely came to listen when he testified before the S.I.C. last December.

Among the reputed Mafiosi noted among the spectators by state investigators were Frank Sacco, another reputed member of the Genovese family, who has been arrested numerous times on loan-sharking charges in Yonkers, and 28-year-old John A. Masiello Jr.

Former United States Attorney Robert M. Morgenthau once described John Jr.'s father as "a prime example of a Mafia figure operating illegitimately in legitimate channels."

The Masiellos control ANR Leasing Corporation, of 332 East 149th Street, the Bronx, which has mail hauling contracts until the Post Office Department canceled them in June, 1968. Last month both father and son were convicted of bribing post office officials who supervised mail trucking contracts in New York.

In 1965, the Small Business Administration awarded ANR a loan of $400,000, but official investigators believe the money was used to finance the elder Masiello's loan-sharking activities. Investigators say that Masiello has substantial interests in other metropolitan area trucking firms and "virtually controls trucking out of Kennedy International Airport."

The 50-year-old Masiello lives in a $100,000 home on Durst Place, a quiet residential street in the western part of the city. Just around the corner, at 192 Dunwoodie Street, is the spacious home of Vincent John Rao, the 72-year-old consiglieri (counselor) of the Mafia family of the late Thomas (Three Finger Brown) Luchese.

Like Vito Corleone, the Mafia leader in the novel "The Godfather," Rao has housed his two married daughters in homes next door. The three-house compound with swimming pool and playhouse is reportedly valued at $500,000.

After Luchese died in 1967, the short, Sicilian-born Rao could have had the leadership of the family if he'd wanted it, according to law officials. However, with his fortune and a craving for respectability, he apparently preferred to fade into the background.

The exact amount of Rao's fortune is uncertain, but he is said by Federal officials to have made millions of dollars through real estate holdings and businesses that include a Yonkers restaurant, a construction company and a New Jersey oceanfront hotel.

Rao is now in jail, serving a five-year perjury sentence but the police say his business affairs are being handled by his associates.

[Supreme Court of the United States, No. 87, October term, 1969]

UNITED STATES, PETITIONER, V. LELORD KORDEL AND ALFRED FELDTEN, ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FEBRUARY 24, 1970

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents are the president and vice president, respectively, of Detroit Vital Foods,

Inc. They were convicted in the United States District Court for the Eastern District of Michigan, along with the corporation, for violations of the Federal Food, Drug, and Cosmetic Act.[1] The Court of Appeals for the Sixth Circuit reversed the respondents' convictions on the ground that the Government's use of interrogatories to obtain evidence from the respondents in a nearly contemporaneous civil condemnation proceeding operated to violate their Fifth Amendment privilege against compulsory self-incrimination.[2] We granted certiorari to consider the questions raised by the Government's invocation of simultaneous civil and criminal proceedings in the enforcement of federal law.[3]

In March 1960 the Division of Regulatory Management of the Food and Drug Administration (hereafter "FDA") instructed the agency's Detroit office to investigate the respondents' possible violations of the Food, Drug, and Cosmetic Act. Within a month the Detroit office recommended to the Division a civil seizure of two of the respondents' products, "Korleen" and "Frutex"; within another month the Division similarly recommended seizure to the FDA's General Counsel. On June 6, 1960, the General Counsel requested the United States Attorney for the Eastern District of Michigan to commence an *in rem* action against these products of the corporation, and the United States Attorney filed a libel three days later. The corporation, appearing as the claimant, answered the libel on September 12, 1960. An FDA official in the Division of Regulatory Management then prepared extensive interrogatories to be served on the corporation in this civil action. The United States Attorney filed the agency's interrogatories on January 6, 1961, pursuant to Rule 33 of the Federal Rules of Civil Procedure.[4]

After the Division official had drafted the interrogatories, he recommended that pursuant to § 305 of the Food, Drug, and Cosmetic Act the FDA serve upon the corporation and the respondents a notice that the agency contemplated a criminal proceeding against them with respect to the transactions that were the subject of the civil action.[5] On January 9, 1961, three days after the filing of the interrogatories in the civil action, the Detroit office received an instruction from the Division to serve the statutory notice. The Detroit office complied 10 days later, and on March 8, 1961, the agency held a hearing on the notice.

On April 10, the corporation, having received the FDA's interrogatories but not yet having answered them, moved to stay further proceedings in the civil action or, in the alternative, to extend the time to answer the interrogatories until after disposition of the criminal proceeding signaled by the § 305 notice. The motion was accompanied by the affidavit of counsel. The moving papers urged the District Court to act under Rule 33 "in the interest of substantial justice" and as a "balancing of hardship and equities of the respective parties. . . ." Permitting the Government to obtain proof of violations of the Act by resort to civil discovery procedures, the movant urged, would be "improper" and would "work a grave injustice against the claimant"; it would also enable the Government to have pretrial discovery of the respondents' defenses to future criminal charges. Counsel expressly disavowed any "issue of a self-incrimination privilege in favor of the claimant corporation." And nowhere in the moving papers did counsel raise a claim of the Fifth Amendment privilege against compulsory self-incrimination with respect to the respondents.

On June 21, 1961, the District Court denied the motion upon finding that the corporation had failed to demonstrate that substantial prejudice and harm would result from being required to respond to the interrogatories. The court reasoned that the § 305 notice did not conclusively indicate the Government would institute a criminal proceeding, that six to 12 months could elapse from the service of the statutory notice to initiation of a criminal prosecution, and that the Government could obtain data for a prosecution from the testimony in the civil action or by subpoenaing the books and records of the corporation. Accordingly, the court concluded, the interests of justice did not require that the Government be denied the information it wanted simply because it had sought it by way of civil-discovery procedures. On September 5, 1961, in compliance with the court's directive, the corporation, through the respondent Feldten, answered the Government's interrogatories.

On July 28, 1961, five weeks after the District Court's order but more than a month before receipt of the answers to the interrogatories, the Director of the FDA's Detroit office recommended a criminal prosecution to the Division. The Division forwarded the recommendation to the General Counsel on August 31, 1961, still prior to receipt of Feldten's answers. While the matter was pending in the General Counsel's office, the Division officer who had originally drafted the proposed interrogatories recommended that additional violations of the statute be alleged in the indictment. On June 13, 1962, the Department of Health, Education, and Welfare requested the Department of Justice to institute a criminal proceeding, and about two months after that the latter department instructed the United States Attorney in Detroit to seek an indictment. The civil case, still pending in the District Court, proceeded to settlement by way of a consent decree in November 1962, and eight months later the Government obtained the indictment underlying the present judgments of conviction.

I

At the outset, we assume that the information Feldten supplied the Government in his answers to the interrogatories, if not necessary to the proof of the Government's case in the criminal prosecution, as the Court of Appeals thought, at least provided evidence or leads useful to the Government.[6] However, the record amply supports the express finding of the District Judge who presided at the criminal trial, and who held an extensive evidentiary hearing on the respondents' pretrial motion to suppress evidence, that the Government did not act in bad faith in filing the interrogatories. Rather, the testimony before the trial court demonstrated that the Division of Regulatory Management regularly prepares such interrogatories upon the receipt of claimants' answers to civil libels, and files them in over three-fourths of such cases, to hasten their disposition by securing admissions and laying the foundation for summary judgments.

The Court of Appeals thought the answers to the interrogatories were involuntarily given. The District Judge's order denying the corporation's motion to defer the answers to the interrogatories, reasoned the court, left the respondents with three choices: they could have refused to answer, thereby forfeiting the corporation's property that was the subject of the libel; they could have given false answers to the interrogatories, thereby subjecting themselves to the risk of a prosecution for perjury; or they could have done just what they did—disclose the requested information, thereby supplying the Government with evidence and leads helpful in securing their indictment and conviction.[7]

In this analysis we think the Court of Appeals erred. For Feldten need not have answered the interrogatories. Without question he could have invoked his Fifth Amendment privilege against compulsory self-incrimination.[8] Surely Feldten was not barred from asserting his privilege simply because the corporation had no privilege of its own,[9] nor because the proceeding in which the Government sought information was civil rather than criminal in character.[10]

To be sure, service of the interrogatories obliged the corporation to "appoint an agent who could, without fear of self-incrimination, furnish such requested information as was available to the corporation."[11] The corporation could not satisfy its obligation under Rule 33 simply by pointing to an agent about to invoke his constitutional privilege. "It would indeed be incongruous to permit a corporation to select an individual to verify the corporation's answers, who because *he* fears self-incrimination may thus secure for the corporation the benefits of a privilege it does not have."[12] Such a result would effectively permit the corporation to assert on its own behalf the personal privilege of its individual agents.[13]

The respondents press upon us the situation where no one can answer the interrogatories addressed to the corporation without subjecting himself to a "real and appreciable" risk of self-incrimination.[14] For present purposes we may assume that in such a case the appropriate remedy would be a protective order under Rule 30(b), postponing civil discovery until termination of the criminal action.[15] But we need not decide this troublesome question. For the record before us makes clear that even though the respondents had the burden of showing that the Government's interrogatories were improper,[16] they never even asserted, let alone demonstrated, that there was no authorized person who could answer the interrogatories without the possibility of compulsory self-incrimination.[17] To the contrary, the record shows that nobody associated with the corporation asserted his privilege at all. The respondents do not suggest that Feldten, who answered the interrogatories on behalf of the corporation, did so while unrepresented by counsel or without appreciation of the possible consequences. His failure at any time to assert the constitutional privilege leaves him in no position to complain now that he was compelled to give testimony against himself.[18]

Kordel's claim of compulsory self-incrimination is even more tenuous than Feldten's. Not only did Kordel never assert the privilege; he never even answered any interrogatories. The Court of Appeals nevertheless reversed his conviction because it thought it "clear from the record that Detroit Vital Foods, Inc., was merely the corporate device through which Kordel sold his products. The Government naturally wanted to cut through the facade and get to Kordel who was the president and dominant personality in the corporation."[19] We disagree. The Government brought its libel against the goods; the corporation, not Kordel, appeared as claimant. The Government subsequently prosecuted Kordel as an officer of the company. If anyone has sought to cut through the corporate facade so far as the Fifth Amendment privilege is concerned, it is Kordel: he has, in effect, attempted to fashion a self-incrimination claim by combining testimony that he never gave and an assertion of the privilege that he never made with another assertion of the privilege that his company never had.

The Court of Appeals thought that Kordel must go free in any event because the Government had used Feldten's admissions in proving its criminal case against both respondents, in violation of the rule in *Bruton* v. *United States*.[20] This too was error. Feldten's admissions were never introduced in evidence at the trial, and thus Kordel cannot maintain that the reception in evidence of a codefendant's inculpatory statements violated his Sixth Amendment right to confrontation.[21]

Footnotes at end of article.

II

The respondents urge that even if the Government's conduct did not violate their Fifth Amendment privilege against compulsory self-incrimination, it nonetheless reflected such unfairness and want of consideration for justice as independently to require the reversal of their convictions. On the record before us, we cannot agree that the respondents have made out either a violation of due process or a departure from proper standards in the administration of justice requiring the exercise of our supervisory power. The public interest in protecting consumers throughout the Nation from misbranded drugs requires prompt action by the agency charged with responsibility for administration of the federal food and drug laws. But a rational decision whether to proceed criminally against those responsible for the misbranding may have to await consideration of a fuller record than that before the agency at the time of the civil seizure of the offending products. It would stultify enforcement of federal law to require a governmental agency such as the FDA invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial.[22]

We do not deal here with a case where the Government has brought a civil action solely to obtain evidence for its criminal prosecution [23] or has failed to advise the defendant in its civil proceeding that it contemplates his criminal prosecution; [24] nor with a case where the defendant is without counsel [25] or reasonably fears prejudice from adverse pretrial publicity or other unfair injury; [26] nor with any other special circumstances that might suggest the unconstitutionality or even the impropriety of this criminal prosecution.[27]

Overturning these convictions would be tantamount to the adoption of a rule that the Government's use of interrogatories directed against a corporate defendant in the ordinary course of a civil proceeding would always immunize the corporation's officers from subsequent criminal prosecution. The Court of Appeals was correct in stating that "the Government may not use evidence against a defendant in a criminal case which has been coerced from him under penalty of either giving the evidence or suffering a forfeiture of his property." [28] But on this record there was no such violation of the Constitution, and no such departure from the proper administration of criminal justice.

Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK did not take part in the decision of this case.

FOOTNOTES

[1] 21 U.S.C. § 301 *et seq.*

[2] *United States* v. *Detroit Vital Foods, Inc.*, 407 F. 2d 570. The Court of Appeals initially reversed the judgments of conviction of all three defendants, but on the Government's petition for rehearing it affirmed with respect to the corporation.

[3] 395 U.S. 932.

[4] Rule 33 provides in pertinent part: "Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party."

[5] Section 305 of the Act, 21 U.S.C. § 335, provides,

"Before any violation of [the Act] . . . is reported by the Secretary [of the Department of Health, Education, and Welfare] to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding." Service of the statutory notice did not necessarily mean that a criminal prosecution would follow; the testimony before the District Court on the respondents' pretrial motion to suppress evidence indicated that fewer than 10% of the matters involving a § 305 notice reach the stage of either indictment or information.

[6] Compare 407 F. 2d, at 575, with *id.*, at 572.

[7] *Id.*, at 573.

[8] *Wilson* v. *United States*, 221 U.S. 361, 377, 385; *Boyd* v. *United States*, 116 U.S. 616, 633–635; cf. *United States* v. *42 Jars . . . "Bee Royale Capsules,"* 162 F. Supp. 944, 946, aff'd, 264 F. 2d 666.

[9] *Curcio* v. *United States*, 354 U.S. 118, 124; *Wilson* v. *United States, supra*, at 385; *United States* v. *3963 Bottles . . . of . . . "Enerjol Double Strength,"* 265 F. 2d 332, 335–336, cert. denied, 360 U.S. 931; *United States* v. *30 Individually Cartoned Jars . . . "Ahead Hair Restorer . . .,"* 43 F.R.D. 181, 187; cf. *Shapiro* v. *United States*, 335 U.S. 1, 27. That the corporation has no privilege is of course long-established, and not disputed here. See *George Campbell Painting Corp.* v. *Reid*, 392 U.S. 286, 288–289; *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, 196, 208, 209–210; *United States* v. *Bausch & Lomb Optical Co.*, 321 U.S. 707, 726–727; *Essgee Co.* v. *United States*, 262 U.S. 151, 155–156; *Wheeler* v. *United States*, 226 U.S. 478, 489–490; *Baltimore & Ohio R. Co.* v. *ICC*, 221 U.S. 612, 622–623; *Hale* v. *Henkel*, 201 U.S. 43, 74–75; cf. *Curcio* v. *United States, supra; White* v. *United States*, 322 U.S. 694, 698, 705.

[10] *Gardner* v. *Broderick*, 392 U.S. 273, 276; *McCarthy* v. *Arndstein*, 266, U.S. 34, 40; *Counselman* v. *Hitchcock*, 142 U.S. 547, 562, 563–564; *Boyd* v. *United States, supra; United States* v. *The Saline Bank*, 1 Pet. 100, 104; 8 J. Wigmore on Evidence § 2257, at 339–340 (McNaughten ed. 1961); C. McCormick on Evidence § 123, at 259 (1954).

[11] *United States* v. *3963 Bottles . . . of . . . "Enerjol Double Strength," supra*, at 336; cf. *United States* v. *48 Jars . . . "Transquilease,"* 23 F. R. D. 192, 195, 196; 2A W. Barron & A. Holtzoff, Federal Practice and Procedure § 651, at 101 (1961).

[12] *United States* v. *3963 Bottles . . . of . . . "Enerjol Double Strength," supra.*

[13] Cf. *George Campbell Painting Corp.* v. *Reid, supra*, at 289; *Hale* v. *Henkel, supra*, at 69–70.

[14] Cf. *Minor* v. *United States*, 396 U.S. 87, ——; *Leary* v. *United States*, 395 U.S. 6, 16; *Marchetti* v. *United States*, 390 U.S. 39, 48; *Mason* v. *United States*, 244 U.S. 362, 365.

[15] See *Paul Harrigan & Sons* v. *Enterprise Animal Oil Co.*, 14 F.R.D. 333.

[16] *Lucy* v. *Sterling Drug, Inc.*, 240 F. Supp. 632, 634; *Glick* v. *McKesson & Robbins, Inc.*, 10 F.R.D. 477, 479, 480; *Bowles* v. *Safeway Stores, Inc.*, 4 F.R.D. 469, 470; *Blanc* v. *Smith*, 3 F.R.D. 182, 183. The respondents, urging that the Government had the burden of establishing the availability of an agent to answer for the corporation, rely upon the decision of the Court of Appeals for the District of Columbia Circuit in *Communist Party* v. *United States*, 118 U.S. App. D.C. 61, 331 F. 2d 807, cert. denied, 377 U.S. 968. But there the court departed from the customary allocation of the burden on the ground that the mere act of volunteering the information sought, or even of showing that an effort had been made to find someone who would answer, was itself potentially incriminatory. *Id.*, at 68–69, 331 F. 2d, at 814–815.

[17] See *United States* v. *American Radiator & Standard Sanitary Corp.*, 388 F. 2d 201, 204, cert. denied, 390 U.S. 922; *United States* v. *Simon*, 373 F. 2d 649, 653, cert. granted *sub nom. Simon* v. *Wharton*, 386 U.S. 1030, vacated as moot, 389 U.S. 425; but see *Nat'l Discount Corp.* v. *Holzbaugh*, 13 F.R.D. 236, 237.

[18] *Gardner* v. *Broderick*, 392 U.S. 273, 276; *Rogers* v. *United States*, 340 U.S. 367, 372–375; *United States* v. *Monia*, 317 U.S. 424, 427; *Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 113; *Brown* v. *Walker*, 161 U.S. 591, 597.

[19] 407 F. 2d, at 575.

[20] 391 U.S. 123. See 407 F. 2d, at 575.

[21] See *Bruton* v. *United States, supra*, at 126.

[22] Cf. *Standard Sanitary Mfg. Co.* v. *United States*, 226 U.S. 20, 51–52 (Sherman Act).

[23] Cf. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 683–684; *United States* v. *Pennsalt Chemicals Corp.*, 260 F. Supp. 171; and see *United States* v. *Thayer*, 214 F. Supp. 929; *Beard* v. *New York Cent. R. Co.*, 20 F. R. D. 607.

[24] See *Smith* v. *Katzenbach*, 122 U. S. App. D. C. 113, 114–116, 351 F. 2d 810, 811–813; *United States* v. *Lipshitz*, 132 F. Supp. 519, 523; *United States* v. *Guerrina*, 112 F. Supp. 126, 128.

[25] Cf. *Nelson* v. *United States*, 93 U.S. App. D. C. 14, 19, 21, and n. 19, 208 F. 2d 505, 510, 512, and n. 19, cert. denied, 346 U.S. 827.

[26] Cf. *United States* v. *American Radiator & Standard Sanitary Corp.*, 388 F. 2d 201, 204–205, cert. denied, 390 U. S. 922.

[27] Federal courts have deferred civil proceedings pending the completion of parallel criminal prosecutions when the interests of justice seemed to require such action, sometimes at the request of the prosecution, *Campbell* v. *Eastland*, 307 F. 2d 478, cert. denied, 371 U. S. 955; *United States* v. *Bridges*, 86 F. Supp. 931, 933; *United States* v. *30 Individually Cartoned Jars . . . "Ahead Hair Restorer . . .,"* 43 F.R.D. 181, 187, n. 8; *United States* v. *One 1964 Cadillac Coupe DeVille*, 41 F. R. D. 352, 353–354; *United States* v. *$2,437 United States Currency*, 36 F. R. D. 257; *United States* v. *Steffes*, 35 F. R. D. 24; *United States* v. *Maine Lobstermen's Assn.*, 22 F. R. D. 199; *United States* v. *Cigarette Merchandisers Assn.*, 18 F. R. D., 497; *United States* v. *Linen Supply Institute*, 18 F. R. D. 452, sometimes at the request of the defense, *Kaeppler* v. *Jas. H. Matthews & Co.*, 200 F. Supp. 229; *Perry* v. *McGuire*, 36 F. R. D. 272; cf. *Nichols* v. *Philadelphia Tribune Co.*, 22 F. R. D. 89, 92.

[28] 407 F. 2d, at 575–576.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

The ACTING PRESIDENT pro tempore (Mr. EAGLETON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

COMMUNICATION FROM AN EXECUTIVE DEPARTMENT

The ACTING PRESIDENT pro tempore (Mr. EAGLETON) laid before the Senate the following letter, which was referred as indicated:

REPORT OF ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

A letter from the Chairman, Advisory Commission on Intergovernmental Relations, Washington, D.C., transmitting, pursuant to law, a report of that Commission, dated January 31, 1970 (with an accompanying report); to the Committee on Government Operations.

PETITION

The ACTING PRESIDENT pro tempore (Mr. EAGLETON) laid before the Senate a resolution adopted by the City Council of Philadelphia, Pa., praying that the President of the United States use his good offices to protest the mounting rage of indiscriminate terrorism against innocent travelers to Israel, which was referred to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, with amendments:

H.R. 13448. An act to authorize the exchange, upon terms fully protecting the public interest, of the lands and buildings now constituting the U.S. Public Health Service Hospital at New Orleans, La., for lands upon which a new United States Public Health Hospital at New Orleans, La., may be located (Rept. No. 91–746).

By Mr. GOODELL, from the Committee on the District of Columbia, with amendments:

S. 2999. A bill to authorize, in the District of Columbia, the gift of all or part of a human body after death for specified purposes (Rept. No. 91–747).

BILLS INTRODUCED

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

By Mr. DODD:

S. 3621. A bill for the relief of Ana Maria Conceicao; to the Committee on the Judiciary.

By Mr. BENNETT:

S. 3622. A bill for the relief of Robert T. Barnes; to the Committee on the Judiciary.

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

S. 3623. A bill to amend title 39 of the United States Code in order to prevent the insulting and profane use of the U.S. mails as a means to distribute unsolicited and unwanted sexually-offensive advertisements; to the Committee on Post Office and Civil Service.

(The remarks of Mr. GOLDWATER when he introduced the bill appear later in the RECORD.)

By Mr. HARRIS (for Mr. HOLLINGS):

S. 3624. A bill to amend title V of the Housing Act of 1949 to provide assistance in the purchase of mobile homes in rural areas; to the Committee on Banking and Currency.

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

S. 3623—INTRODUCTION OF A BILL CLAMPING DOWN ON THE SMUT SCOUNDRELS

Mr. GOLDWATER. Mr. President, it was my hope to appear last Friday before the Senate Committee on Post Office and Civil Service in support of stronger laws against pornography. However, I recognize that all eyes of the Nation were then, and are now, on the mail halt and that members of the committee might well wish to concentrate their attention on this sudden and unfortunate situation whose bounds are not yet known.

Therefore, while I was disappointed that Friday's hearing was canceled, I can appreciate the reasons for the interruption. I will only say that I hope my good friend, the distinguished Senator from Wyoming (Mr. MCGEE) will find it possible to reschedule the postal obscenity hearing in the very near future.

Mr. President, the movement to clean up the mails of the unbelievable filth which is pouring through it is one in which I have joined since first resuming my service in this Chamber last year. I addressed the Senate seven times in the past year on this subject, and during last November and December I was privileged to appear before both the House Subcommittee on Postal Operations and the House Judiciary Committee to urge the adoption of new laws which will crack down on the smut scoundrels who are polluting the Nation's mails.

Mr. President, in connection with the forthcoming hearing by the Senate Committee on Post Office and Civil Service, I have discovered that the positive, comprehensive proposal drawn up by President Nixon to deal with sexually offensive advertisements has not yet been introduced in bill form on this side of the Hill.

In order to be certain that the administration request will get before the committee once it meets to handle legislation in this field, I have decided to join with my distinguished colleague from Arizona (Mr. FANNIN) in introducing a bill which incorporates the departmental measure.

Since the senior Senator from Arizona (Mr. FANNIN) is a member of that committee, our action will assure that the administration request will be fully discussed and considered within the committee.

Mr. President, the appropriate moment to discuss our measure will be during the upcoming hearing. For now, I would only like to mention that our bill is designed to completely bar the doors to any further use of the U.S. mails as a means to distribute unsolicited and unwanted sexually offensive advertisements.

It will achieve this by permitting any person to place his name, as well as the names of his minor children, on a list of people who desire not to receive sexually oriented advertisements. That list will be maintained by the Postmaster General, but the costs of defraying such list will be borne by the smut peddlers themselves through payment of a service charge.

Every smut dealer will be prohibited from sending his dirty material to any person whose name is on the list.

If he fails to purge his own mailing list of the names of unwilling recipients, our bill provides machinery for both the civil and criminal enforcement of its proscription.

One significant feature of the measure is the authority which it grants the Attorney General to seek temporary restraining orders and preliminary injunctions either before or during the course of judicial enforcement proceedings.

This device could prove to be the means Americans have long been seeking in order to put a halt to the improper operations of smut peddlers immediately, rather than waiting around for them to exhaust a time-consuming flood of legal motions and other technical maneuvers.

Mr. President, the bill which my distinguished colleague from Arizona (Mr. FANNIN) and I have drafted rests on solid constitutional grounds. Since it is founded upon the twin powers of Congress to protect the fundamental personal right to privacy of the American people and their inherent right to raise their children in a wholesome, healthy environment, we have no doubt that the legislation will be upheld when it goes before our judicial brethren.

Finally, I will add that our bill is intended to close up the strange gap which exists in the present postal obscenity laws under which the original source of pornography is left untouched. Oddly enough, under current laws it is only the person who deposits obscene matter in the mails who is caught by the Federal postal regulations.

It is high time that the postal obscenity laws were extended to reach the smut mills that actually produce this garbage as well as the distributor who merely mails it. Our bill will do exactly that.

In short, I believe the bill which we are offering will provide a major and effective new approach to stopping the profane intrusions which now threaten the last preserve of American freedom—the sanctity of American households.

Mr. President, I ask unanimous consent that the bill which is coauthored by the senior Senator from Arizona (Mr. FANNIN) and myself shall be printed in the RECORD at this point, which is the end of my remarks.

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

The bill (S. 3623) to amend title 39 of the United States Code in order to prevent the insulting and profane use of the U.S. mails as a means to distribute unsolicited and unwanted sexually offensive advertisements, introduced by Mr. GOLDWATER, for himself and Mr. FANNIN, was received, read twice by its title, referred to the Committee on Post Office and Civil Service, and ordered to be printed in the RECORD, as follows:

S. 3623

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

TITLE I—INVASION OF PRIVACY BY MAILING OF SEXUALLY ORIENTED ADVERTISEMENTS

FINDINGS

SEC. 101. (a) The Congress finds—

(1) that the United States mails are being used for the indiscriminate dissemination of advertising matter so designed and so presented as to exploit sexual sensationalism for commercial gain;

(2) that such matter is profoundly shocking and offensive to many persons who receive it, unsolicited, through the mails;

(3) that such use of the mails constitutes a serious threat to the dignity and sanctity of the American home and subjects many persons to an unconscionable and unwarranted intrusion upon their fundamental personal right to privacy;

(4) that such use of the mail reduces the ability of responsible parents to protect their minor children from exposure to material which they as parents believe to be harmful to the normal and healthy ethical, mental, and social development of their children; and

(5) that the traffic in such offensive advertisements is so large that individual citizens will be helpless to protect their privacy or their families without stronger and more effective Federal controls over the mailing of such matter.

(b) On the basis of such findings, the Congress determines that it is contrary to the public policy of the United States for the facilities and services of the United States Post Office Department to be used for the distribution of such materials to persons who do not want their privacy invaded in this manner or to persons who wish to protect their minor children from exposure to such material.

SEXUALLY ORIENTED ADVERTISEMENTS

SEC. 102. (a) Chapter 51 of title 39, United States Code, is amended by adding at the end thereof the following new sections:

"§ 4011. Mailing of sexually oriented advertisements

"(a) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the sender thereof and such mark or notice as the Postmaster General may prescribe.

"(b) Any person, on his own behalf or on the behalf of any of his children who has not attained the age of nineteen years and who resides with him or is under his care, custody or supervision, may file with the Postmaster General a statement, in such form and manner as the Postmaster General may prescribe, that he desires to receive no sexually oriented advertisements through the mails. The Postmaster General shall maintain and keep current, insofar as practicable, a list of the names and addresses of such persons and shall make the list (including portions thereof or changes therein) available to any person, upon such reasonable terms and conditions as he may prescribe, including the payment of such service charge as he determines to be necessary to defray the costs of compiling and maintaining the list and making it available as provided in this sentence. No person shall mail or cause to be mailed any sexually oriented advertisement to any individual whose name and address has been on the list for more than thirty days.

"(c) No person shall sell, lease, lend, exchange, or license the use of, or, except for the purpose expressly authorized by this section, use any mailing list compiled in whole or in part from the list maintained by the Postmaster General pursuant to this section.

"(d) 'Sexually oriented advertisement' means any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing. Material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalogue, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters.

"§ 4012. Judicial enforcement

"(a) Whenever the Postmaster General believes that any person is mailing or causing to be mailed any sexually oriented advertisement in violation of section 4011 of this title, he may request the Attorney General to commence a civil action against such person in a district court of the United States. Upon a finding by the court of a violation of that section, it may issue an order including one or more of the following provisions as the court deems just under the circumstances:

"(1) a direction to the defendant to refrain from mailing any sexually oriented advertisement to a specific addressee, to any group of addressees, or to all persons;

"(2) a direction to any postmaster to whom sexually oriented advertisements originating with such defendant are tendered for transmission through the mails to refuse to accept such advertisements for mailing; and

"(3) a direction to any postmaster at the office at which registered or certified letters or other letters or mail arrive, addressed to the defendant or his representative, to return the registered or certified letters or other letters or mail to the sender appropriately marked as being in response to mail in violation of section 4011 of this title, after the defendant, or his representative, has been notified and given reasonable opportunity to examine such letters or mail and to obtain delivery of mail which is clearly not connected with activity alleged to be in violation of section 4011 of this title.

"(b) The statement that remittances may be made to a person named in a sexually oriented advertisement is prima facie evidence that such named person is the principal, agent, or representative of the mailer for the receipt of remittances on his behalf. The court is not precluded from ascertaining the existence of the agency on the basis of any other evidence.

"(c) In preparation for, or during the pendency of, a civil action under subsection (a) of this section, a district court of the United States, upon application therefor by the Attorney General and upon a showing of probable cause to believe the statute is being violated, may enter a temporary restraining order or preliminary injunction containing such terms as the court deems just, including, but not limited to, provisions enjoining the defendant from mailing any sexually oriented advertisement to any person or class of persons, directing any postmaster to refuse to accept such defendant's sexually oriented advertisements for mailing, and directing the detention of the defendant's incoming mail by any postmaster pending the conclusion of the judicial proceedings. Any action taken by a court under this subsection does not affect or determine any fact at issue in any other proceeding under this section.

"(d) A civil action under this section may be brought in the judicial district in which the defendant resides, or has his principal place of business, or in any judicial district in which any sexually oriented advertisement mailed in violation of section 4011 has been delivered by mail according to the direction thereon.

"(e) Nothing in this section or in section 4011 shall be construed as amending, preempting, limiting, modifying, or otherwise in any way affecting section 1461 or 1463 of title 18 or section 4006, 4007, or 4009 of this title."

(b) The table of contents of chapter 51 of such title is amended by adding at the end thereof the following new items:

"4011. Mailing of sexually oriented advertisements.
"4012. Judicial enforcement."

CRIMINAL PENALTIES

SEC. 103. (a) Chapter 83 of title 18, United States Code, relating to offenses against the postal service, is amended by adding at the end thereof the following new sections:

"§ 1735. Sexually oriented advertisements

"(a) Whoever—

"(1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 4011 of title 39, or willfully violates any regulation of the Postmaster General issued under such section; or

"(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 4011 of title 39, uses a mailing list maintained by the Postmaster General pursuant to such section;

shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

"(b) For the purposes of this section, the term 'sexually oriented advertisement' shall have the same meaning as given it in section 4011(d) of title 39.

"§ 1736. Restrictive use of information

"(a) No information or evidence obtained by reason of compliance by a natural person with any provision of section 4011 of title 39, or regulations issued thereunder, shall, except as provided in subsection (c) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding.

"(b) The fact of the performance of any act by an individual in compliance with any provision of section 4011 of title 39, or regulations issued thereunder, shall not be deemed the admission of any fact, or otherwise be used, directly or indirectly, as evidence against that person in a criminal proceeding, except as provided in subsection (c) of this section.

"(c) Subsections (a) and (b) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information."

(b) The table of contents of chapter 83 of such title is amended by adding at the end thereof the following new items:

"1735. Sexually oriented advertisements.
"1736. Restrictive use of information."

SEPARABILITY

SEC. 104. If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remainder of this title and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 105. The provisions of this title shall become effective on the first day of the sixth month which begins after the date of enactment.

TITLE II—EXTENDING POSTAL OBSCENITY LAWS TO MAKER OF SEXUALLY RELATED MAIL MATTER

Sec. 201. (a) Chapter 83 of title 18, United States Code, relating to offenses against the postal service, is amended by further adding at the end thereof the following new section:

§ 1737. Manufacturer of sexually related mail matter

"(a) Whoever shall print, reproduce, or manufacture any sexually related mail matter, intending or knowing that such matter

will be deposited for mailing or delivery by mail in violation of section 4009 or 4011 of title 39, United States Code, or in violation of any regulation of the Postmaster General issued under such section, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years or both, for any second or subsequent offense.

"(b) As used in this section, the term 'sexually related mail matter' means any matter which is within the scope of section 4009(a) or 4011(d) of title 39, United States Code."

(b) The table of contents of such chapter 83 is amended by adding at the end thereof—

"1737. Manufacturer of sexually related mail matter."

S. 3624—INTRODUCTION OF A BILL TO PROVIDE ASSISTANCE IN THE PURCHASE OF MOBILE HOMES IN RURAL AREAS

Mr. HARRIS. Mr. President, for the Senator from South Carolina (Mr. HOLLINGS), I introduce a bill to amend title V of the Housing Act of 1949 to provide assistance in the purchase of mobile homes in rural areas, and ask unanimous consent that the bill and statement by the Senator from South Carolina (Mr. HOLLINGS) be printed in the RECORD.

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

The bill (S. 3624) to amend title V of the Housing Act of 1949 to provide assistance in the purchase of mobile homes in rural areas, introduced by Mr. HARRIS, for Mr. HOLLINGS, was received, read twice by its title, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 3624

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title V of the Housing Act of 1949 is amended by adding a new section as follows:

MOBILE HOMES

"SEC. 524. (a) Notwithstanding the provisions of any other section of this title, the term "housing" as used in this title shall, to the extent deemed practicable by the Secretary, include mobile homes; *Provided,* That the Secretary is hereby authorized and directed, with respect to mobile homes financed under this title to (1) prescribe minimum property standards to assure the livability and durability of the mobile home and the suitability of the site on which the mobile home is to be located, and (2) obtain assurance from the borrower that the mobile home will be placed on a site which complies with the standards prescribed by the Secretary and other applicable local requirements.

"(b) Loans for the purchase of mobile homes shall be on such terms and conditions and in such amounts as the Secretary deems necessary, subject to the following limitations:

"(1) there is reasonable assurance of repayment of the loan;

"(2) the amount of the loan may not exceed $10,000;

"(3) the loan bears interest at a rate determined by the Secretary, not to exceed the maximum rate provided in Title I of the National Housing Act: *Provided,* That with respect to low and moderate income families otherwise eligible for assistance under section 521 of this title, the rate shall not exceed the rate for housing required pursuant to section 521; and

"(4) the loan is repayable within not more than twelve years and thirty-two days."

STATEMENT BY SENATOR HOLLINGS

Mr. President, today I am introducing a bill which will provide a change in Title 5 of the Housing Act of 1949 to permit the term "housing" to include a definition of mobile homes which will provide assistance in the purchase of mobile homes in rural areas. Presently, FHA programs regarding mobile homes are basically urban oriented. On July 31, 1969 I introduced a bill which would permit the Federal Housing Administration to insure loans financing the purchase of mobile homes to be used by the purchaser as his principal residence. During the debate on the floor of S. 2864, the Housing and Urban Development Act of 1969, I offered my bill as an amendment which was accepted by the Senate and is presently part of P.L. 91–152. The proposal I offer today would revise existing law to permit the Farmers Home Administration to finance mobile homes comparable to the conditions set forth in my previous bill, but with the major difference that they would be available for housing in rural non-farm areas and farm areas. This would include areas of up to 5500 persons or less.

In my judgment, Mr. President, the mobile home offers a low-cost form of housing desperately needed by our population. James Smith, Administrator of the Farmers Home Administration, stated on February 7 before the House Banking and Currency Committee that there were approximately five million homes in rural non-farm areas which were deteriorating, substandard or in need of major repairs. Because the impact of inflation has particularly hurt the residents in rural America, I feel this bill will provide a manner in which they can obtain adequate and standard housing within their financial means.

ADDITIONAL COSPONSORS OF BILLS

S. 1290

Mr. McCLELLAN. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Maryland (Mr. MATHIAS) and the Senator from New Hampshire (Mr. McINTYRE) be added as cosponsors of S. 1290, a bill to incorporate the College Benefit System of America.

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

S. 3425

Mr. JAVITS. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from New Mexico (Mr. ANDERSON) be added as a cosponsor of S. 3425, to amend the Wagner-O'Day Act to extend the provisions thereof to severely handicapped individuals who are not blind, and for other purposes.

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

S. 3466 THROUGH S. 3472

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that, at the next printing, the name of the Senator from Nebraska (Mr. HRUSKA) be added as a cosponsor of S. 3466 through S. 3472, the environmental control bills.

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

ADDITIONAL STATEMENTS OF SENATORS AS IN LEGISLATIVE SESSION

REMARKS OF SENATOR McCLELLAN BEFORE NATIONAL RIVERS AND HARBORS CONGRESS

Mr. STENNIS. Mr. President, the National Rivers and Harbors Congress held its 57th annual convention banquet at the Mayflower Hotel last Thursday night.

Senator JOHN L. MCCLELLAN, of Arkansas, was the principal speaker for this occasion. Senator MCCLELLAN, president of the National Rivers and Harbors Congress for 10 years, now serves as chairman emeritus of the organization. He also is a past president of the Mississippi Valley Flood Control Association.

Senator MCCLELLAN's address to the congress was most timely in view of today's concern over our environmental conditions. His message was most informative, and I commend it to every Member of the Senate. I ask unanimous consent that it be printed in the RECORD.

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

EXCERPTS FROM REMARKS OF SENATOR JOHN L. MCCLELLAN

Mr. Chairman, water is one of the four major and indispensable elements of man's environment. From the time God decreed that the water under the heaven should be gathered together and called the Seas, man has shown an exceptional ambivalence towards this most precious life-sustaining natural resource.

He has blessed the rain when it drenched the parched earth and quenched nature's thirst; and he has cursed it when its raging torrents and catastrophic floods have cleaved paths of destruction and devastation.

Man has stored and hoarded water to generate hydroelectric power, to irrigate the soil, to preserve wildlife and to provide recreation. He has wasted it in arid areas by not retaining and conserving it for use in times of draught and need—and has often squandered it by not profitably re-using it.

Man has consecrated and sanctified water in the ordinance of baptism, but too often he neglects and rejects the use and consumption of the proper quantity that is necessary for his own good health and physical well being.

He has abused and polluted many lakes, rivers, and harbors by allowing them to become contaminated repositories for every conceivable kind of waste and decay.

Indeed, with respect to the abundant water resources with which our nation is so richly endowed, we find that, as a people, we have in some areas exercised the highest and best in vision and wisdom; and in other areas, we have exhibited the worst in practice and habit.

The "best" is demonstrated by the marvelous multiple-purpose improvements we have made on many of our major streams for flood control, hydroelectric power, recreation, irrigation, and navigation. The "worst" is evidenced by the reckless neglect and

abuses that have contaminated and polluted our rivers and lakes, particularly in metropolitan areas, with waste, filth, and sewage which now stigmatizes so many of our congested industrial and crowded centers of population.

* * * * *

Today, when we are engaged in an unpopular war—incidentally, a war we have not tried to win—a war which is requiring expenditures of more than $25 billion annually and which has already cost us in excess of $100 billion, our Government is spending only a fraction of that amount to preserve and develop for the accommodation of our rapidly increasing population the vital water resources of our land. (The Vietnam War from 1966 to 1970 has cost $106.2 billion. Whereas, construction funds appropriated for rivers, harbors, and flood control in that same period of time was only $4.4 billion or 4 percent of the cost of the Vietnam War. For a whole decade of the sixties, our Federal Government spent only $8.5 billion for construction of river and harbor projects.) Thus, it is apparent that man's ambivalent attitude has contributed mightily towards the contamination and deterioration of this basic and indispensable natural resource.

With clean water so vital to man's sheer survival and with the great bulk of both international and domestic commerce dependent upon water transportation, one would think that the development and preservation of our national water resources would be assured; that its quality would be guaranteed and that its value would now in this enlightened age be enshrined in the hearts of mankind.

Our water transportation carries more than 25 percent of the goods moving in domestic commerce. This is second only to the railroads which carry 36.5 percent of our domestic commerce. And while the exact figures are not available, we know that probably ¾'s or more of our international commerce is carried on ships that traverse the seas.

It seems, therefore, incongruous that our Federal water projects are generally heavily saddled with stringent, precise—and often unrealistic—mathematical formulas and requirements to assay and justify the benefits of our river and harbor development programs before they can be authorized and before even usually inadequate appropriations are begrudgingly and stingily made for their construction.

Indeed, water improvement projects are unique among Federal programs in that regard. We have spent nearly $150 billion in foreign aid—in the past quarter of a century—and billions more on domestic programs that were hastily conceived, ill prepared and poorly implemented in pursuit of vague and illusionary objectives. However laudatory the goals in these programs may have been, many have completely failed of achievement; others at best have been greatly disappointing. Ironically, none of these were subjected to the preliminary surveys and appraisals nor to the rigorous standards that are imposed on our river and harbor projects.

So varied and abundant are the benefits derived from investments in river and harbor projects, however, that we have been able to meet the test and live with those standards, and still see our mighty waterways developed. These developments have resulted in lands being reclaimed and irrigated, in hydroelectric power being generated and in bringing flood control protection to our major valleys. The bountiful harvests reaped from these improvements have greatly surpassed all original estimates and expectations.

One of the most rewarding aspects of my three decades of service in the National Congress has been my labors in the vineyard of water resource development. I share with your organization, and with you, a real sense of pride and accomplishment with the construction of each new project. And, especially, am I proud of the tremendous, although belated, progress that we have made in Arkansas.

I have a personal interest in the Arkansas River Development Program which I co-authored and which is now nearing completion. Indeed, that one project alone, in my state, stands as a monumental re-affirmation of the great progress that can be made with the pursuit and implementation of these programs.

Construction did not begin on the Arkansas River Program until 1958. The first section of river navigation—to Little Rock—opened a decade later in December of 1968—and the second section—navigation on to Fort Smith—opened a year later in December, 1969. The third and final section of this 450-mile inland navigation project is scheduled for completion to Tulsa, Oklahoma, in early 1970.

This magnificent mulple-purpose project which was frequently condemned and ridiculed by many in the early stages of its conception and development has converted 450 miles of a flood-plagued river into a controlled navigable, inland waterway system that will connect Tulsa, Fort Smith, Little Rock, and Pine Bluff and give that area an outlet to all inland ports of the United States and to the ocean ports of the world.

This Arkansas project to me is symbolic of the cooperation and dedication of yours and of similar organizations working closely with the Congress, the Executive Branch, and especially with the Corps of Engineers. By reason of this vast development, the Arkansas River Valley is already experiencing tremendous industrial growth and expansion and the amount of cargo that has been generated on this system to date has equalled three times the original estimate.

It is now predicted that during the last thirty years of this century, an additional 100 million Americans will inhabit the United States. To accommodate this additional number of people in so short a time will require intensive planning and action on a massive scale. Hundreds of new towns will be needed, and water problems, already verging on the critical stage—in many areas—will become more and more acute unless we do what is necessary to conserve our abundant water resources and to restore to good quality, where possible, the polluted waters of the major streams in our nation.

The path leading to our present day economic affluence and over crowded metropolitan cities has been strewn with litter and beclouded by pollution. So much so that many scientists are today prophesying doom unless we launch an immediate and massive campaign to clear our air, clean our streams, and intelligently handle the gigantic waste created by our industrial economy and affluent society.

Certainly, when our main cities, those shining citadels of yester-year, are shrouded in suffocating smog, when life-giving streams are choked with raw sewage, chemicals and debris, and the truck gardens that used to surround our towns are today's garbage dumps, it is time to act to save and protect our environment. It somehow seems ironic for us to reach to the stars and ignore the deteriorating life-supporting elements of our planet.

For years, many have labored under a false illusion that there is an over abundance of water in our country. But we know that is not true. Your organization is well aware of the old adage that "the waste of plenty is the resource of scarcity". Unless we conserve and keep clean our fresh water supply, we may find before the end of the century that we have a "resource of scarcity".

* * * * *

The Congress and the President are becoming committed to a number of programs to improve our environment. I wholeheartedly support the general objective of all such programs. But, at the same time, I have urged the Administration to launch an immediate campaign aimed at preventing further crowding and congestion in our major cities which are today the prime centers of pollution. This can be done by reversing present trends and stopping the massive influx of people into the already overly-populated metropolitan areas.

We should take all practical steps possible to halt the sprawling, haphazard, and often unmanageable growth of urban areas and give them—and especially our decaying inner cities—time to restructure and clean up. At the same time, we should be making every effort to develop the potential of our rural areas. A national policy to achieve these objectives should be adopted and properly promoted and supported, would:

1. Ease the proliferating population growth in the main centers of congestion and pollution;
2. Relieve the major metropolitan areas of their growing pains and pressures; and
3. Afford an opportunity for sustained, orderly, growth in rural areas for present and future generations.

We stand on the threshold of the seventies. We must look beyond this decade and the next and adopt policies and inaugurate programs that will exalt our water resources and not exploit them. We know that a population crisis is coming. Let us prepare to meet it by decentralizing industry and by creating job opportunities for our people in environments that are not already overcrowded, congested and polluted. Let us be prudent and make adequate provisions to orderly accommodate the additional 100 million Americans who are expected by the end of this century. We can, if we will, insure them an environment in and near the smaller cities of our nation that will be conducive to good health and pleasant living. Thus, they will not have to become numberless, faceless members of a collective group in the environs of an air and water polluted, transportation congested metropolitan conglomerate.

THE HARD WORK OF ENVIRONMENT—ADDRESS BY SENATOR MUSKIE

Mr. HART. Mr. President, the Senator from Maine (Mr. MUSKIE) is the leading Senate expert on pollution problems as chairman of the Air and Water Pollution Subcommittee.

In his remarks at the University of Michigan Environmental Teach-In March 13, the Senator outlined the philosophical and political background of today's earth crisis. And he again suggested a National Survival Corps for youthful activities to do the "hard work of environment."

Mr. President, I ask unanimous consent that the text of Mr. MUSKIE's Michigan speech be printed at this point in the RECORD.

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

DEALING WITH THE ROOTS OF THE CRISIS

(Remarks by U.S. Senator EDMUND S. MUSKIE)

"Every individual carries a set of about a hundred thousand genes—an inheritance

he has received from all the living beings who preceded him and concentrated their qualities in him. That is the heritage he will pass on. If all the genes from the world's three and a half billion people were baked together, they would form a small ball with a diameter of about one millimeter. The contents of this small ball is what holds us together as a species, and is, essentially, all we own as human beings."

We do not own very much, and we are spread quite thin. All of what we own—our total environment of human and natural resources—is stretched around the earth no thicker than the skin around an apple. Any scar, any scratch, any nick can be fatal.

This is all we have. There are no replacements, no surplus stocks with which to replenish our supplies. We hang together by tenuous bonds that are now strained as they have never been strained before—and as they never must be strained again. We live in a world of limited natural resources and fragile human resources, and we cannot survive an undeclared war on our future. We must lay down *all* of our weapons of self-annihilation.

THE ROOTS OF THE CRISIS

The Teach-In this evening has focused on the roots of the environmental crisis. This is important, because unless we understand what has brought us to this confrontation with our future, we will continue to make the same mistakes we have made in the past. We can no longer afford the luxury of environmental error.

The roots of the environmental crisis stretch as far back as the nation itself. Life in America was cheap in the beginning. Natural resources were plentiful, and the idea that there had to be limits on our material growth never entered our minds.

Thus, early farming paid scant attention to conserving the land that produced the crops. We took trees from the forests without thinking of the possibility that our timber supply was not endless. Soon after industry first came to America, some of our rivers were seriously polluted and the air in some of our cities and towns was foul.

Even while our cities grew and became more crowded, enough Americans could escape from the confines of soot and clutter so that the voices of those who were trapped were never really heard.

As long as there was enough affluence in city, the squalor of the tenements was obscured. As long as people left the slums, they forgot their misery.

And when people left the urban-industrial center, what did they leave behind? True, they escaped from foul air, dirty water, and littered and noisy streets. But they also escaped from the tenements, the disease, the ugliness, and the poverty of the city.

So pollution was isolated by the very size and openness of America. A river here, a forest there, a few of our larger, more industrialized cities—these early examples of environmental destruction seemed a small price to pay for our prosperity. Most people could escape, and those who could not were never really heard. This was the frontier ethic: America pushing ahead and getting ahead, with an unlimited future—with a manifest destiny ahead of us.

Now we find that we have overreached our destiny. The frontier ethic helped us build the strongest nation in the world. But it also led us to believe that our natural and human resources were endless, that our rivers could absorb as much sewage as we could pour in them, that there was automatic equal opportunity for everyone, that our air would always be clean, and that hunger and poverty didn't really exist in America.

Our problems are not really new. Rather, they have multiplied. They have spread to all our rivers and all our cities. Everyone is affected by them.

The frontier ethic that we never really abandoned has caught up with us. There is nowhere left for escape.

We have reached a point where man, his environment, and his industrial technology intersect. We confront our deteriorated environment, our devouring technology and our fellow men. Relative harmony has become a three-cornered war—a war where everyone loses.

No society has ever reached this point before, no society has ever solved this problem. We have no past experience to guide us.

So we will need all the enthusiasm, all the concern, and all the dedication we can muster. At the same time there are some dangers involved in this surge of concern.

THE TOTAL HUMAN ENVIRONMENT

I hope that the issue of environmental protection does not become a smokescreen that will obscure the overall crisis of life in America.

I am concerned that the environment will obscure the unmet challenge of equal opportunity, and there appears to be good cause for concern.

The great danger of the environmental issue is that we may not recognize that the total environment is at stake in America.

Whatever form your efforts take after Earth Day, the focus of your efforts must be *man*—man today, man tomorrow, and man in relation to all the other forms of life which share our biosphere. And in addition to the air, the water, and the land, man's environment includes the shape of the communities in which he lives, his home, his schools, his places of work, and his society.

The environmental conscience that has gripped the nation should hold great promise—not only for our air, our water and our land, but also for the future of people searching for ways out of poverty, hunger and neglect. The environmental conscience may be the way to turn the nation around.

The study of ecology—man's relationship with his environment—should finally teach us that our relationships with each other are just as intricate and just as delicate as those with our natural environment. We cannot afford to correct our history of abusing nature and neglect the continuing abuse of our fellow man.

We should have learned by this time in our development as a nation that we must find ways to live together in peace. And we should have learned that the only way to achieve peace among ourselves is to insure that all Americans have equal access to a healthy environment—to a healthy total environment.

That can mean nothing less than equal access to good schools for our children, to meaningful job opportunities, to adequate medical care, and to decent housing.

For the last ten years we have been groping toward the realization that the total environment is at stake.

We have seen the destruction of poverty, and declared a war on it.

We have seen the ravages of hunger, and declared a war on it.

We have seen the costs of crime, and declared a war on it.

And now we have awakened to the pollution of our environment, and we have declared another war.

We have fought too many losing battles in those wars to continue this piece-meal approach to self-preservation.

The only strategy that makes sense is a total strategy to protect the total environment.

We must do it now—not when inflation eases, not in a few years, not sometime soon, but now. For the sake of the environment if nothing else, we ought to find it possible to put-off grand tours of space, faster planes, and greater overkill.

This will not be merely a summertime war. The protection of our environment will be a long, hard pull. The action you take as students, will be important, but the greatest challenges will come when you assume your roles in the communities of the future.

We must forge a wholesale change in our priorities and our values. We must redefine our standard of living, reflecting the knowledge that both our human and natural resources are at stake.

This will not be easy. Walter Lippmann stated the problem very well when he said that "The supreme question before mankind . . . is how men will be able to make themselves willing and able to save themselves."

We must turn away from uncontrolled economic and technological growth that ignores the increasing strain on the environment. As we seek to control this growth, the kinds of difficult decisions you will have to make will be surprising. As community leaders—and as students—you must see that the right decisions are made.

Our technology has reached a point in its development where it is producing more than we want, more than we need, and more than we can live with.

We have to learn to choose, to say no, and to give up some luxuries. These kinds of decisions are the acid test of our commitment to a healthy environment. Right now we are failing that test.

Look at the budget for 1971. That "balanced budget" represents shamefully unbalanced priorities. That budget "balances" $275 million for the SST against $106 million for air pollution control. It "balances" $3.4 billion for the space program against $1.4 billion for housing. And it "balances" $7.3 billion for arms research and development against $1.4 billion for higher education.

It is a sham to say that we cannot afford the protection of our environment—just yet; or the fight against hunger and poverty—at this time; or homes and medical care for our people—for a few years. We can afford these programs now, if we admit that there are less important programs that we cannot afford.

These are the kinds of choices that have to be reversed. If they are not reversed, our concern and rhetoric will mean nothing.

There are other decisions that must be made, and they are ones in which students should take a hand.

POLITICAL ACTION

First, concerned students should take advantage of the laws that are now on the books. While we have accumulated and inherited most of our environmental problems, we have also accumulated some legislation.

The laws are not now as strong as we would like, but they provide an important start. The Air and Water Quality Acts were passed before the environmental crisis was universally recognized. In the hope that the public would become concerned, we sought to guarantee the right of the public to effective participation in the standards-setting process.

Water and Air Quality standards are being set in the States now. These standards and the implementation and enforcement plans must comply with criteria issued by the Federal Government. But they are set at the State level so that the public can participate. The public can decide what kind of air and water they want and how they want to achieve it.

If the opportunity for influencing these decisions is abdicated on a "let George-do-it-basis," then this procedure will fail. On the other hand, if students and other concerned citizens seize these opportunities, we can have tough, effective Air and Water Quality standards.

These provisions for public participation are the greatest promise for clean air and water we have, and we intend to build on them.

Once Air and Water Quality standards are set, they must be enforced. I have suggested amending both the Air and Water Quality Acts so that citizens can bring class suits to enforce these standards, extending the concept of public participation to the enforcement process. But the primary responsibility for enforcement will rest with the State agencies. These agencies should be reminded—over and over again—that standards must be enforced.

You must take your campaign where most of the important battles are fought—to the State and local levels.

Too many people, for too long, have assumed that participating in a democracy begins and ends at the ballot box. State and local agences charged with the protection of the environment have functioned in the abyss of public neglect. Those who have been able to afford constant representation in legislative lobbies and in City Halls have dominated the decision-making process—often only because of their constant presence.

The public has abdicated civil responsibility, and the result has been devastating. It could worsen. If we destroy our environment through public neglect of the political process, we will have only ourselves to blame. The public must combine the power of voices, votes and pocketbooks to make its presence felt.

CITIZEN'S LOBBY

I hope that all of you who have participated in the Teach-In will move beyond these demonstrations of concern to continuing political involvement.

A Citizen's Lobby for Environmental Protection would be an excellent way to do it.

A Citizen's Lobby could voice effective demands for tough legislation. It could support candidates for public office who have shown a continuing commitment to strong environmental legislation. And it could bring pressure to bear to spend the money that must be spent.

At the same time, a Citizen's Lobby could keep a watchful eye on industry. Selective purchasing policies may be a means to discourage the use of non-degradable packaging, non-return bottles, or phosphate-heavy detergents. These policies would also encourage industries to install the best possible pollution control equipment.

Student members of Lobby could use employment interviews as an opportunity to question the interviewer about his industry's commitment to environmental quality.

The creation of a successful Citizen's Lobby will not be easy, but Earth Day could be an important first step. Government and industry will respond to the concern expressed here this week and all across the nation next month only if your voices and your power are directed at the political process.

EDUCATION

Everyone must be brought into the act to protect the environment. The educational task will be enormous.

We must create new values for life in a kind of world that man has never known—a world of increasingly delicate balances between man and his environment.

The University of Michigan and a few other colleges and universities have developed comprehensive programs of environmental and ecological studies, but there is much more that we can and should do.

First, we should broaden the mission of our land-grant Universities. We must move from a production-oriented educational system to a system designed to preserve a balanced and healthy environment. Our universities must reach out to the people of their States with programs of environmental extension services.

Second, we should develop a system of National Environmental Laboratories to explore the effects of technology and growth on the human and natural environments.

Finally, Teach-Ins must become Teach-Outs. The urgent message you are developing this week at the University of Michigan must be taken to the people of the whole State of Michigan in the coming months and years.

NATIONAL SURVIVAL CORPS

While we educate, we must also act. The energies and commitment of young people who want to do something should not be lost because there is nothing to do but talk.

Pollution emission sources must be monitored; waste treatment plants must be built and operated; debris must be cleared from our cities, our parks, and our waterways. This is the hard work of environmental protection.

If young people are willing to do this work, then there should be a way to do it. I would suggest the creation of a National Survival Corps for this purpose, and plan to introduce legislation in the Senate to establish it. The Corps could work on Federal projects and lands, reclaiming mines and forests and performing emergency tasks such as oil-spill clean up. At the same time, members of the Corps would be available to States and cities for similar purposes.

This suggestion is an example of the flood of ideas engendered by this sense of urgency. I thought the National Survival Corps was a good idea. Then Secretary Hickel voiced a similar thought. I still think I have a good idea!

However we fight this battle for survival, man must learn to live with his environment and with himself. This is a very small world, and it is crowded. We have little time to learn what we should have been learning for thousands of years.

The Santa Barbara Declaration of Environmental Rights put this thought very well. "Today is the first day of the rest of our life on this planet. We will begin anew."

We cannot really begin anew because we cannot recreate the earth. But we can protect and enhance what we have left. It is about time man learn to appreciate what he has been given.

THE "CARVEYOR" SYSTEM OF MOVING SIDEWALKS AND RAMPS

Mr. SAXBE. Mr. President, an Ohio-based firm recently introduced a pollution-free urban transportation system which utilizes moving sidewalks and ramps plus small passenger cars riding on a series of conveyor belts. Because of the moving ramps and sidewalks, it can be used by 100 percent of the traveling public, including those who are handicapped and unable to use escalators.

The "Carveyor" system, developed by the Goodyear Tire & Rubber Co., of Akron, Ohio, without the aid of tax moneys or grants, was featured in Washington last month during National Engineers' Week. A working model was on display at George Washington University.

Because it represents one answer to our problem in downtown traffic congestion, automobile pollution, and pedestrian travel in cities and at airports, I ask unanimous consent to have printed in the RECORD newspaper articles about this transportation system published in the Wall Street Journal, the Washington Daily News, and the Dayton, Ohio, Journal Herald.

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

[From the Wall Street Journal, Mar. 24, 1970]

GOODYEAR UNVEILS PLAN FOR "WAITLESS" URBAN TRANSPORTATION SYSTEM; SAN JOSE, CALIF., TO BE SITE FOR "CARVEYOR," WHICH CAN HANDLE UP TO 22,000 PEOPLE AN HOUR

AKRON.—Goodyear Tire & Rubber Co. unveiled plans for a "waitless" urban transportation system it said could solve traffic problems in urban and congested areas, and later announced that the City of San Jose, Calif., plans to install one of the new systems.

Called "Carveyor," Goodyear's system consists of small, wheel-less cars propelled by a continuously moving network of conveyor belts. Goodyear said the system can handle up to 22,000 people an hour at speeds of up to 15 m.p.h.

In San Jose, Olney G. Smith, executive director of the city's redevelopment agency, said construction would begin in 1972 on a six-mile Carveyor system. Cost of the San Jose system wasn't disclosed, but Goodyear said the system's basic cost runs from $5 million to $7 million a mile, indicating a cost of from $30 million to $42 million for the San Jose system.

Mr. Smith said the first phase of San Jose's system will link a perimeter area with the city's San Antonio Plaza and Park Center redevelopment project in the downtown area. Goodyear said its system is primarily designed for such locations and for use between airport terminals, boarding areas and parking lots, but also can be employed at such other sites as suburban shopping centers and athletic stadiums.

Robert E. Mercer, general manager of Goodyear's Industrial Products division, said the company also is negotiating with one other city and "hopes to make an announcement about that city shortly." The executive added that Goodyear is prepared to begin production immediately.

The Carveyor system, which Goodyear says is unique among the urban "people-movers" currently being developed by industry, eliminates stop-and-start aspects of mass transit. In stations, the passenger cars move at 1.5 miles per hour, with passengers entering from a "moving sidewalk" conveyor belt running alongside the cars at the same speed. After leaving the station, faster-moving belts accelerate the cars to a speed of 15 miles per hour.

[From the Journal Herald, Mar. 3, 1970]

THE IVORY TOWER

(By Charles T. Alexander)

Just after the "Ivory Tower" on mass transit appeared the other day, I spotted a story in the Wall Street Journal about a "Carveyor" system, developed by Goodyear, which essentially carries out a principle I was suggesting.

Wheelless cars about the size of limousines operate on a continuous network of conveyor belts. They can handle up to 22,000 passengers an hour at speeds up to 15 or 20 miles per hour.

I was intrigued by the story, so I got on the phone to R. E. Pauley, assistant to the general manager, Industrial Products Division of Goodyear. Now Mr. Pauley is a dynamo who's really got the bug.

I posed a question about the system, and he grabbed the ball. "We're ready to go. We're not fooling," he quickly assured me.

He went on to talk of studies of transit and studies of studies and said they weren't for Goodyear. "It won't take us millions of dollars and years of research and development. We've got something here that's ready to go right now."

The "Carveyor" system is not of the magnitude I was discussing last week. It is not, in its present form, practicable for a system that runs more than three or four miles, and it must be a closed system—that is, it must have no end. It can be a square, a

figure eight, or whatever, but the end and the beginning must be joined. Goodyear sees it as ideal for linking parking facilities with stores and hotels several blocks distant, or for moving passengers within a central shopping district.

It is an elevated system 10 or 11 feet above the ground which carries completely enclosed small cars. They run continuously and whenever you want to get on one, it's there. As Mr. Pauley says, "If you miss the 5:18 you take the 5:18" because it's a continuous chain.

The cars are individually heated and air-conditioned, have molded seats—"so that vandals can't carve them up"—and the entire system costs $3 million to $5 million per lineal mile to construct. The network could be designed to move cargo in off-hours if that were desired, he said.

The City of San Jose, Calif., has plans to install a six-mile system, beginning in 1972. Closer to home, Mr. Pauley says that Goodyear made a presentation just last week "to the people who are tearing down the old Deshler-Wallick hotel to run a system from the hotel site across from the Statehouse at Broad and High two miles across the river to a parking facility.

It would take about two minutes from the parking site back to the square. "You can't walk, run, or drive and make that trip in less time," Mr. Pauley said, noting that an auto could go faster, but not likely in that downtown Columbus traffic.

Goodyear doesn't think the "Carveyor" is practical for runs under 1,000 feet. "We've got moving sidewalks for that distance," Mr. Pauley said.

I gave Mr. Pauley an opening to project that in the future such a system might be expanded so that it would operate over longer distances. I was thinking of from one end of the town to the other. But he put me down on that one. He has a specific system to sell, he's sold on its use in the here and now with the capacity it currently offers, and he's not going to go beyond that.

It set me to thinking, however. The center city concept puts a transportation center somewhere down Main Street near Sixth, on which Union Station now is. All forms of transportation—intercity rail, rapid transit (some perhaps over present tracks from the suburbs), buses would all converge in one multilevel terminal. There would also be parking for autos, as I recall. Now suppose you got off your train and walked across the terminal and stepped directly onto a "Carveyor,"—no waiting, Mr. Pauley would remind us—and within less than five minutes you would be at your place of business or the store where you want to shop or the restaurant where you want to eat. Or at a theater. And you get there out of the weather in heated or air-conditioned comfort.

I repeat what I said last week: Dayton's limping transportation system may be its greatest asset for the moment because it offers the opportunity to turn away from conventional methods if something better comes along.

Whether or not the "Carveyor" is a partial answer, it proves that there are minds and dollars at work looking for better, more convenient methods of moving people and things about. And a city on the move has to keep people on the move or they'll move elsewhere.

[From the Washington Daily News, Mar. 2, 1970]

CARVEYOR COULD BE USED HERE

(By Donald Saltz)

If the Goodyear Tire and Rubber Co. can do enough of a selling job, a number of cities—perhaps even Washington—will have a unique system for moving people short distances—quickly and easily. Goodyear recently announced—displaying a model at George Washington University last week during National Engineers Week—a Carveyor, or large conveyor belt with cars for people which eliminates a need for auto or bus traffic in places where mass movement is necessary.

The Carveyor system, which stemmed from Goodyear's 57 years of experience in conveyor belt manufacturing, starts off with a moving sidewalk—but one moving only 1½ miles an hour or half normal walking speed—and goes from there to glass-enclosed cabs seating from two to 10 persons each or more, moving along over the belt to the next station, usually half a mile or so away.

BUSINESS DISTRICT

Paul Freitag, Goodyear's chief salesman for the concept, said it can be used with success in central business districts, at major activity centers such as around auditoriums, and for airport terminals. It may also find use near large shopping centers.

Already, officials of San Jose, Calif., and Columbus, Ohio, are seriously investigating the plan which, Mr. Freitag noted, would cost only $3.46 an hour for power to move 3,500 persons in four-seat cars in Columbus, or less than the usual hourly wage for a bus driver.

"The real advantage to the Carveyor," Mr. Freitag said, "is the immediate service—there's no waiting."

Persons walk onto the moving sidewalk and simply enter a car which is moving alongside at comparable speed. Within 20 or 30 seconds, the cars leave the station and within 72 feet accelerate from 1½ to 15 miles an hour.

Mr. Freitag thinks the system can be successfully utilized at parking areas on the fringe of cities' downtown. He said the most practical systems would probably be two to four miles long, but they can be under, on, or above ground. Cost is $5 million to $7 million per mile.

SUBWAY AIDE

"It can also serve as a distribution system for a subway," he said, bringing people quickly from parking or living areas to nearby subway stations.

When the wheelless cars reach their top speed of 15 miles an hour, they are 90 feet apart. A bank of accelerator wheels increases their speed as they leave a station; similarly, a bank of decelerator wheels slows them down as they enter bumper-to-bumper.

Maintenance is an advantage, Mr. Freitag said. He said a system can be operated by two or three employes per shift with the cost of maintenance only 1½ to 2 per cent of the total cost. Weather doesn't affect operations as the conveyor belt is self-cleaning.

The systems, he said, would be monitored by close-circuit television during the length of the ride.

Operating at peak efficiency, the Carveyor plan could move 22,000 persons thru a given point in an hour, Mr. Freitag stated.

THE ODER-NEISSE QUESTION: THE IMPORTANCE OF REMOVING UNNECESSARY IRRITANTS

Mr. DODD. Mr. President, according to an article in last week's issue of Newsweek, the recognition of Poland's claim to the Oder-Neisse territories, which it acquired from Germany after World War II, is the one issue on which Communist and Catholics in Poland are passionately united.

From numerous conversations with Poles in this country, I believe this estimate to be correct.

The Newsweek article further makes the point that it would enormously strengthen the position of Communist Party Boss Wlasdyslaw Gomulka if he can claim personal credit for obtaining Western recognition of the Oder-Neisse frontier, for this would enable him to usurp the mantle of protector of the Polish people.

I believe that this article points to the need for a frank reassessment of the Western position on the tortured question of the Oder-Neisse frontier.

As Senators know, I have never suffered from any illusions about Communist intentions. Indeed, I have more than once taken the floor to urge that Communist protestations of their desire for a detente be examined in the light of their overall record.

But in denying the actual existence of the so-called detente, I have made it clear that I was not opposed to a detente in principle. If peace is to be preserved, then we are going to have to do our utmost, despite all the difficulties and all the frustrations, to bring about a genuine relaxation of tensions between East and West.

In line with this approach, I believe that it is proper for the Western nations to seek to remove meaningless irritants to East-West relations, where such irritants exist.

The so-called Oder-Neisse problem is one such irritant.

I think a tribute is due to Chancellor Willy Brandt for the effort he has been making over the past 2 years to put to rest the uneasiness and suspicions engendered by the Oder-Neisse problem.

The Oder-Neisse problem had its genesis in the negotiations between the allies which preceded the end of World War II. At the Potsdam Conference, an agreement was reached that the future frontiers between Germany and Poland should follow the line of the Oder and Neisse Rivers.

The Poles have been blamed for the mass expulsions of the German population from the territory east of the Oder-Neisse line.

I do not like mass expulsions, nor would I attempt to condone them.

But before blame is cast it would be well to remember the terrible suffering which the Polish people endured at the hands of the Germans during World War II, and all the reasons they had for resentment.

Against this background of suffering, it would have been difficult to expect the Poles to behave with tenderness toward their former conquerors.

Before blame is cast, too, it would be well to remember that at Potsdam the Western Allies joined the Soviet Union in recommending to the Polish Government that the German population east of the Oder-Neisse line be transferred to the occupation zones of Germany. If there is blame, therefore, Britain and the United States must share it equally with the Governments of the Soviet Union and Poland.

The formal position of the Western Allies and of the Federal German Republic today is that the Oder-Neisse line cannot legally be recognized as the final frontier between Poland and Germany until the conclusion of a peace treaty terminating World War II.

But after 25 years, there is general agreement that the wheels of history cannot be turned back; and there is also

a growing disposition in Germany, as well as in Britain, France, and the United States, to accept the finality of the Oder-Neisse line in order to remove this completely pointless irritant from the relations between East and West.

Until recently, it would have been exceedingly difficult for any German politician, even the most courageous, to take a stand in favor of recognizing the Oder-Neisse line as the permanent frontier between Germany and Poland.

The memory of World War II was too fresh, and the political pressure from the millions of Germans expelled from the eastern territories was too great.

But virtually all of the expellees have now been absorbed into the Western German economy, and it is highly questionable whether many of them would now want to return to the eastern territories, even if this became politically possible.

The internal pressures in Germany against the acceptance of the Oder-Neisse line have, therefore, been fading with each passing year.

That German public opinion would today be prepared to accept the recognition of the Oder-Neisse line is further indicated by the fact that the Catholic bishops of Germany and the Protestant bishops, in separate statements, have both urged the recognition of the present Polish frontier in the interests of peace.

Nevertheless, it was an act of great courage on the part of Willy Brandt, who was then Foreign Minister of the Federal German Republic, when he wrote in Foreign Affairs for April 1968:

> The drawing of borderlines should not impede the establishment of a peaceful order in Europe. If forces in Europe are strong enough to create a system of security and ultimately a stable and equitable order, they will not be held up by border questions of the past. Perhaps the declarations we have offered regarding the renunciation of force can be formulated and safeguarded in such a way that the present borders of Poland can be recognized for the period for which the Federal Republic can commit itself, i.e., until a peace settlement.

In repeated statements since that time, both as Foreign Minister and as Chancellor of the German Federal Republic, Brandt has called for an agreement on the renunciation of force and has underscored the need to establish conditions which would enable the peoples of Europe to live within secure borders.

Despite the lack of certainty that the practical acceptance of the Oder-Neisse line will persuade the Communists to conduct their foreign policy in a more civilized manner, I believe that it is clearly to our advantage to make explicit something that has for all practical purposes been implicit for some time now.

Regrettably the language that has thus far been used in dealing with the Oder-Neisse question, both in our own country and in Germany, is something less than definitive. It still has about it an element of ambiguity which is bound to feed the fears and suspicions of the Poles.

And based on recent history, no one can deny that the Poles have some justification for their fears and suspicions.

I do not believe that there is any real ambiguity about our own intentions or about the intentions of Chancellor Brandt and his government. But a Pole reading his article in Foreign Affairs might conclude from the wording employed that the Chancellor was willing to recognize the Oder-Neisse frontier until a peace treaty was negotiated, but that he was reserving the right to reopen this question when the negotiations for a peace treaty actually got underway.

If the Government of the Federal Republic of Germany and our own Government are agreed that frontiers cannot be changed by force; if they implicitly accept the permanence of the Oder-Neisse line; then it seems to me that it would be advantageous to remove all ambiguity from their statements and make it clear, without equivocation and without reservation, that they do accept the Oder-Neisse line as the frontier between Poland and Germany.

It is my fervent hope that the Government of the Federal Republic of Germany, with the support and encouragement of our own Government and of the other Western allies, will take this simple and clearcut and historically inevitable course.

I am afraid that we bog down in legalisms when we take the stand that we cannot accept the Oder-Neisse line as final until there is a peace treaty which formally terminates World War II.

World War II has been over for 25 years now, and there is still no peace treaty. And, looking at things realistically, I think the chances are better than even that 25 years hence we will still be without a formal treaty terminating World War II.

It seems to me, therefore, that the Western nations hurt only themselves when they put off dealing with this question in a formal legal manner until the never-never day when a peace treaty is signed.

There are some who may cry that such a concession at this time would constitute appeasement. I disagree with them.

Indeed, I believe that the acceptance of the Oder-Neisse line, because it constitutes an acceptance of what is an accomplished and irreversible fact, in no way constitutes appeasement and would in no way weaken the West. It would, if anything, strengthen the West and strengthen the cause of freedom and make the peace of Europe more secure.

It would remove a completely pointless and outdated irritant from the relations between Poland and the Warsaw Pact states on the one hand, and the NATO nations on the other hand.

It would make all Poles feel less dependent on Moscow, and to that extent would serve to encourage the pro-Western and pro-democratic elements in the Polish nation.

That such recognition would also serve to weaken the hold of the infamous Ulbricht government in East Germany is apparent from the almost openly negative attitude of the East German Government to the prospect of even a limited rapprochement between the Polish Government and the Government of West Germany.

Since recognition of the Oder-Neisse frontier is bound to come in any case, surely it makes sense for the Western nations to grant such recognition of their own accord, and without delay. Surely this would be better than acceding to it after protracted negotiations, thus permitting the Polish Communist Government to claim credit for it.

While the immediate impact of the acceptance of the Oder-Neisse line would be justification enough, a larger justification can be found in the effect that such acceptance may have on the future peace of Europe.

The peace of Europe has been plagued over the centuries by a series of national antagonisms. The ancient Franco-German antagonism was foremost among these. But not very far behind it in rank has been the traditional hostility between Poles and Germans.

The Franco-German antagonism has now been laid to rest, even though many people not so long ago would have considered such a development impossible. There is, therefore, reason for hoping that the Polish-German antagonism, similarly, can be buried in the darker pages of past history, opening the way to a new era of collaboration and friendship between these two strong and remarkably virile people.

The coming period will be one of testing at many points, and there will be many issues on which we cannot yield to Communist demands without sacrificing principle or our basic interests.

We must stand fast on the issue of allied rights in Berlin, for example, because the fate of all Europe may very well hinge on our continued ability to guarantee the freedom of West Berlin and to compel Soviet compliance with the series of agreements relating to Berlin.

We must also make it clear to the Soviets that we will refuse to recognize the validity of the so-called Brezhnev doctrine, under which Moscow claims the right to intervene militarily in all socialist countries. As Senators will recall, shortly after the doctrine was promulgated, I introduced a resolution calling for a public repudiation of the doctrine by the United States. I regret that this resolution has not been acted on to date.

But, having said all this, I still believe that we should seek to remove irritants and sources of tension wherever they can be removed, in the hope that somehow, somewhere along the line, a larger understanding between East and West can be evolved.

The final recognition of the Oder-Neisse boundary might be a good place to start.

PRESIDENT NIXON'S ROLE IN CURBING TEXTILE IMPORTS

Mr. THURMOND. Mr. President, on Sunday, March 22, an editorial entitled "Nixon Can't Abdicate Role in Curbing Textile Imports" was published in the Charlotte Observer.

President Nixon has on several occasions indicated his support for the protection of the domestic textile industry. In August of 1968 Mr. Nixon, then a can-

didate for the Presidency, in a telegram committed himself to the protection of this vital industry.

Since that time the administration has been engaged in efforts to secure voluntary agreements with importing countries through the office of Secretary Stans.

In his statement of position on America's world trade policy issued in November 1968, the President advocated free trade but he took special cognizance of the textile import problem, referring to it as "a special circumstance that requires special measures."

The editorial to which I refer states that the administration reportedly is about to abdicate its leadership on the textile import question and says in effect that President Nixon is not going to make good his promises concerning textile imports.

The article indicates that if President Nixon should not go forward with strong proposals and strong leadership, it will be unlikely that textile legislation can be secured.

Mr. President, I hope that the editorial is unduly pessimistic; however, it is important that the administration continue to take a firm stand on the import question and promote and sponsor protective legislation.

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

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

[From the Charlotte Observer, Mar. 22, 1970]

NIXON CANNOT ABDICATE ROLE IN CURBING TEXTILE IMPORTS

The Nixon administration is reportedly about to take a line on textile imports that is an abdication of leadership and a "copout" on the President's own campaign pledges.

Indications are that the administration will go along with the textile industry's request to call off further negotiations for voluntary quotas with the Japanese. But the White House seems unwilling, at the moment, to propose other remedies.

This is a prescription for deep and, perhaps, dangerous confusion. In effect, it proclaims that there is no alternative except for industry spokesmen in Congress to produce legislative limits on imports.

Legislative action would be tricky even with a strong proposal and strong leadership from the administration. A score of other industries with friends in Congress want protection as much as the textile industry and its friends in the South. So it is unlikely that legislators concerned with textiles can line up a voting majority for textile protection without including protection for other industries which would seriously threaten to upset the uneasy balance of trade.

The difficulty of getting import controls for a single industry from Congress is one reason the Nixon administration shied away from that remedy. It has helped put the President in a tight spot.

But he cannot escape this dilemma by simply bucking the textile import issue along to Congress. When he campaigned through the South for the presidency, he declared that he could handle the textile import question.

In the overall context of Nixon's campaign—in which he identified himself as a champion of free trade—he also implied that he could handle the textile import question without upsetting trade and bringing on retaliation that would close vital markets to American exporters.

The job isn't as easy as it looked during the campaign. But easy or not, the President himself is on the hook to provide the leadership he promised on the textile import question.

To duck that responsibility now would be to discredit himself and risk a serious setback for free trade principles.

THE JOURNALISM AWARD TO TOM BROWN, ANCHORAGE, ALASKA, DAILY NEWS

Mr. GRAVEL. Mr. President, last September, I had the pleasure of placing in the RECORD what I considered an outstanding piece of journalism. It was a series of articles on the 1969 Alaska oil rush, written by Tom Brown, staff writer of the Anchorage Daily News. The Scripps-Howard Foundation was impressed enough with the series to name Mr. Brown the winner of first place in its 1969 Edward J. Meeman Awards.

The late Mr. Meeman was conservation editor from the Scripps-Howard newspapers. Awards in his name, totaling $5,000, go to newspapermen and women for superior work in promoting conservation.

As Senator from Alaska, I share with thousands of other Alaskans pride in Mr. Brown's work. Environmental problems are uppermost in the minds of many Americans. I am certain that I speak for millions of American citizens, Mr. President, when I publicly congratulate Mr. Brown for bringing the many facets of this issue into public view, and the Scripps-Howard Foundation for placing high emphasis on environmental studies.

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

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

PROMOTING CONSERVATION—PIPELINE STORY WINS TOP MEEMAN AWARD

NEW YORK, March 9.—A series setting out the dangers posed by Alaska's oil boom and a planned 800-mile pipeline to rivers, forests and wildlife, today won for Tom Brown of the Anchorage (Alaska) Daily News the $1,000 first place in the Scripps-Howard Foundation's 1969 Edward J. Meeman Awards.

The awards—totaling $5,000—go to newspapermen and women for superior work in promoting conservation thru reporting, editorials, cartoons and photography.

They were established by the late Edward J. Meeman, a pioneer conservationist, while he was editor of the Memphis Press-Scimitar, a Scripps-Howard newspaper. He later became Scripps-Howard Conservation Editor.

Mr. Brown, 28, was a United Press International correspondent before joining the Anchorage paper.

William Steif, whose major series on environmental pollution, titled "American Despoiled", was published in the Washington Daily News and other Scripps-Howard newspapers, received a $750 second prize.

Second prizes of $750 each also went to Herc Ficklen, Dallas Morning News cartoonist; William Logan of the Rocky Mountain News, Denver; and a three-man team, Mike Albertson, Paul Jasper and Bill Prime of the Pensacola (Fla.) News-Journal.

Five third prizes of $200 each were awarded to Mark A. Stuart, editorial writer for The Record, Hackensack, N.J.; Franz Scholz of the Lowell (Mass.) Sun; Paul G. Hayes, Milwaukee Journal; Don Bliss of the Louisville Times; and Chester S. Davis of the Winston-Salem Journal Sentinel.

Pollution of the natural environment received the major emphasis in this year's competition, the judges noted. They were Don E. Weaver, Scripps-Howard Conservation Editor, and Alfred C. Andersson of the Memphis Press-Scimitar, a longtime associate of Mr. Meeman's.

Mr. Brown's first-place entry, reported in detail in a series of articles, warned of the fragile ecology of Alaska and what hasty exploitation could mean to the future of the area.

ARMS SALES TO ISRAEL

Mr. CRANSTON. Mr. President, it is ironic that only days after the Soviets announced that SAM–3 missiles—which reportedly may have Russian crews, are in the United Arab Republic, that the Department of State decided not to sell additional aircraft to Israel.

The administration is playing a very dangerous game in the Middle East. The Soviets send in the SAM's while we continue to hold back on the planes. The only conclusion the Soviets and their Arab allies possibly could reach is that we are not prepared to stand firmly behind Israel during this period of heightened tension.

If the SAM's become operational, the balance in the area will have shifted, and Israel for very real reasons of national survival cannot be expected to allow this to happen. In short, this is a time when we should be reassuring our Israeli friends, not shaking their confidence in us.

Yet the Nixon administration continues its shortsighted policy of seemingly rewarding our enemies and punishing our friends. The administration continues to pour billions of American dollars and hundreds of American lives into Southeast Asia to prop up corrupt, repressive dictatorships but will not even allow our Israeli friends the right to purchase arms to defend themselves against Soviet-equipped and Soviet-trained Arab armies in the Middle East.

All Israel has asked for are the tools to defend herself with. We have the moral responsibility to provide these tools. The consequences of our failure to do so could be disastrous not only for Israel and for the Middle East but for world peace.

We must show the Arab nations and the Soviet Union that Israel does not stand alone now before it is too late—too late for Israel and too late for us.

OUR SITUATION IN VIETNAM

Mr. FULBRIGHT. Mr. President, the Washington Post of Sunday, March 22, contains an exceptionally perceptive article, written by Mr. Arthur M. Cox, concerning our situation in Vietnam. I believe it is worthy of the closest attention by all Senators. I ask unanimous consent that it be printed in the RECORD.

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

ACTUAL DEFEAT A VIETNAM PERIL

(By Arthur M. Cox)

(NOTE.—Cox, a former senior fellow at the Brookings Institution, is a consultant, writer

and lecturer on foreign affairs and a former government specialist on communism.)

President Nixon last November announced a Vietnam policy which cannot possibly achieve its stated objectives. Even so, the President has won the support of much of the nation with "Vietnamization," a strategy built on the quicksand of unwarranted optimism which has characterized U.S. policy in Vietnam especially since 1965. Unless the Nixon program is soon revised, it will lead to chaos and create the possibility of outright U.S. military defeat.

Given the political realities, the only way this war can end in the near future is through negotiation. President Nixon has stated in all of his recent speches that "there has been no progress whatever on the negotiating front." Of course there has been no progress; the U.S. has manifested absolutely no willingness to negotiate about the only subject with which a compromise settlement would deal—a new government in Saigon.

The issue of who runs Saigon is the reason for the war. The Commission believes it should be theirs and we have blocked them. Negotiations leading successfully to settlement could result only if both sides compromised. The Communists would have to give up their objective of takeover and we would have to give up the Thieu-Ky regime. The result could be a neutralist regime. Quite clearly, the Nixon administration has not been moving in this direction.

In his November speech, President Nixon said, "I recognized that we might not succeed in bringing an end to the war through negotiation. I, therefore, put into effect another plan to bring peace." That plan, which Secretary of Defense Laird named "Vietnamization," calls for the United States to withdraw gradually most of its troops while transferring progressively more of the fighting to the South Vietnamese. The United States will continue to provide air support and certain noncombat military services while increasing its supply of military hardware to the South Vietnamese army, leading in time to a situation in which the Saigon regime and its military hopefully can defend themselves.

President Nixon says "we were proceeding in our pursuit for peace on two fronts—a peace settlement through negotiations or, if that fails, ending the war through Vietnamization." That assertion won't stand examination. The United States has never moved for serious negotiation because it has refused to discuss the central question of a new Saigon regime. Instead, the United States has launched its Vietnamization policy, and Vietnamization and negotiation are absolute incompatibles. To have any chance of success, the Vietnamization policy must rely on the continuity of the Thieu-Ky regime and its military establishment. The Vietnamization policy, in other words, locks the United States into a position of unwavering commitment to Thieu and Ky. A policy of negotiation, on the other hand, would require the United States to persuade Thieu and Ky to step aside in favor of other politicians who would accept a compromise government, including some Communist participation.

FLIMSY OPTIMISM

The President says Vietnamization is a plan "which will bring the war to an end regardless of what happens on the negotiating front." That is an impossibility which has been allowed to go unchallenged. The war will end only when one side wins a military victory or when a settlement has been negotiated. Since Vietnamization rules out serious negotiation, the only conceivable other assumption must be that the President is counting on the South Vietnamese to win their own war. Surely that is optimism of an even more flimsy sort than that of President Johnson and his advisers during the 1965–68 period. President Johnson thought that 540,000 Americans plus the South Vietnamese and the other allies could win the war. He was very wrong. How can President Nixon contemplate that the South Vietnamese can win when most Americans have gone? President Johnson discovered that limited wars must have limited objectives, and military victory is not one of them.

It must be hoped that President Nixon has not succumbed to the siren's song of those mystics among U.S. policy advisers who have crooned that the Communists would sooner or later fade away. After more than 25 years of fighting, with more than a million dead, it would appear most unlikely that the Communists have any intention of fading away, especially since they continue to be supported by both Russia and Communist China.

All of this might be accepted as part of the game of American politics if it were not so potentially threatening to the very roots of our nation and our society. Each month that the Vietnamization policy proceeds, the more dangerous our predicament becomes. For every 100,000 troops we withdraw, our bargaining position with both Thieu and the Communists is that much diminished.

It is impossible to state the exact point when we will rely on Thieu more than he relies on us, but it will come. When it comes, we will be so dependent that we will have no alternative but to stay with Thieu at least until the end of his present term in September, 1971. At that time, the United States undoubtedly would support Thieu's re-election, because the process of Vietnamization would collapse if an opponent of the war should win.

It is also impossible to state at what level our military presence ceases to be a bargaining counter with the Communists. Certainly for the next several months we will still have enough troops present to bargain for a genuinely neutral government in Saigon; to bargain for an international peace-keeping force to observe a cease-fire, and to obtain guarantees that anti-Communists will not be liquidated after a settlement. But each time our troops are cut back, our bargaining position decreases.

BY 1971 IT MAY BE TOO LATE

If we want to end the war, the time to negotiate had better be 1970; next year probably will be too late. When the point is reached where the Communists are confident they can obtain on the battlefield what they can't obtain at the conference table, we will be in deep trouble. As long as they are persuaded that victory is doubtful and that another 100,000 to 200,000 Communists may die in battle, they may be interested in a political compromise; but when that point is passed, there will be no turning.

One of the most ominous aspects of the Vietnamization policy is that even after most of the U.S. combat forces are withdrawn, it is contemplated that a small U.S. force be left in Vietnam. Secretary of Defense Laird has even referred to a "residual force" to remain in South Vietnam after hostilities end, just as we continue a farce of 55,000 troops in South Korea. The sad thing about such observations by Secretary Laird and other administration spokesmen is that they assume the hostilities are going to end. How? They might end by a negotiated settlement which creates a neutral government. Most assuredly such a government would not be supported by our military defeat after we have reduced our troops to the point of no return. In either case, there will be no "residual force" in South Vietnam.

One of the great self-deceptions of recent times has been the frequent comparison of South Vietnam with Korea. Many Americans were deluded by Secretary Rusk and others into thinking that the 38th parallel in Korea and the 17th parallel in Vietnam are similar issues. They are not.

The Korean war was a clear case of military aggression across a recognized international boundary line. It was settled after many months at Panmunjom when the Communists agreed to stay on their side of the 38th parallel. In Vietnam, the 17th parallel was accepted in the Geneva Accords of 1954 as a temporary line behind which troops would regroup pending a free election to be held in 1956. The election was not held because South Vietnam's President Diem, supported by the United States, blocked it. Ever since, the Communists have been fighting to gain by force that which was denied in an election which former President Eisenhower in his memoirs acknowledged they would have won. No, there is no similarity in the two parallels. In South Korea, American troops live in relative safety; in South Vietnam, they always will be subject to attack until the war is over.

If this analysis is valid, the question must be raised as to why the President has not been more effectively challenged? There seem to be two major reasons. The first is that the Democratic Party is still in a shambles as a result of the disastrous Vietnam policy of the Johnson administration. The other is that very few of the opposition leaders have been willing to face the hard realities involved in pressing for a negotiated political settlement. Instead, the opposition leaders have been grasping for easy solutions—solutions either totally unacceptable to the Communists or unacceptable to most of the American people.

THE CHICAGO DEBATE

The closest the nation has come to a great debate on the issue of ending the Vietnam war was at the 1968 Democratic Convention at Chicago. The Kennedy and McCarthy supporters were narrowly defeated by backers of the Johnson policy. They advanced the case for starting negotiations by stopping the bombing and moving ahead to a political settlement based on the establishment of a provisional government in Saigon. President Johnson finally did stop the bombing and the talks did start. But there has been no negotiation about the formation of a new government—because both Presidents Johnson and Nixon have been committed to the continuity of Thieu and Ky.

The principal challenge to President Nixon's Vietnamization policy has been a call for complete withdrawal of U.S. forces, either at once or within a year or 18 months. This is a policy of abandonment, of leaving the anti-Communists to their fate. We would be welshing on the promises of four American Presidents that the government of South Vietnam not be established by military conquest. We would be unilaterally departing, in abject defeat, from a war which we have been running since 1965. If we followed such a course, how many of our allies would continue to trust our agreements? No matter how mistaken our original commitments may have been, no matter how tragically wrong our decision to take over command of the war, it is not surprising that a majority of the American people do not support immediate withdrawal of U.S. forces.

But most Americans do want the war to end, and they believe that gradual withdrawal will result ultimately in an end of U.S. involvement. They believe it because President Nixon has told them so. Most Democratic "doves" have been so eager for troop withdrawal, any troop withdrawal, that they have not looked into the chasm which lies ahead. They are just as responsible for the looming disaster as is the president.

President Nixon is gambling everything on the success of Vietnamization. Certainly the South Vietnamese have a much more experienced, better led, better trained and better equipped army than in 1965, when they faced certain defeat. They have been assuming a much larger share of the fighting. They also

have a stronger, more effective police force. The Thieu government has been in power long enough to learn from experience and is unquestionably better than the government of 1965. But is that good enough? Is it as disciplined, tenacious, tough and loyal as the Communist opposition? What will happen when the crunch comes—when the people of South Vietnam know that U.S. troops are down to 100,000 and will never return again?

The Communists will step up the tactics of terror, threatening those who remain loyal to Thieu with slit throats. At the same time, those who support the Communists will be promised land and better living conditions for their families. As in the past, Communist political action will probably be more effective in the mandarin village structure of South Vietnam than the methods employed by the U.S.-trained forces commanded by the Saigon generals. If this proves to be so, what will happen to the U.S. commitment for self-determination when the Communists begin to turn the tide?

What might happen is that the prediction of the Communist Chinese would come to pass. The Chinese have urged the Vietnamese Communists to fight a long war of attrition, forecasting that in time the combination of economic drain, military casualties and political dissension within the United States would bleed us to death—would result in our military defeat. If the South Vietnamese political and military structure began to collapse, it seems most unlikely that the American people would stand for another rescue operation involving increased American troops.

The more likely alternative would be for the remaining 100,000 U.S. troops to join with the South Vietnamese forces in enclaves surrounding the major cities. This might hold off the Communists awhile in a stalemated situation. However, in time, the Communists would control the entire countryside while the United States financed the survival of the cities. Gradually, as the people became aware of their encircled existence, progressive rot and corruption would set in with an inevitable atrophy of the whole structure of such government as remained.

Admittedly, this gloomy prognosis might not come to pass for four or five years. Something better might eventuate from Vietnamization, but it does seem prudent to examine the gamble the President is taking. Based on the record of overoptimism up to now, it seems wiser to anticipate the problems rather than to rest the future of our country on fragile hopes.

The better course would seem to be to start serious negotiations with the Communists about a new government in Saigon which would be based on political compromise. This would mean slowing the withdrawal of troops and moving for genuine settlement now. Of course, if we are not going to negotiate, there is no point in checking the troop withdrawal. But there shouldn't be any more playing with the question of negotiation: Either we mean to talk seriously, or we should get out of Paris.

It is still not too late. There are strong, tough South Vietnamese who are not Communists, such as Big Minh, Gen. Don and others less well known who believe that the war can be brought to settlement through negotiated compromise. It will only happen, though, if the U.S. decides to pursue a policy of negotiation instead of Vietnamization. Rather than perpetuating Thieu and Ky in power, we will have to persuade them to step aside in favor of others who can successfully form a neutral government.

The situation probably will be irreversible by 1971, but the point of no return has not yet been reached. The Communists have long claimed a willingness to negotiate a compromise settlement based on a neutral regime in Saigon. The time to test that position is now.

INTERAGENCY COMMITTEE FOR MINORITY ENTERPRISE

Mr. SAXBE. Mr. President, in March 1969, in response to a request from Secretary of Commerce Stans, an Interagency Committee for Minority Enterprise was created by the Nixon administration. Mobilization of the resources and skills of the Federal Government is vital and a major charge of the committee. The project was discussed recently by Hon. Rocco C. Siciliano, Under Secretary of Commerce, in a speech in Cleveland.

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

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

REMARKS OF THE HONORABLE ROCCO C. SICILIANO, UNDER SECRETARY OF COMMERCE

This conference is of special significance to the Department of Commerce. You are engaged in a pilot project which affects an area of vital interest to the Department—small business.

Unfortunately, the Department of Commerce in the past was associated by some with big business and big industry. Such is not the case at all. Our constituency is all of private enterprise, big and small. All big industries had their genesis in small business. It is the hallmark of our economic system that the opportunity for growth be available to every beginning enterprise. All that really matters, of course, is that a business be viable.

While the basis for our present industrial structure is in the small beginnings of individual entrepreneurs, it is self-evident that if our economy is to maintain its unparalled growth and prosperity we must continue to provide opportunities for the ambitious, the persistent and the confident and to assist them in making their start.

In essence, this is the philosophy to which we in the Department of Commerce subscribe and it is the purpose of the program which we are implementing—a program of expanded opportunity to participants in the private enterprise system. We are convinced it will have a tremendous influence, both socially and economically on our national future. For private enterprise—capitalism if you will, is not a naughty word. It is the cornerstone of our economic system.

To achieve this purpose, President Nixon, on March 5—two months after taking office—signed an Executive Order and created the Office of Minority Business Enterprise in the Department of Commerce.

At that time, he set the goal of fostering the economic status of members of our minority groups by seeking to involve them more fully in our private enterprise system. Blacks, Mexican-Americans, Puerto Ricans, Indians, and others were to be encouraged to enter the field of business, both in the areas where they now live and in the larger commercial community—and not only as workers, important as that is, but also as managers and owners.

The Nixon Administration is unequivocally committed to a policy which assures all Americans an equal opportunity at the starting line:

By creating—in cooperation with corporate America—new business opportunities;

By finding—in cooperation with financial America—sources of venture capital; and

By identifying—in cooperation with the minority communities of America—the individual who has the ambition and the potential to become a businessman.

This obviously is not a simple task. It demands an acceleration of the evolutionary process through massive assistance by an understanding America—because while a history of entrepreneurship, with its successes and failures, is the heritage of the majority—it is a novel experience for the millions whose forebears were deprived of the opportunity to develop specialized skills.

The philosophy which guides us in defining the mission of OMBE is clear and evident. Our task is to provide an opportunity for every American who wants the chance to start his own business—who is willing to pit his ambitions and skills against the challenge of the market place—who is not afraid to risk failure—who wants only to participate in the American experience.

Identification of the basic needs and the search for their pragmatic solutions is OMBE's immediate task.

Two are paramount—one, opportunities which contain sources of continuing assistance and guidance in basic business management, and two, assurance of venture capital to enable start-up and follow-on.

Detailed study of the American business community indicates that the former can be obtained through participation in the fast expanding franchise industry or by association with corporations which grow through either independently owned or managed sales branches.

Your conference and exposition here is another important vehicle toward achieving our national objective. Here are assembled exhibits of the products and materials which major business firms seek to obtain from small businesses as subcontractors.

Importantly, you also have provided counseling to small businessmen on how to become prime contractors for the hundreds of items of supply and the specialized products which the Federal Government purchases.

Creation of opportunity for the small manufacturer and supplier is a vital factor in our over-all program.

We are convinced that one method is to create access for the minority contractor to the multi-billion dollar market created by Federal procurement. This policy makes it possible to provide marketing opportunities for the minority manufacturer and supplier, and to assist him, both technically and in management, to assure contract performance.

The mechanics for its implementation have been achieved through the organization of the Inter-Agency Committee for Minority Business Enterprise, with a special Task Force on Federal Procurement. As a result minority contract opportunities totaling $17,650,000 in the current fiscal year have been committed to date, and a $100 million goal has been set for Fiscal Year 1971.

The procurement program revolves around Section 8(a) of The Small Business Act which is regarded as the best vehicle for minority participation in government procurement since there is no competitive bidding and a cost differential is allowed.

This is how the 8(a) program operates:

The minority businessman contacts his local SBA office. He advises the SBA procurement specialist what products he is able to produce. SBA's recently expanded Business Development Office in Washington then visits the businessman's plant and makes an on-site field survey and evaluation of capacity to perform.

If the man has the capabilities to produce specific items, SBA then locates and identifies appropriate products and seeks out a federal agency buyer who wishes to buy them. SBA conducts the necessary negotiations between the manufacturer and the buying government agency before the contract is consummated.

Mr. Robert Kunzig, the Administrator of

the General Services Administration, has already committed $10 million in procurement monies to minority manufacturers. This will involve purchases of such diverse items as furniture, textile goods, toiletry products and garden tools. This represents only an initial commitment by GSA, and we are assured that more procurement money will be available when the initial amount is exhausted.

In similar efforts, the Post Office Department has committed $2.4 million to the minority procurement program and the Department of Transportation has earmarked $4.25 million. Other agencies will be following suit in the very near future. The SBA, as prime contractor for all government agencies, has set a goal of $100 million worth of commitments by July 1971.

Although our program in a measure is experimental, it is designed to develop procedures with cooperating procurement agencies and to determine the approach and techniques involved in the complex process of establishing small manufacturing concerns which, it is hoped, eventually will become independent and self-sustaining in our normal competitive environment. For the most part, these contracts represent the initial productive input for newly organized business concerns.

In many instances, the Small Business Administration (SBA) has found it necessary to furnish direct management and technical assistance to assure performance of the contract by the fledgling company, since their lack of experience makes it necessary that SBA maintain a continuous review.

Thus, we assure an opportunity for the company to obtain that vital management and technical capability which too often is lacking among minority groups and other disadvantaged persons.

We are aware that this availability of Federal business is unknown to hundreds of producers of products which the Government buys. To acquaint those unfamiliar with the scope of the Federal procurement program, the items sought and the techniques involved in getting the business, OMBE is scheduling a series of procurement conferences over the nation.

Two already have been scheduled—the first will be held on February 20 in Philadelphia and the second on March 20 in Washington, with other area centers under consideration. Representatives of the various Federal Agencies involved will explain to the thousands invited what their departments are seeking; will provide counseling; and will designate the minimum requirements for qualification. Those attending will also be fully briefed on the proper bidding procedures.

By bringing the information directly to the supplier, we hope to encourage the widest possible participation. Specifically, what we are doing is creating an opportunity through Federal contracting for a company owned and operated by members of the minority community to obtain the management experience mandatory for its continuance as a business.

The Administration is determined to open the doors of business opportunity to *all* Americans. To explain our purpose, to present our programs, and to search out and identify qualified individuals, the Secretary of Commerce, Maurice H. Stans, is currently engaged in visits to various cities over the nation.

During each of those visits, the program which I merely have highlighted today will be explained in detail to industrial and business leaders and representatives of the minority community so that all will be informed and all desiring to become involved in the opportunities for entrepreneurship developed by OMBE will have a chance to participate.

The term "jawboning" has become a popular phrase for describing a lot of talk without any action. This is not our purpose.

We know—as must all of you—that this nation cannot grow, cannot flourish, cannot achieve its destiny if the doors of opportunity remain closed to *any* of our fellow citizens.

There is no room within our democracy—no place within our system—for denying the capable and qualified from meeting the challenge of the marketplace. No one should, or shall, be frustrated in his ambition to become a full partner in our economy.

And we are confident that what we seek is no "impossible dream," but the attainable—the inevitable.

We want it to happen. It shall happen.

AFL–CIO ON THE WORLD AROUND US

Mr. DODD. Mr. President, the AFL–CIO, in recent deliberations at Bal Harbour, Fla., showed its concern over nagging crises afflicting us at home and abroad. This great American trade union organization, always cognizant of the national interest, made its views known in a series of pointed declarations.

Some received publicity at the time of presentation; others did not. Those covering the foreign field merit more consideration and reflection. I refer particularly to statements by the AFL–CIO Executive Council on the Middle East, AID, NATO, and Nigeria.

I ask unanimous consent that four statements issued by the AFL–CIO Executive Council be printed in the RECORD.

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

URGENT ALTERNATIVES IN MIDDLE EAST

For months, the "Big Four"—U.S., Britain, France and USSR—have been conferring on the problem of securing peace in the Middle East. The deliberations were doomed to failure the very moment they began. Two of the participants were not qualified to play the role of peacemakers.

For fourteen months, the Soviet Government has been providing the most aggressive Arab regimes with huge supplies of modern weapons for the destruction of Israel. More recently, the USSR has become the chief provider and trainer of the Arab terrorist commandos which are seeking not only to bleed Israel but also to subvert and replace the more moderate Arab governments (Jordan and Lebanon) with Nasser-type dictatorships. For years, Paris has refused to deliver to Israel planes she paid for, planes vital to the defense of her existence. More recently, the French government agreed to provide the Libyan military junta with more than a hundred of the most up to date warplanes. This armada is obviously destined for bolstering Nasser's faltering airpower.

There has been much talk about the Big Four seeking a political rather than a military solution of the Arab-Israeli conflict. The Soviets have joined such talks only to mask their unceasing efforts to feed the flames of military struggle. They have been actively encouraging the defeated Arab regimes to believe that, with the backing of the Warsaw Pact countries, they would regain through diplomatic pressures all the territory they lost in the war of June 1967. The Kremlin rulers are also interested in dragging out these deliberations in order to gain time for training more effectively the aggressive Arab forces and the terrorist commandos. In this situation, the Big Four could not possibly join hands in rallying their influence and prestige for getting the Arab and Israeli representatives to a conference table for negotiating a peaceful settlement. The bitter fruit of their labors to date has been to further Arab-Israeli armed confrontation instead of negotiation.

So far, only the U.S. government has clearly declared that peace in the Middle East "can be based only on agreement between the parties and that agreement can be achieved only through negotiations between them" (President Nixon) and that "an agreement among the powers cannot be a substitute for agreement among the parties themselves." (Secretary of State Rogers).

It actually hurts the cause of peace for our Government to persist in its futile quest for joint efforts with the USSR to achieve an equitable and durable settlement in the Middle East, since Moscow seeks only to corrode our basic position by securing piecemeal concessions at the expense of Israel—thus strengthening Nasser and his associates in their determination to prevent all direct negotiations with Israel.

In view of its experience with the Big Four negotiations to date, our government, would be well advised to seek alternative measures for promoting peace in the Middle East. Our country should now rally world opinion for having both Arabs and Israeli honor fully the cease-fire arrangements they accepted in June 1967.

Despite the courage and capacities of the Israeli fighting forces, they are at a tremendous disadvantage because of the heavy military imbalance in the Middle East. Israeli armaments lag far behind those of the Arabs. The latest count is a ratio of four to one. Only a correction of this imbalance could convince the aggressive Arab rulers that it is better to negotiate an honorable peace with Israel than risk another confrontation with her. Only the correction of this imbalance can prevent another war in the Middle East which might lead to a nuclear world conflagration. Our country's vital national interests and the best hopes for world peace demand that our government should provide Israel with planes and the other military supplies she urgently needs for self-defense and survival—especially in view of the escalation of Soviet and French arms shipments to Egypt and other belligerent Arab regimes.

The Israeli people are now spending over three million dollars a day in fighting for their self-preservation. Eighty percent of Israel's tax revenue is consumed by national defense needs. Our country should help Israel to shoulder this terrible burden imposed on her by the harsh military realities she faces. The United States has a vital political as well as moral interest in helping Israel preserve her nationhood. We must never forget that the very forces which preach and seek the destruction of Israel are the ones who are actively engaged in seeking to drive U.S. influence and all American interests out of the Middle East and subjecting this entire pivotal area to Soviet Domination. We dare not shut our eyes to the gravity of this mounting threat. Were these forces to succeed in attaining their two-fold objective, it would be an irreparable disaster for all the peoples in the Middle East—Arabs and Israeli alike—and a catastrophe for world peace, human and social progress.

NO DISMEMBERMENT OF AID

Within the last two years there has been developing in our country a determined opposition to our nation's overseas assistance program. The latest foreign assistance appropriation by Congress amounts to $1.8 billion which is $800 million below the far from adequate request by President Nixon and only 0.33 percent of our gross national product. While other countries have been increasing their contributions, the U.S. share has been declining and has dropped to eighth place among the donor countries. Scarcely a place of honor for the wealthiest nation with the most powerful economy!

This development is a distressing manifestation of the growing neo-isolationist tendency in our country, towards running away from world responsibilities. If continued, this emerging shift in foreign policy is bound to curtail further the already inadequate assistance to the developing nations and harm the prospects for world peace.

The AFL–CIO warns against this trend as harmful to the best interests of the American people. We view with deep concern the desperate needs of the two-thirds of humanity who are poor. Our nation's prosperity cannot have a lasting foundation in a world plagued by massive poverty.

President Nixon's correct insistence "that other nations must play a role" must never serve as an excuse for our own country disengaging and retreating from world responsibility. Similarly, the talk about channelling more American aid through international institutions should never serve as a screen for hiding the efforts of those who would dismantle our country's increasingly effective foreign aid machinery. Whether an assistance program is to be bi-lateral or multi-lateral should be decided in each instance solely on comparative merits.

The Executive Council reaffirms its vigorous opposition to all moves, under whatever guise, to weaken or eliminate the Agency for International Development by "re-structuring" it in any manner which would tend to deprive it of its vital functions. Every agency of our government should be under constant scrutiny. There is, however, a vast difference between scrutinizing for improvement and scuttling an agency which has made so many valuable contributions to the development of self-help and economic growth among the poorer nations.

We hope that the Presidential Task Force, headed by Rudolph Peterson, former president of the Bank of America, will not yield to the various isolationist pressures and will come forward with recommendations commensurate with our country's world responsibilities. The two-year authorization period, granted the Agency for International Development for the first time, should be utilized for strengthening rather than strangling it.

It is high time to realize that the mere transfer of capital, whether it be public or private, no matter how much the latter is governmentally protected against risks, and an increase in the GNP will not by themselves overcome the standard of living gap among the nations of the world. A cardinal need of all developing nations is the fostering of education, self-help and self-reliance through responsible voluntary agencies. Unless this need is met, the technical know-how made available to them cannot serve adequately for their achievement of viable economies with decent conditions of work and equitable standards of living. More consideration should, therefore, be given to individual human beings, social institutions, and a fair distribution of wealth than to raising the GNP as such.

Whether in Latin America, Africa, or Asia, there is among the developing nations an overriding need for a literate, skilled, and healthy work force—in addition to capable technicians, able managers, and sound intellectuals. Recognition of this need must be paramount if there is to be any sound investment in the development of human resources. Hence, the great importance of responsible effective free trade unions in nation-building.

In this connection, the positive contributions made to date, despite rather limited resources, by the American Institute for Free Labor Development, the African-American Labor Center, and the Asian-American Free Labor Institute, show the way to solid progress in developing the human resources without which there can be no elimination of the perilous economic and social gap among the nations of the world.

There can be no truly "rational division of labor in the Hemisphere" (Western or Eastern) when such division undermines the living standards in the poorer countries. Combining false and harmful policies with preferential tariffs and similar incentives will serve to expand the profits of the few rather than eliminate the poverty of the many, though it might stimulate the spread of multi-national conglomerates.

It is important to note that there is also a gap within the developing countries—between the privileged few and the impoverished great mass of the people. The development of International fair labor standards is, therefore, the indispensable first requirement for overcoming the poverty gap. Low purchasing power for the great mass of people does not spell sound economic progress anywhere. American interests establishing runaway plants in lower wage countries are not helping to overcome the poverty gap but only perpetuating unacceptable living standards in the poorer countries.

The living standards of the lower-paid workers in any country will never be raised by lowering the wage scale of the higher paid workers in other countries. The prosperity of our nation's economy can be helped by the higher and not by the lower purchasing power of other lands.

The Executive Council reaffirms the position taken by the Eighth Constitutional Convention of the AFL–CIO declaring that "continuous progress towards narrowing this gap is essential to mankind's peaceful achievement of social progress and maintenance of world peace. To help the realization of this goal is not only our responsibility but also our great opportunity."

NATO—Shield of Peace and Freedom

Twenty years ago, the United States took the initiative in establishing NATO in order to block the Soviet Union from extending its control over the entire European continent. Our nation did this because two world wars had taught us that American national security is dependent upon a Europe free from the hegemony of a single power.

NATO has succeeded in keeping the peace in Europe and preserving the freedom of our European allies. It has served as an effective obstacle to a third world war and has thus assured the Western nations two decades of unparalleled progress and prosperity.

Throughout these years, the United States has been the backbone of the Atlantic Alliance. America's commitment to defend Europe has given our allies security and enabled them to withstand Moscow's threats, attempts at intimidation and ultimatums. The U.S. has backed its commitment fully. The most visible and convincing proof of our determination to honor our pledge has been the stationing of U.S. troops on European soil, mainly in West Germany. Friend and foe realize that any aggression against West Europe would at once bring American forces into battle—with all the consequences this would have for the aggressor. The presence of a substantial number of American troops has, therefore, served as a reassurance to our allies and a warning to our enemies.

This cornerstone of the Atlantic Alliance is now in danger of being undermined by the demand for a speedy and major withdrawal of American forces from Europe—a demand expressed in the resolution submitted by Senator Mansfield.

The AFL–CIO Executive Council views this proposal with great concern. It regards a drastic cut in American troop strength in Europe at the present time as a grave threat to the security of the United States, the freedom of Europe and the peace of the world. We consider the assumptions underlying the Mansfield resolution as unrealistic and fallacious. Its main assumption is that the Soviet Union no longer harbors expansionist designs in Europe. Unfortunately, all available evidence points to the contrary.

As witnessed by the international conference of Communist parties held last June in Moscow, and by the WFTU Congress held last October in Budapest, the Kremlin has stepped up its subversive campaign against the West European countries; it lends increased support to the efforts of the French and other Communist parties to gain power; it seeks to penetrate—and not without success—mass organizations in West Germany such as trade unions, student movements and church groups.

On the diplomatic field, it attempts to exploit the new Ostpolitik of the Brandt government, not only for winning recognition of its World War II conquests, but also to weaken the freedom of West Berlin and loosen the ties binding the Federal Republic to the West and especially NATO. Likewise, the main purpose of the so-called conference on European security, ardently sought by the Soviet government, is the consolidation of Moscow's East European conquests and the dismantlement of NATO. This continues to be the over-riding preoccupation of the Soviets.

Moscow has ordered a worldwide mobilization of all its front organizations to promote this objective. At the October 1969 WFTU Congress, Shelepin, former political police chief and now head of the Soviet "trade unions", proposed that this world body wage a carefully prepared, step by step, campaign to lure the free trade unions of Western Europe to join with the Communist-controlled labor organizations in a conference to consider the "security of the continent."

This political drive has been accompanied by the continuous buildup of Soviet military power. To the disadvantage of NATO, Moscow's strategic position has considerably improved in recent years. With the occupation of Czechoslovakia, Russian troops are now stationed at the Czech-German border. The presence of strong Soviet naval forces in the Mediterranean threatens the Southern flank of NATO and endangers oil supplies for West European countries. And the integration of Moscow Pact troops under Soviet control has been further advanced.

A second fallacy in the Mansfield resolution is the belief that a U.S. troop cutback would bring about a lessening of tension in the heart of Europe. Actually, such a unilateral move would have the opposite effect. The NATO member states have repeatedly called upon the Soviet Union to negotiate with them a mutual and balanced reduction in the armed forces confronting each other. The Soviet government has ignored this appeal. Moscow expects large numbers of U.S. troops to leave Europe without the Soviets having to reciprocate. It is clear that our unilateral action will dim the chances for an agreement with the Soviet Union on a similar cutback in Warsaw pact forces.

A third fallacy is the assumption that U.S. troops could be easily replaced by European forces and that, therefore, an American withdrawal would have no dangerous consequences. It is true that our European allies have not kept fully their promises regarding conventional arms. While we should press for the fulfillment of their commitments, we must realize that this situation cannot be remedied overnight. Even if it were possible to replace, reasonably soon, U.S. troops by European forces, this would not repair the damage caused by a major American cutback. Such a cutback would be widely interpreted as a sign of disinterest in a disengagement from Europe—as a return to isolationism. The Mansfield resolution has already caused dismay and apprehension among our Euro-

pean allies. Its adoption and implementation would, in all probability, encourage and facilitate the Soviet Union to step up its pressure and blackmail tactics in the hope of frightening the countries of West Europe into submission.

Confronted with a much smaller number of American troops, the Soviets might even be emboldened to commit aggressive acts. In such a case, the United States would be left with a choice only between accepting capitulation or risking nuclear war in order to assure Europe's and, finally, our own survival as a free nation.

A fourth fallacy is the assumption that improved transport facilities would enable American combat units to return speedily to Europe in the event of an emergency. However, this argument does not take into account the danger of planes being intercepted; it underrates the time factor and ignores the possibility that a Soviet massive blitz attack might destroy all landing places in allied hands.

Senator Mansfield and other sponsors of his resolution have mainly adduced financial grounds in arguing for a reduced U.S. military establishment in Europe. They maintain that our European allies can well afford to make a greater contribution to their defense needs. For years, the AFL–CIO has been calling for a more fair sharing of NATO expenditures. We now urge our government to step up its efforts to secure more equitable arrangements. Our government should seek an agreement under which NATO costs would be financed through a joint budget. This would facilitate a just solution of this crucial problem and serve the best interests of all concerned.

Finally, we should not forget that we have commitments to our European allies not only under NATO. When we urged them to sign the Non-Proliferation Treaty we assumed an additional moral responsibility for their defense. Any substantial reduction in our armed forces now might be regarded as a betrayal of their trust in us. Compared with 1962, there are today almost 100,000 fewer U.S. soldiers in Europe. Any further major reduction would weaken our military presence to such an extent that the credibility of our commitment might be seriously questioned.

For these reasons, the Executive Council of the AFL–CIO calls upon the Administration to maintain an adequate level of U.S. troop strength in Europe as long as the Soviet threat persists and an agreement on a reciprocal and balanced troop withdrawal has not been concluded with the U.S.S.R.

NIGERIA

Now that the tragic war in Nigeria is over, maximum speedy aid to the victims of the war is most urgent. At the same time, it is vital to reinforce Nigerian national unity through massive programs of rehabilitation and reconstruction of the war-torn country.

These objectives merit the full support of our government and every sector of our nation. We, of American labor, pledge to assist these efforts in cooperation with the free trade union movement in Nigeria—the United Labour Congress of Nigeria.

The AFL–CIO Executive Council calls upon our government and the American people to channel all assistance to the Nigerian people through the legitimate recognized national institutions of the country.

It is, therefore, most important that our country help counteract and overcome the costly consequences of the war by providing all-out economic and social assistance to the people of Nigeria to be distributed equitably and speedily. In this way, we will not only bring effective aid to needy people but also strengthen the forces of Nigerian national unity and democracy.

NEW AIRPORT PROGRAM MUST INCLUDE TERMINALS

Mr. RANDOLPH. Mr. President, several of our colleagues are participating in a conference concerning H.R. 14465, the Aviation Facilities Expansion Act. I recognize that the conferees have before them a number of difficult issues to resolve. I believe it is incumbent on me to speak to one of those issues.

The purpose of my comment today is to be assured that the conferees on that important legislation bear in mind the very firm position of the Senate with respect to assistance for public facilities in airport terminals. The strength of this body's approbation of such assistance was underscored by a vote of 69 to 20, rejecting elimination of the terminal aid provision.

The Congress took a wise step in 1961 when it eliminated from the Federal aid-airport program the eligibility of funds for terminal areas. At that time, available funds were severely limited and were urgently needed to improve safety through airfield construction. In addition, the appropriations were made from the general funds of the Treasury. The situation today, however, is altogether different. Now all the money for airport needs will be coming from a user-supported trust fund and not from the general taxpayer.

All of us know how serious is the problem of congestion at many of our airports. With the increasing use of air transportation the congestion will become ever more severe. We will be misleading the public—yes, defrauding them—if we let them believe that the new airport program will be a solution to congestion while at the same time we withhold funds from critical terminal construction projects.

Under the terms of H.R. 14465, some of the funds are earmarked for each airport location. There exist today situations in which there is no need for more runway or other airfield construction, but an immediate need for terminal funds. It would be a shameful waste of money not to provide such locations the money to which they are entitled, simply because their need is for terminals and not for runways.

PARAMEDICAL COURSE A CARDOZO SUCCESS

Mr. YARBOROUGH. Mr. President, the Health Training Improvement Act of 1970, which I introduced last week, extends and improves the Allied Health Professions Personnel Training Act of 1966, as amended. I am convinced that passage of the bill will greatly enhance the existing program. One amendment in particular holds a great deal of promise for our economically disadvantaged. This amendment would provide grants to help identify individuals of financial, educational, or cultural need with a potential for education or training in the allied health fields. These funds could also be used to encourage such individuals where appropriate to complete secondary school, undertake postsecondary training in the allied health professions or publicize existing sources of financial aid to undertake training or education in the allied health professions.

The need for this section of the bill became very evident when I came across an item in the Washington Evening Star of March 9, 1970, which indicated very vividly that when given an opportunity the economically disadvantaged will respond. The article discusses how 29 hard-core unemployed, underemployed, or welfare recipients received training in an 11-month paramedical course given by the Community Group Health Foundation, Inc., with financial assistance from the Office of Economic Opportunity and ended up with $4,900-a-year GS–3 positions.

Mr. President, I was much impressed with the article in question and would commend it to the Senate. For the benefit of those who missed it, I ask unanimous consent to have printed in the RECORD the article entitled "Paramedical Course a Cardozo Success," published in the Evening Star of March 9, 1970.

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

PARAMEDICAL COURSE A CARDOZA SUCCESS—29 ARE GRADUATED

The graduates passed no written exams, there were no grade sheets and there was no valedictorian. And instead of white gowns and mortar boards, the graduates wore blue hospital uniforms.

But then, it's not every day that hard-core unemployed, underemployed or welfare recipients get a degree. But that's what happened yesterday afternoon when commencement exercises were held for 29 Upper Cardozo residents who graduated from an 11-month paramedical training course.

The training program was given by Community Group Health Foundation, Inc., at 14th Street and Park Road NW, a community medical and dental center.

A $1.5 MILLION GRANT

The clinic started more than a year ago with five people, a $1.5 million grant from the Office of Economic Opportunity, and an idea—to give useful jobs to the hard-core unemployed. In April the clinic advertised for community residents who were interested in being trained as medical aides and technicians. The only qualification required was that the trainee present evidence that he or she was disadvantaged—underemployed, unemployed or on welfare.

The office was inundated with 250 responses. "I guess that's evidence of the size of the need for a program like this in this neighborhood," Dr. James D. Shepperd Jr. commented. Shepperd, the director of the project, said 42 applicants were selected.

The average age of the trainees was 29, and their average schooling was Grade 10—although one was a qualified nurse and one man partially qualified as a physician.

During the course, the students were paid $2 an hour for training as health workers, laboratory technicians, dental assistants or clerks.

"It was an idea whose time had come. It resulted from a community's desire to do something for itself—to give something to the community and do for itself," one enthusiastic community resident said.

Freedmens Hospital and the College of Medicine at Howard University were among area participants in the training project, along with Change, Inc., and Group Health Association.

Dr. Shepperd admitted that relations with

OEO were not always cordial: "We caught a little hell now and then," he said. But in spite of critics, mistakes and program changes, the project managed to continue, dropping 13 trainees along the way for a variety of reasons ranging from personal problems to better job offers.

"It took dedication for them to carry through," Shepperd said of the 29 graduates. "And commitment and will to make a success."

GET GS-3 JOBS

The project's first graduating class walked down the aisle to receive their certificates to the strains of Mendelssohn's "War March of the Priests." Their graduation was based on approval by clinic personnel, and they were not required to pass written exams, nor were they given grade sheets.

As they proudly accepted their diplomas yesterday in the basement of the Shrine of the Sacred Heart Church, 16th Street and Park Road NW., the paramedical graduates walked off the welfare rolls and into $4,900-a-year GS-3 positions.

The medical clinic's project—which now handles 80 patients a day—has recently been refunded with $1.8 million OEO grant, Shepperd said.

"It's been one of the more successful of OEO projects, and it's been a big success," he reflected. "We've just had an increase in money and we'll continue for at least another two years."

THE BUSINESS OF A UNIVERSITY

Mr. SAXBE. Mr. President, one of the more lucid articles I have read in a long time appeared in Sunday's New York Times Magazine. Its title is "What Business Is a University In?" and it was written by Mr. Irving Kristol, coeditor of the Public Interest and Henry Luce, Professor of Urban Values at New York University. Because the article is about a timely topic, I ask unanimous consent that it be printed in the RECORD.

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

WHAT BUSINESS IS A UNIVERSITY IN?

(By Irving Kristol)

The American nation today—especially the most educated part of it—seems to be even more confused than usual. On practically every campus of this country, learned professors are vociferously demanding the prohibition of cyclamates or DDT or whatever—while in the same breath arguing for the legalization of marijuana or hashish or whatever. Similarly, most professors and college administrators have concluded that they have neither the obligation nor the capacity to supervise the sexual habits or elevate the moral characters of their students—but they appear to have concluded simultaneously that they do have the obligation and capacity to solve our urban problems, conduct American foreign policy, reshape the American economy and perfect the American national character. They will abolish violence from American life—but they will stoically tolerate it on the campus rather than take "repressive" action. They will protect their students from air pollution—but not from veneral disease, drug addiction, pregnancy or psychedelic psychosis. Never has one had better cause to appreciate the cogency of William F. Buckley's observation that he would rather be governed by the first 2,000 names in the Boston telephone directory than by the Harvard faculty.

It is a familiar sociological phenomenon that, when an institution no longer knows what it is doing, it starts trying to do everything. The loss of genuine purpose is invariably accompanied by the lust for a dozen pseudo purposes. It would be a truly revolutionary event if the administration and faculty of one of our major universities were to meet in solemn conclave and then announce to the world: "Look, let's face it. We don't know what in hell to do with the money you give us or the young people you send us. Our traditional procedures and practices are obviously no longer relevant to the present situation. The reforms we have introduced in recent years seem not to have made much difference—except, perhaps, for the worse. We're not even sure whose fault it is: ours, the students' or the world's. But we are, at this moment in time, a losing proposition. We are therefore disbanding for a year and are going home to think things over."

One need not be a prophet to know that this scenario is a highly improbable one. What is more likely is that such a conclave would abolish all surviving parletal rules, all required courses and all grades—while declaring its intention of using its collective intelligence in order to save our cities. Should anyone chance to wonder aloud whether the university indeed possessed a "collective intelligence" suitable for this purpose, he would be dismissed as a frivolous heckler.

And yet, this very question, as to whether a university possesses something that can be called a "collective intelligence," and if it does what the range of such intelligence is, is really at the heart of the matter. For the idea of "corporate responsibility"—the idea that "the university" must act so as to solve our social problems—makes no sense without it.

Now, if I may somewhat simplify a complicated matter, an institution can be said to have a corporate responsibility to the extent that (a) its actions reflect the consent, active or passive, of the majority of its members; (b) it is organized in such a way as to make collective decisions and take collective actions, and (c) its decisions are, in some way and to some degree, a constraint upon its members. It follows that an individual, when he elect to join such an institution, accepts responsibility for its actions and decisions—accepts responsibility for them as a whole, and regardless of his disagreement with particular ones. Particular disagreements are inevitable, of course, but they are irrelevant to the question of general responsibility.

Is a university this kind of institution? I think one has to reply—yes, it is: but only to a trifling degree and only in a limited area. The degree has to do with the extent to which the university is something more than—or, if you prefer, less than—a community of scholars (more precisely, a community of teaching scholars).

The ideal of "a community of scholars" is still very much alive—at least the phrase is still used. No doubt the reality frequently falls far short of the ideal. But I believe that it is an authentic ideal, sincerely celebrated for the most part, and actually in existence here and there. What is puzzling, however, is that the very same people who say the university is a community of scholars will also assert that the university has a collective and corporate responsibility for rebuilding our cities, ending the war in Vietnam and solving our racial crisis. These two notions would appear to be—I should say they are—totally incompatible.

In a community of scholars, there may be *individual scholars* who wish—some because they sense that their expert knowledge would be useful, some others because their conception of the good citizen prescribes it, and still others because they are simply bored with their work—to get involved in public affairs. Such an action, by an individual scholar, poses no intellectual problem. It has always been assumed, since the birth of the university in the Middle Ages, that a scholar had a right *not* to get involved with worldly matters, if that was his choice. In the past century, the struggle for what was called "academic freedom"—a struggle that has been largely, if not entirely, successful—has given the scholar the positive right to get involved, if he does wish to. The number of scholars who have exercised this right, during this past decade, is larger than ever before in our history. I need only mention the names of Daniel Patrick Moynihan, John Kenneth Galbraith, Henry Kissinger, Arthur Burns, W. W. Rostow and Arthur Schlesinger.

But I do not see how a "community of scholars" can *collectively* and *institutionally* decide either to abstain from politics or to participate in politics in a particular fashion. That kind of decision-making is precisely what a "community of scholars" is incapable of, if it is to remain true to its self-definition. For, in order to make such decisions, it would have to become a *political community*—which is to say that *power* would be the focus of organization. A leadership would have to be instituted; modes of selecting this leadership would have to be established; formal channels of communication between leaders and members would have to be defined; a system of judicial restraint, constraints and punishments would have to be erected; an administrative hierarchy would be needed to carry out the decisions—and so on and so on.

We all know what such collectivities—whether they be in the public sector or the private, whether their intentions be philanthropic or mercenary—are like. They are *organizations*. And whatever the difficulties inherent in giving substance to the idea of a "community of scholars," I know of no one who ever argued that these difficulties could be overcome by transforming the academic community into an academic organization, and by converting scholars into organization men.

To be sure, there are many people these days—mainly younger people, both students and faculty—who criticize the very ideal of a "community of scholars" as being antiquated and, in the light of our present condition, even reactionary. These younger people are moved by an urgent sense of crisis—and this is to their credit, because the crisis we are living through is real enough and urgent enough. And it seems to them an act of flagrant irresponsibility for the intelligent and learned men in our universities not to be contributing to the solution of this crisis. An understandable sentiment—but, I fear, an invalid one, in that it is based on profound misconceptions of the nature of the social sciences and of the relationship between theory and practice in the realm of human affairs.

My meaning, stated bluntly, is this: There is no reason to think—there is not the slightest shred of evidence—that the organized, collective intelligence of professors has anything whatsoever to contribute to the solving of our social, economic, political or moral problems.

In this respect, the social sciences differ radically from the physical sciences. In the latter, the whole is very often greater than the sum of its parts—a team of scientists, organized for joint endeavor, is capable of achieving things that no single scientist, however brilliant, can hope to accomplish. (For instance, it can build an atom bomb.) I suspect that this analogy is in the minds of those who would have sociologists, economists, philosophers, historians, even professors of English unite for benign social purposes. But the analogy, for better or worse, is false. I know of no organized enterprise in the social sciences—no research project, no experiment—that has been notably creative. On the contrary: it is the work of individual scholars that represents the major contributions, while the organized teams usually contend themselves with exploring the significance and implications of *his* work.

Governments and other political authorities, to be sure, when they consult social sci-

entists, always try to consult with a group rather than with an individual. But this is for reasons political, not scientific; it is an effort to diffuse responsibility rather than achieve truth. There is no reason whatsoever to think that the Council of Economic Advisers, for instance, is more likely to be right, in its analysis and predictions, than any individual economist. And it is very easy to find many instances where it has been wrong. Similarly, there is no reason to think that 10 criminologists, or demographers, or housing experts, working together, are more likely to achieve a correct understanding of a social problem than would one of them, working alone. Indeed, anyone who has ever participated in a meeting of such experts has soon realized that original creative thinking does not easily survive the press of conflicting opinions.

Why the social sciences should differ from the physical sciences in this way, I leave it to the philosophers of knowledge to explain. That they *do* differ is, I submit, a fact. Yet, oddly enough, this is a fact that many social scientists themselves find incredible. In college after college, in this country today, members of departments of sociology, anthropology, economics, etc., are insisting that it is incumbent upon them—not only as a possible moral obligation for the individual but as a necessary political obligation for the group—to "get involved in solving our social problems."

Perhaps the explanation has something to do with the fact that the population explosion in our universities has brought on to campus a great many professors who have little interest in, or talent for, scholarship, but who simultaneously feel that the mere possession of a Ph.D. gives them a title to political and moral authority that society insufficiently respects. Perhaps there are other and truer explanations. One wouldn't mind seeing *this* problem studied—though I wouldn't recommend that anyone hold his breath until it is.

A second misconception involves the relation of social theory to political practice. It is not merely that conflicting *interests* make it difficult to act according to a persuasive piece of social or economic analysis—though this is true enough, and certainly not unimportant. What is even more serious is that social problems usually reflect conflicts of *values*—between different sections of the populations, of course, but also *within* the hearts and minds of the majority of individuals who compose the entire community.

The reason politics is such a difficult art is less that people are insufficiently enlightened and more that it is in the nature of human beings to want incompatible things at the same time. We want to diminish air pollution, but we are not willing to stop driving automobiles. We want less noise in the skies, even as we fly on faster jets. We want low-cost housing for poor people but, once we have seen it, we decide that what we really need is *expensive* low-cost housing for poor people—with no increase in taxes, naturally. And so on, and on, and on—the catalogue is endless.

It is because our social problems are of this nature that the prime political virtue is, not theoretical rectitude, but practical sagacity (what the ancients used to call "prudence"). This is not an academic virtue; indeed, where it exists it can be an academic weakness. We want our social theorists to be bold and keen and unconstrained in the use they make of their imaginative and analytical powers. And it is precisely because we want this that we must look askance at the proposition that academic men ought, as a species, to get involved in the management of our society.

I have mentioned that there is a sense in which the university, as an institution, *does* have a corporate responsibility—but that this is so only to a trifling degree and in a limited area. No university is merely a "community of scholars." In order for such a community to exist and survive, it needs to be buttressed by an organizational component, by an administration which manages money and real estate and employes and relations with the world outside. Such organization and administration do indeed imply responsibilities. More precisely, they imply a responsibility—the responsibility to be reasonable with regard to the interests and sensibilities of other organizations and other people. And I don't think they imply anything more than that.

For example, a university that has a building program has the same responsibility as a business corporation or a government agency to see to it that injurious consequences to residents of the neighborhood are minimized if they cannot be entirely avoided. I do not think its responsibility is *more* than this. I certainly do not think that the university has the responsibility to create a "model" neighborhood or a "model" environment around it. For one thing, such a "model" reflects a man's personal values, not his academic knowledge. Nor can academic knowledge itself tell us how to translate a model into a reality—otherwise, philosophers would indeed have the divine right to be kings! Moreover, no one has given the university the authority to impose its notions of a "good" neighborhood or a "healthy" environment upon its environs. To assume such authority, therefore, would be an illicit usurpation of power. One might even call it "impudent," were that word still in good standing.

Similarly, the university has the obligation to invest its money to achieve the highest return, yet in such a way as not to offend the sensibilities of the academic community that resides within the university's organizational shell. If the members of this community feel it improper for such funds to be invested in, say, South African securities, then a reasonable administration will respect these sensibilities and avoid such investments.

On the other hand, an administration should pay no attention to those who insist that it select its investments mainly for the beneficent social consequences they will have. No one knows which investments have such consequences. After all, an investment in today's low-cost housing may mean an investment in tomorrow's outrageous slum—and the benevolent university might find itself in the position of actually being a malevolent "slumlord."

In addition, of course, there are acts of pure philanthropy that a well-heeled institution ought to perform out of a sense of *noblesse oblige*. It would be both nice and proper if Harvard established and supported a free private school in the slums of Roxbury. On the other, I am appalled at suggestions that Harvard devote its resources to "solving the problems of ghetto education."

There are no grounds for thinking that Harvard's faculty members—even if they be in the School of Education—are any better at solving the problems of ghetto education than anyone else. (At the moment, indeed, the Harvard faculty would seem to have its hands full trying to solve the problems of Harvard education.) Yes, of course, there are individual scholars at Harvard who know a great deal about ghetto education. There are also scholars at Harvard who know a great deal about the sociology of the family, but that doesn't mean they'd necessarily make good marriage counselors. It only means their books ought to be read by marriage counselors.

Activities of the kind I have mentioned seem to me pretty much to exhaust the question of the university's corporate responsibilities to the community at large. There are, to be sure, a whole series of borderline cases. Should the university accept Government contracts for research? I see no way of giving an a priori answer to this question. If such contracts and such research fit into its educational program, I see no reason why a university shouldn't accept them—if it wants to. I don't see that it has any *obligation* to accept them. The Government can always get such research done outside the university, if it has to. And in this connection, I see no difference in principle in research for the Department of Agriculture and research for the Department of Defense. What counts is the way such research fits into the *educational* program of the university. It ought to go without saying that, if it has no relevance to education, then it has no place in the university.

The question—now agitating many minds—as to whether a university should take a position on the Vietnam war or some other controversial issue of the day strikes me as being simply beneath discussion. If critics of the Vietnam war can get an overwhelming majority of the faculty to sign an *ad hoc* statement in opposition to the war, why should they then insist that the university senate *officially* subscribe to such statement? Such official action only makes sense if it in some way binds the dissenting minority. Since it does nothing of the sort, its only meaning is the expectation that it might intimidate this minority into silence—through fear, through shame, through embarrassment. This is as neat a definition of McCarthyism as one can find. And, in truth, the present demand that the university, by a majority vote, take a stand on such political issues is nothing but an expression of McCarthyism from the Left. I repeat: it is *nothing* but that—no matter how many ingenious rationalizations are provided and no matter how self-righteous the proponents.

I do not wish to end on a negative note. I am aware that I have mainly been arguing what the responsibility of the university is not. Let me therefore propose a positive thought. The university does indeed have one major collective responsibility which it has been shamefully neglecting; this is its responsibility for education.

We are all of us aware that university education in the United States today is an utter shambles. We have all seen bright, young high-school graduates move on to our college campuses and, after only a relatively short period, display a feebler intellect, a less cultivated sensibility and a greater vulgarity of soul than either God or their parents bequeathed to them. I have a son who is now preparing to enter college and, frankly, I am heartsick at the thought that this young man—who may be a budding scholar—is going to have to live through four years at one of our institutions of higher learning. Other parents, I know, are similarly perplexed and distressed at the prospect of plunging their children into the psychedelic phantasmagoria of campus life, where the college chaplain is more likely to have faith in encounter therapy than in a mere deity.

Now, I know that this is a fearfully difficult situation. The university today must cope with a large, heterogeneous student body. It must confront a "counterculture" that often renders young minds impervious to the very idea of education. It must take into account the proliferation of scientific, social-scientific and quasi-scientific disciplines, and of the decay of the traditional conception of a curriculum. It must satisfy the demands of high-minded students, professionally minded students, vocationally-minded students and students who go to college with no ulterior—or even discernible—motive whatsoever.

All of this, and other things too, make for crisis and disarray. The faculty and administration of our universities cannot fairly be blamed for creating or provoking this crisis—

though they often are so blamed, the human penchant for scapegoating being as powerful as it is. But they *can* be blamed for the pitiful inadequacy of their response. Why, one wonders, are practically all campus newspapers in the hands of the extreme left? Why are the student unions and student funds controlled by militant minorities? Why don't the administration and the faculty demand a student referendum on these matters—with compulsory voting, if that is needed to make student elections meaningful? The reason, I suspect, is that they fear the left would lose—and would then be even more troublesome than it is. So, fearful of democracy, they try bribery, with predictable results.

And where, one may ask, are the philosophies of education appropriate to our new condition? Where are even the intellectual controversies over the nature and function of higher education? Where are the bold definitions and redefinitions of the purpose of the curriculum? Where are the fine distinctions among the different kinds of education suitable for different kinds of students?

They are nowhere, so fas as I can see, though scholars are supposed to be good at precisely this sort of thing. Instead, we have endless committee meetings that result in a mindless shuffling and reshuffling of bits and pieces of the educational structure—together with an amiable willingness to label *anything* as education if that will only buy some temporary peace on the campus.

The collective responsibility of the university is education. That is its original mission, that is its original purpose, that is the only thing it can claim expertise or authority for. To return to this original purpose, with renewed seriousness, would be an action at once radical and constructive.

KEN KEATING, A GREAT AMBASSADOR

Mr. PROXMIRE. Mr. President, today's New York Times contains an article entitled "Indians Warm to Keating's Style," written by Sydney H. Schanberg, about our friend and former colleague Kenneth Keating, who is now Ambassador to India.

There are many from the school, who believe that the State Department and American embassies should be run on the model of an outdated British diplomacy, who deplore the appointment of noncareer ambassadors.

Ken Keating's stewardship in New Delhi is the complete rebuttal to that rather old fashioned and stuffy point of view. He exemplifies the very best in the tradition that noncareer appointees make the very best ambassadors. And no country has had a more distinguished list of such ambassadors than has India—John Sherman Cooper, John Kenneth Galbraith, Chester Bowles, and now Ken Keating.

Ken Keating is exactly what the job calls for. He is a genuine friend of the Indians. He represents the very best in American public life. And he is a warm, ebullient, outgoing Ambassador who gives the job the extra dimension which is needed; namely, not only a representative from Government to Government, but a representative from the people of the United States to the people of India.

His methods may not always endear themselves to the hidebound, traditional, career hands of the Department of State. But I can say without question that his friends and colleagues in the U.S. Senate believe that Ken Keating's methods exemplify everything that is best in the relationship both between countries and between peoples.

As a House Member for 12 years, as a U.S. Senator for 6 years, as a justice of the New York State Court of Appeals, as a warm human being, and as a man with a quick and responsive sense of humor, he embodies all those qualities which make a good Ambassador, a good citizen, and a good man.

We need more like him.

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 New York Times, Mar. 23, 1970]

INDIANS WARM TO KEATING'S STYLE

(By Sydney H. Schanberg)

NEW DELHI, March 22.—Threeeeeep! Threeeeeep! Threeeeeep! Threeeeeep! a shrill call pierces the quiet of New Delhi's lengthening dusk. Is it the hoopoe bird calling to its mate or the white-cheeked bulbul practicing its song?

Not even close. It's Kenneth B. Keating, the United States Ambassador to India, calling his 50 guests to dinner—with a police whistle.

The whistle is only one of many unorthodox touches Mr. Keating has brought to diplomatic life here, and while traditionalists in his embassy wince, the 69-year-old former Republican Senator and judge from Rochester, N.Y., is charming the Indians and having a good time doing it.

Even his recent no-nonsense criticism of the Indian Government's decision to close down five American cultural centers has not dampened the warmth Indian officials feel for him.

"We consider him a friend, beyond question," an official at the External Affairs Ministry says in a typical comment, "a warm, congenial, open-minded, open-hearted man. They couldn't have made a better choice."

Which is a long way from the somewhat disappointed remarks the Indians were making when Mr. Keating replaced Chester Bowles nearly nine months ago and when they had the impression that he was a relatively unknown, relatively undistinguished politician who had no particular influence with the President.

Mr. Keating—who looks like central casting's idea of the perfect ambassador, with his elegant shock of white hair and his pipe and boutonniere—had spent those nine months barnstorming around the country in the embassy's two-engine Convair, shaking hands, waving at crowds, making speeches, holding news conferences.

He makes no apologies about being a political animal. On the contrary, he revels in it.

When he was planning a trip to volatile Calcutta some time ago, he heard that the Communists were preparing to greet him with a "black-flag" protest demonstration over the Vietnam war. The Ambassador stuffed a black silk handkerchief into his pocket to wave back at the black flags, but the demonstration never materialized, and he said later, only half-joking, that he was "a little disappointed."

There was one angry man in the Calcutta crowd, however, who kept screaming: "Yankee yellow dog—go home!" Though the Ambassador waved good-naturedly at him, the police hauled him in. Mr. Keating got him out the next day with a letter to the authorities arguing that "he incited no one" and that dissent was "the right of every man."

In similar style a month later, while introducing the Apollo 11 astronauts to a huge Bombay crowd, he decided to add the words "Jai America!" (Hail America!) to the "Jai Hind!" (Hail India!), which is the usual ending of patriotic speeches here. The crowd roared its approval.

"My staff didn't like the idea," Mr. Keating said, "but the crowd voted against the staff. So the old ham had to play up to the crowd."

SOME VOICE RESERVATIONS

Some career Foreign Service officers at the 550-man embassy frown at the Ambassador's flamboyant methods.

They contend he spends too much time "still running for office" and "seeing how many inches he got in the local papers" and too little time on important policy matters—such as how to put the diminishing aid money to the best use here and how to persuade Congress to stop diminishing it.

"He's not interested in Indian sociology or the dynamics of a developing agricultural society under stress," said a critic. "He's status quo conscious—unrest makes him uncomfortable. He sees everything as a political issue, and then only as it relates to his personal success or failure. This might be good short term for him, but it's bad long term for the United States."

Still other critics say his effectiveness as a listening post is hampered by the fact that he does not meet with any of the political opponents of Prime Minister Indira Gandhi, seeking out only her friends.

Many of the complaints, endemic in the small-town atmosphere of all diplomatic communities, seem overdrawn.

Even the strongest critics of his style concede that in his primary function of explaining President Nixon's low-profile-in-Asia policy to India, and Indian policy to the White House, Mr. Keating has been successful.

They also agree that while he does more entertaining than information gathering in his meetings with Indian bigwigs, "he butters them up and makes it easier for other embassy officers to get things out of them later."

His fans insist flatly that a politician, not an intellectual, is what the Delhi post needs in the present supercharged Indian political atmosphere. And critics and fans alike applaud his straight-talking toward the Indian Government.

"It's great to be free of the old Bowlesian syndrome where we had to be soft on India and love the place all the time," said one embassy hand.

Soon after Mr. Keating arrived, he established his credentials as a friend of India—with an interview in The New York Times backing Mrs. Gandhi's socialist policies that got wide notice here—and he has since used this as a talking point when he has something critical to say.

"The interview did me more good than any single thing I've done," he says. "Now, if something comes up, like the closing of these cultural centers, where I think they're wrong, I go to them as a friend and they know that. I don't mince words. And I can really talk, I think, more forcefully as a friend."

The cultural center episode is only a facet of a larger issue—Washington's concern that India too often draws her foreign policy inspiration from the Soviet Union. "I think it's important," says Mr. Keating, "to keep this country nonaligned."

For a man of his years the Ambassador keeps a long working day—rising at 7:30 a.m. and going to bed around midnight still carrying office reading with him.

Asked if he had given any thoughts to slowing his pace or retiring, he blurts: "No. Hell, I'd die."

To keep fit—he is 5 feet 9½ and weighs 155 pounds—he jogs three or four hundred steps in his bathroom in the morning and makes a daily ritual of the sauna bath and

outdoor pool in the spacious backyard of Roosevelt House, the ambassadorial residence.

When possible he takes an hour's nap in the early evening before going out to the inevitable dinner or reception. He himself gives a dinner about once a week at Roosevelt House; dessert often includes fudge, a Keating favorite.

At the office, he always dresses in a suit, no matter how intense the Delhi heat—a practice that brought to an end, to the chagrin of some of the staff, the more casual Bowlesian era of "bushshirt diplomacy."

STAFF DRIVEN HARD

Mr. Keating says that he drives his staff hard—in particular, his able 39-year-old special assistant, Richard N. Viets, who seems to thrive on it.

The Ambassador has no particular hobbies. His reading is confined almost entirely to office papers. "I don't read more than two books in a year at the present rate," he says, somewhat guiltily. The unread volumes at his bedside include a book of poetry the State Department sent him as part of its cultural program for ambassadors.

Being a widower, Mr. Keating sometimes drafts a standin hostess from the embassy community, such as Dr. Margaret Clapp, the cultural attaché who is a former president of Wellesley College, or Marina Viets, the wife of his special assistant.

His humor is gently bawdy and he likes to tease, especially women.

The other day he and Dr. Clapp were having lunch with his daughter and son-in-law, visiting from New Jersey, and the Ambassador mentioned that he had been photographed in his pajamas that morning for a newspaper story.

"Which pajamas?" Miss Clapp asked, kiddingly.

EXCHANGE BRINGS BLUSH

"My blue ones," he shot back, "you know the ones." Her blush set him chortling.

One of the Ambassador's favorite pastimes is reminiscing about his career—his first stay in India, 1943 to 1946, as an officer in the Allies' Southeast Asia Command in New Delhi, his subsequent days in Washington as a Representative (12 years) and Senator (six years), and finally his three and a half years as a justice on New York's highest tribunal, the Court of Appeals, which he forsook for the ambassadorship because "I found it too sedentary for my body chemistry."

Mr. Keating, a lawyer and a moderate Republican, frankly confesses that while he is enjoying himself here, he would rather be back in politics. (He was defeated in his bid for a second term in the Senate, which he terms "the greatest institution in the world," in 1964, by Robert F. Kennedy.)

"I'd like to be able to accomplish more," he says of his ambassadorship. "I don't feel fully fulfilled, because sometimes I would like to hit the rafters—when he is annoyed with Indian policy—like you would as a Senator. Well, you can't do that here. I've got to button up my mouth and pull in my horns."

PRESIDENT MOVES FIRMLY IN POSTAL STRIKE

Mr. BENNETT. Mr. President, I commend President Nixon for his timely and courageous action in calling out the Army to handle the mail crisis in New York City.

Moving with strength into the biggest and most crucial crisis, he has let all striking postal workers everywhere know that he means business and that, if necessary, he will take the steps to meet any other mail strike crisis anywhere in the Nation.

At the same time, the President has repeated his offer to negotiate in good faith, so I hope the number of strikers returning to work will increase and before long include those in New York making actual use of the military unnecessary.

I should also point out that in this entire crisis the leaders of the postal unions have opposed the wildcat strikes throughout the country.

Once again, we have been privileged to witness a President at work who is determined to meet his constitutional responsibilities to the American people, a President who cannot and will not be intimidated, a President who is fully capable of dealing with crisis situations. I applaud the President's action and publicly express to him my support. It is clear now that the issue of postal reform and deteriorating mail service must be resolved. I call upon Congress to meet this crisis at the earliest possible time.

A DISTINGUISHED JURIST SPEAKS OUT ON FOREIGN POLICY

Mr. YARBOROUGH. Mr. President, recently a considerable amount of debate has taken place on the floor of the Senate about the American involvement in the war in Laos. One would think that the Nation which similarly drifted into the tragic, immoral and costly war in Vietnam would be very careful about involvement in the conflicts in any other nation in Southeast Asia or in any other part of the globe.

Recently, I received a letter from Judge W. C. Boyd, district judge of the 16th judicial district of Texas at Denton, Tex. Although it is a brief letter, I think it gives an indication of the concern that many of our more thoughtful citizens feel about our continuing involvement in Southeast Asia. Judge Boyd is recognized in Texas as an able concerned jurist, who rates high with bench and bar.

Mr. President, I ask unanimous consent that the letter dated February 18, 1970, be printed in the RECORD.

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

W. C. BOYD,
Denton, Tex., February 18, 1970.

Senator RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR RALPH YARBOROUGH: Instead of disengaging and getting out of Viet Nam, as he promised, Nixon is now expanding the war openly into Laos and covertly into Cambodia and Thailand.

Every responsible voice in Congress must be raised in protest to expansion of this war, and raised in demanding that we disengage and get out of Viet Nam forthwith. We know that we can depend on you.

We feel so impotent and vulnerable, please let us know if there is anything we, as citizens, can do.

Yours truly,

W. C. BOYD,
District Judge, 16th Judicial District of Texas.

VIOLENCE ON THE CAMPUS

Mr. GOLDWATER. Mr. President, on relatively few of the 2,500 campuses in America has trouble been caused by students or faculty. In spite of this, one depending on the media for news gets the impression that every campus is beset with incomparable, uncontrollable problems.

We in Arizona are very proud of our three major universities because the strength of the leadership of these schools has prevented the type of violence generally but wrongly associated with students and faculty alike.

Recently, at the University of Arizona there was a disturbance at the gymnasium because the university was playing Brigham Young University, which is a Mormon school. The display went past decent and normal bounds protected by the right of petition and the right of assembly. The president of the university, Richard Harvill, in his usual strong and wise manner, rejected the unreasonable demands made by the perpetrators of the trouble. His statement, which was contained in the student newspaper, the Arizona Daily Wildcat, indicates the kind of strength that I think is needed on the relatively few campuses where the leadership has either not been able to or has refused to keep the small handful of demonstrators in line.

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

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

FROM PRESIDENT RICHARD A. HARVILL: A LETTER TO THE UNIVERSITY COMMUNITY

(EDITOR'S NOTE.—The following is the complete text of University President Richard A. Harvill's message following his rejection of UFO demands.)

This statement is addressed to the university community. In it are comments concerning the nature of a university, relationships with Brigham Young University, and the matter of communications within this institution. There is also a brief comment on the incident at Bear Down Gymnasium.

DEMANDS

Traditionally the university has closely guarded the right of faculty and students to pursue knowledge without interference or intimidation. It has done this out of the long-established tradition that an open-minded approach to knowledge through fact and reason is the only basis upon which education can be built. The university has deliberately developed within its community a high regard for rational processes. It seeks to recognize intelligence and reason. It resists intimidation, demands, and compulsion.

Demands upon the university are not consistent with these traditions. A demand betrays a rigidity of thinking and a dogmatic assurance inimical to the intellectual processes that are the hallmark of a university. Those who present demands assume their own infallibility, virtue, and rationality.

BYU

Certain groups and individuals have called upon the University of Arizona to terminate relationships with Brigham Young University because of alleged racial discrimination.

The whole question of the correctness of this institution's relationships with Brigham Young University needs clarification. It is essential that the policies of Brigham Young University concerning minority students not be confused with the doctrines of the Mormon Church. The Mormon Church is not a member of the Western Athletic Conference. Brigham Young University must be judged on the way it admits and deals with stu-

dents. This judgment has already been made by the Office of Civil Rights, March 27, 1969, when it found Brigham Young University to be in full compliance with civil rights legislation.

A number of outstanding programs have been developed at Provo for students from varying ethnic backgrounds. The institution enrolled, for example, 279 American Indian students the first semester of this academic year. More than 1000 students were enrolled from 70 countries other than the United States. Black students are actively being recruited. The relatively limited black enrollment at Brigham Young University is occasioned in part by the very small number of black families living in Provo and the comparatively small black population in the state of Utah. It is partly because of public misunderstanding regarding the policies and practices of Brigham Young University.

The regulations under which the Western Athletic Conference operates stipulate that even if a member institution withdraws from the Conference, it would be required to engage in scheduled athletic events with all members institutions through the term of its binding agreements. The University of Arizona has binding agreements to play football with Brigham Young University and other Conference teams through the 1974-75 school year. It has similar obligations to play Conference basketball games through the 1971–72 academic year.

The University of Arizona cannot commit itself to the special crusades of any group. It must remain a forum for the presentation and free discussion of ideas and principles. Part of its role is to permit and encourage the presentation of all sides of an issue. A university certainly cannot allow itself to be made an official instrument for evaluation of religious doctrines. If it does this in the case of one church, it could conceivably be called upon to do the same thing in other cases.

BEAR DOWN INCIDENT

There have been requests that the University of Arizona administration bring about the revision or elimination of charges filed as a result of the January 8th incident at the gymnasium. This is something the University administration cannot do. Furthermore, it cannot discuss the matter in detail for fear of prejudicing the positions of those involved as parties in the cases now before the courts.

COMMUNICATIONS

Much has been said lately about communication on this campus. Obviously, this is a topic which merits continued attention. This institution has changed radically from what it was fifteen or twenty years ago, when most members of the university community knew each other personally and communication was easy, informal and effective. As the University takes on a greater variety of responsibilities, communication becomes more complex and greater delegation of responsibility and authority becomes necessary.

These are reasons that the University has set up channels which provide for the expression and exchange of viewpoint by students, faculty, staff, and administrators and for the orderly conveyance of those viewpoints to the various groups comprising the university community. There are many channels: most faculty members consider it part of their professional responsibility to talk with and listen to students and to transmit their complaints or suggestion to department heads, deans or administrative officials; a number of administrative officers (such as those of the Dean of Men and the Dean of Women) exist solely to serve students; the Vice President for University relations has been delegated a large measure of responsibility in dealing with students; student representation on departmental, college, and universitywide committees has increased; the academic deans and their staffs offer a variety of counseling services. The list could be extended. The point is that the communication network within the University is not neatly hierarchial; there are crisscrossing lines of communication which allow for redress of grievances and discussion of issues.

What needs to be clearly understood, however, is that not all of those lines need be connected directly to the President's office. The president of a university cannot and should not be personally involved in every decision relating to the governance of the institution. He has neither the time nor the encyclopedic knowledge to act judiciously in every such case. Consequently, it is both necessary and desirable that many decisions and responsibilities be delegated to the faculty, the students, and other administrative officials.

Furthermore, it is naive to assume that the president has unlimited authority to act on suggestions and demands for changes in the governance or programs of the University. He clearly does not. Certain prerogatives, particularly those pertaining to academic matters, belong to the faculty and to committees made up of faculty, students and administrators; the Board of Regents exercises many legal controls; ASUA has been entrusted with many responsibilities; and the president of any university is reluctant to overturn regularly the decisions of responsible administrative officials.

For these and other reasons, certain types of inter-university communication which have been suggested are of dubious value. For example, a "town hall" meeting consisting of remarks by the president and questions and criticisms from the audience would likely prove disappointing. If a very large percentage of the university community turned out, the opportunities for a rational exchange of ideas appear slim.

Continuing attention needs to be given to the problem of communications. Some weeks ago the general faculty established an ad hoc committee to study ways of improving communication among students, faculty and administration. Several other groups have also come forward with suggestions and proposals. I am confident that out of these studies and recommendations will come a good, workable plan.

ACADEMIC FREEDOM

In conclusion I would like to add that the task of the president of a large institution is never a simple one. He cannot please all segments of the university at all times. It is not possible for him to attend to all matters personally. He must exercise his discretion about the most effective utilization of his time.

There are, however, certain responsibilities he must carry out, regardless of criticism, in order that the university continue to thrive. Among them, he must assure responsible freedom of speech in the classroom and on the campus. He must hold this position against all outside criticism and pressure. This he has always done and will continue to do.

At the same time he must protect the property of the state and insure that the activities of the university community are employed to resist those who would use force and violence to achieve their goals. Force and violence which disrupt the process of the university community will be resisted.

Presidents of a number of institutions across the nation have indicated that failure to act immediately to prevent disruptions on their campuses precipitated further disturbances. It is important that violence and disruption be avoided on this campus. Forceful interference with the right of others cannot be tolerated in any community.

WORLD ARMS BILL SINCE 1964: $1 TRILLION

Mr. PROXMIRE. Mr. President, the Arms Control and Disarmament Agency has just issued a disconcerting report. It shows that in the last 6 years more than $1 trillion has been spent by governments around the world for arms, armament, and military forces.

It shows that the rate of spending on arms is still increasing. While the rate of increase has slowed somewhat for the big, developed countries, the developing countries have been increasing their spending on arms and armanments at a rate which is twice the rate of increase of the world as a whole.

The study further shows that while the standard of living of individuals in the world has remained almost stable in real terms, the per capita burden of military spending has been increasing. Last year it averaged $56 for every man, woman, and child in the world.

The world spent as much for armaments as it did for all forms of public education and health.

The biggest spenders in actual amounts were the members of NATO and of the Warsaw Pact. What a peaceful dividend could come to the peoples of the world if these two great power blocs could end their differences and if mutual reduction of armaments could occur.

But the countries spending the largest proporation of their national income on arms and armaments—10 percent or more per year—were smaller nations in the eye of the hurricane and at the center of the world trouble spots.

Mr. President, it is time for mutual deescalation of terror. It is time for thoughtful men and for thoughtful countries to stop the mad rush to oblivion. The world must soon come to its senses. We need not only to reorder priorities at home, but it is obvious that the world and all mankind must reorder its priorities if food, health, and education, rather than the armament makers, are to eat up the treasure of the world.

I ask unanimous consent that an article reporting on the Arms Control and Disarmament Agency's report, and published in today's New York Times, be printed in the RECORD.

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

[From the New York Times, Mar. 22, 1970]

WORLD ARMS BILL: TRILLION SINCE 1964—REPORT SAYS SPENDING RISES SHARPLY IN SMALL NATIONS

(By Robert M. Smith)

WASHINGTON.—More than a trillion dollars has been spent for arms and armed forces around the world over the last six years, the Arms Control and Disarmament Agency reports.

In a new study, the agency finds that the increase in arms expenditures of the big countries has slowed somewhat in the last two years while the amounts spent by the developing countries have increased sharply. The military budgets of the small countries seem to be growing at a rate twice as high as the world total.

The report also discloses that although the world's economic standard of living has improved little in real terms in the last six years, the per capita burden of military spending has increased.

The figures show that military spending last year averaged $56 for every person in the world. This breaks down to an average of $179 for every person in the developed countries and $10 for every person in the developing countries.

RATE OF INCREASE SLOWS

"The diversion of resources to military purposes had expanded in step with the world's capacity to produce" says the Arms Control Agency's fourth annual report on world military expenditure. The organization is an independent agency of the United States Government.

The one hopeful note in the 26-page report is that between 1965 and 1967, world military spending rose at the rate of 13 per cent a year; in 1968 and 1969, it rose only 5 per cent a year.

"If the pattern of the last two years continues," the report says, "it will mean some reduction in the ratio of military spending to world income."

"On the other hand," it continues, "it will take more than a diminished rate of increase to lessen significantly the heavy economic burden of world military expenditures. If recent spending patterns continue, the nations of the world by the end of the seventies will be devoting more than $300-billion a year to defense."

$200 BILLION SPENT IN '69

The six-year total of world military spending took as much public money, according to the report, "as was spent by all governments on all forms of public education and health care."

Some $200-billion was spent on the world's arms and armies last year. The North Atlantic Treaty Organization accounted for $108-billion of this total; the Warsaw Pact nations, $63-billion.

Each bloc spent some $3-billion more than in 1968. Given inflation, however, this represents no increase. In fact, the NATO outlays went down $2-billion if inflation is considered.

On the other hand, the military budgets of countries outside these blocs accounted for an increasing proportion of the money the world spent on arms.

"Military budgets of these countries appeared to be growing at a rate more than twice that of the world total," the report says. This reflects "an accelerated arms race among the developing countries," it says.

COUNTRIES LISTED

The study also points out that it took half of all the people in the world to produce a share of all the worlds' goods and services equal to that devoted to military outlays.

The study reports that the following countries spent more than 10 per cent of their total output of goods and services, or gross national product, on their armed forces: Laos, United Arab Republic, North Vietnam, South Vietnam, Taiwan, Iraq, Jordan, North Korea, Syria, Saudi Arabia and Israel.

The following spent between 5 and 10 per cent of their gross product: Burma, Somali Republic, Cambodia, Mainland China, Albania, Iran, Mongolia, Portugal, Cuba, Poland, Soviet Union, France, United Kingdom, Kuwait, and United States.

Spending less than 1 per cent of their gross product were Malawi, Nepal, Sierra Leone, Costa Rica, Peru, Jamaica, Mexico, Panama, Trinidad and Tobago, Japan and Iceland.

The data in the report came mostly from statistics prepared by the United States Agency for International Development and such international agencies as the United Nations Educational, Scientific and Cultural Organization and the World Health Organization.

BILINGUAL SCHOOL REACHING TRUANTS IN BOSTON

Mr. YARBOROUGH. Mr. President, the value of the bilingual education program established in 1968 is becoming evident wherever there are children in school whose language at home is other than English.

One such success story about Spanish-speaking children in Boston is told in the New York Times. The parents of these children have come from Puerto Rico. An estimated 5,000 of the 7,800 school-age children in this population group were not in school when this bilingual program was created.

I point out that the instigation for bilingual teaching in this instance came from the local education development center, one of the regional laboratories created in the Elementary and Secondary Education Act of 1965. Before the President calls for extensive new machinery for educational research and evaluation, I suggest that he review his own budget restrictions that resulted in the closing of five of the 20 regional laboratories, which are now doing much of the task the President thinks is needed.

I ask unanimous consent to have printed in the RECORD the story entitled "A Bilingual School Reaching Truants in Boston," published in the New York Times of March 14, 1970.

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

A BILINGUAL SCHOOL REACHING TRUANTS IN BOSTON

(By M. A. Farber)

BOSTON, March 13.—A bilingual school for Spanish-speaking children who are shunning regular classes or failing to progress in them has been started by the Boston School Committee at the urging of a federally funded education laboratory here.

The school board acted at the behest of the Education Development Center, one of 15 private, nonprofit regional education laboratories, authorized by the Government five years ago to aid in the discovery, testing and dissemination of new educational ideas and programs.

Activities of the regional laboratories account for nearly a fourth of the $100-million spent annually by the United States Office of Education for research and development. These activities receiving particular scrutiny in Washington now in connection with President Nixon's recent demand for a more productive and "coherent" approach to education spending.

MADE OUT OF SCHOOL

Last year the laboratory here began mounting pressure for the model bilingual "transitional" school when surveys led it to conclude that 5,000 of the city's 7,800 Puerto Ricans 6 to 18 years old were not going to school while hundreds of others were "vegetating" in classes that could not help them.

"Unless a concerted, extensive and extended effort is made to see that Spanish-speaking children can succeed in school and remain in school to enter the working force at the highest level of their ability, we will be the architects of a massive welfare subculture," the center said.

The laboratory says the failure of Puerto Rican youths to attend school can be attributed to an amalgam of factors: acute language difficulties; boredom and despair from sitting in classes with younger students; apathy of parents who may be illiterate; inadequate food and clothing, and fear of physical harm in a supposedly "hostile" environment.

RISE IN POPULATION

A center official, who asked not to be identified, said that the problem was compounded by the reluctance of some Puerto Ricans to have social contact with Negroes.

A study by the laboratory found that there were 1,200 Puerto Ricans in Boston in 1960, chiefly in the South End. Today the number is estimated to be at least 20,000, with increasingly large Spanish-speaking populations in Roxbury and North Dorchester, predominantly Negro neighborhoods. The future, the study said, "points to tremendous growth, especially in the school age segment."

In New York City, the latest figures available show 240,746 Puerto Rican pupils were enrolled in the public schools in 1968, or 21.5 per cent of the total enrollment. In 1957, the first ethnic census showed 128,980 Puerto Rican pupils, or 13.5 per cent.

PROGRAMS IN NEW YORK

Several New York City public schools have bilingual programs for Spanish-speaking pupils, and the Boston effort is concerned with developing a prototype for such programs.

The Boston laboratory, which has its headquarters in nearby Newton, chose to initiate the undertaking in its own metropolitan area, working closely with Sister Frances Georgia of the Boston Diocese Urban Planning Office.

Last month the school, using three rented buildings, opened with 150 Spanish-speaking students 5 to 15 years old, 12 bilingual teachers and eight teachers' aides. The center had spent $60,000 in the planning phase; the city recently allocated $200,000 for the first year of operation.

Denison House, in Roxbury, is one of the school sites. The three-story structure had been abandoned as a regular school, and the grime on its sullen, red brick exterior is further testament to age and disregard. Inside, however, Denison House is very much alive—too lively, in fact, for some discipline-minded Puerto Rican parents.

On the first floor, bright pink walls bear pictures of "Los Animales" next to the English alphabet and drawings by pupils, and the Rev. Dr. Martin Luther King Jr. looks down from the calendar supplied by Arrington's Fruit and Vegetable Market.

"Que color es este?" repeats Rose Amodeo, a dark-haired, 25-year-old teacher who came to her present job after two years as a Peace Corps volunteer in Colombia. The pupil, Jose, she has found, does not know any colors except red. "Ensáname un triángulo rojo," she continues.

GETTING USED TO SCHOOL

Few people associated with the new school talk much about academic advancement at this stage, but they note that the children are there. "The learning situation is frustrating for them at the start," Miss Amodeo observed, "but we're getting them used to coming to school now."

The center's promotion of the school, viewed as a waystation preparing pupils for regular classes, in part of the laboratory's plan for "total intervention" in educational affairs here, from curriculum revision to teacher training to community assistance.

Formed in 1967 by a merger of Education Services, Inc., and the Institute for Educational Innovation, the center is nationally known for its curriculum projects, particularly in science, mathematics and social studies.

"We still see curriculum as a key thing," said Mrs. Mary Lela Sherburne, director of the center's pilot communities program, including the transitional school.

DEALING WITH VARIABLES

"But the sum is greater than its parts," Mrs. Sherburne, a 40-year-old biologist, went on. "And if you're going to change schools, you have to deal with all the variables. Before we were taking a limited view, now we're fixing on a variety of leverage points."

Robert R. Hind, the laboratory's president, said, "If you want to renew the schools

generally, you must go into that system as a friend. It's the only way."

Dr. Hind warned against severely limited programs of aid that, he said, often aroused "feelings of being used" in the community and among teachers and administrators. "Until you can work in the schools without being suspects," he remarked, "the most elegant curriculum you might install won't be worth a damn."

THE FEDERAL APPROACH

The Nixon's Administration's desire for a more comprehensive and coordinated Federal approach to educational research and development is not unlike the goal set by President Johnson in 1966, after the regional laboratories were approved in Title IV of the Elementray and Secondary Education Act of 1965.

The laboratories, numbering 20 until five were cut off from Federal funds in a budget squeeze last year, have focused on early childhood programs, instructional techniques for teachers, new curriculums and "individualized" learning, and a host of other educational matters—with mixed success.

NO EROSION ON CIVIL RIGHTS

Mr. HART. Mr. President, the American Jewish Committee recently issued a statement warning that without the explicit commitment of Government leaders to equality and justice, progress toward those goals is slowed if not halted.

As we await the President's message on school desegregation scheduled to be delivered this week, the committee's statement, made by David Sher, chairman of the organization's board of governors, reminds us that each individual should be committed to building a united yet pluralistic society.

Mr. President, I ask unanimous consent that the statement by the American Jewish Committee be printed in the RECORD.

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

EQUALITY AND JUSTICE

The American struggle for equality and justice is the essence of what our nation is all about. It is therefore critical that our governmental institutions and leaders be unalterably committed to these goals. When they falter, the national resolve is weakened and progress is halted.

We commend the Administration for its leadership in the development of new and creative welfare legislation. We are heartened by the Administration's condemnation of the recent violence attendant to school integration in Lamar, South Carolina.

However, other recent events provide us with reason for great concern. Unless the direction indicated by these events is reversed, we face a dangerous erosion of a decade of slow but significant progress in achieving an improvement in the condition of minority groups in this nation.

We refer to the Administration and Congressional efforts to achieve a slowdown in school desegregation. We have always opposed de facto segregation as well as de jure segregation. But the most serious predictable consequence of the Stennis amendment will be that de facto segregation will not be affected while the slow process of reducing de jure segregation will be halted.

We refer to the Administration's attempt to weaken the Voting Rights Act.

We refer to the incident in which the Director of the Civil Rights Division of the Department of Health, Welfare and Education was forced to resign because he fought too vigorously to enforce school desegregation.

We refer to the Civil Service Commission's Chairman's statement that the Administration would now ease pressure on government job opportunities for minority workers—a statement which caused great consternation despite the fact that he was soon forced to retract it.

The gains that America made in civil rights in the past 15 years came as a result of firm and committed leadership. That leadership is not furthered by recommendations for "benign neglect," which tend too accurately to reflect the pattern of recent deterioration in the field of human rights. To close the remaining gap—which is still tremendous—we need the same kind of firm resolute leadership, not only of government, but of the religious community, business, labor, and the minority groups themselves.

The American Jewish Committee maintains its faith that America can be a unified and yet pluralist society. It will support steps aimed at eliminating the remaining legal barriers to an integrated society while strengthening those programs for full and fair housing, welfare, education, and jobs, which could eliminate the basic conditions that bring about de facto segregation and inequality. We call upon our fellow Jews and Americans to stand firm against the growing tide which is eroding the significance of major Supreme Court decision, of vital civil rights legislation, and of the interreligous and interracial unity that forged a vibrant and effective civil rights movement.

PURIFICATION OF THE NATION'S WATERS

Mr. YARBOROUGH. Mr. President, the words "environment" and "pollution" have become national bywords. They are the subject of campus teach-ins, political speeches, great public indignation over oil spills, they receive the legislative attention of Congress, and less often the budgetary consideration of the Executive.

The earliest attack upon environmental pollution was in 1956, when the first Water Pollution Control Act was passed by Congress. But although cleaning up the national water supply has had the first priority, and the most money spent on it, we are hardly keeping water purity from getting worse.

The New York Times of March 17 outlines the extent of the problem remaining before us in controlling water pollution. It should be read by every interested person, because it sets forth the financial dimension of pollution abatement. The cost of cleaning up just the waterways will be staggering. The question of "national priorities" can no longer be simply a debating point, if we are to take seriously the necessity of a livable and civilized natural environment.

I ask unanimous consent that the Times article, entitled "Purification of Nation's Waters Expected To Be Long and Costly," be printed in the RECORD.

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

PURIFICATION OF NATION'S WATERS EXPECTED TO BE LONG AND COSTLY

(By Gladwin Hill)

Federal experts are finding that restoration of the nation's waters to something approaching satisfactory cleanliness is many years—and many billions of dollars—in the future.

Into a computer at the Interior Department's Federal Pollution Control Administration's building, overlooking the dirty Potomac River, these experts have fed reams of figures that can instantly give a statistical profile of sewage-plant construction in Buffalo or recapitulate Federal grants to the state of Michigan.

Up to now, according to the officials who must translate the data into action, the computer has presented this picture:

The condition of the nation's waterways is disheartening, perhaps worse than a decade ago.

The over-all problem is being aggravated by new types of pollution.

Current plans to step up antipollution efforts are promising, but their realization hinges on forthcoming judgments of Congress on some highly controversial questions.

President Nixon, in his environmental message of Feb. 10, outlined a $10-billion, four-year plan for new sewage plants ($4-billion in Federal subsidies, $6-billion to come from states and localities); a system of new financing aid to localities, and greatly expanded Federal authority in combating water pollution.

No one familiar with the problem is suggesting that this will be a cure-all. Ten billion dollars is only a drop in the nation's bucket of dirty water. The cost of cleaning up Lake Michigan alone has been expertly estimated as high as $10-billion. The ultimate prospective cost of cleaning all the nation's waterways is out of sight, somewhere beyond $100-billion.

"But this new program is the springboard we need," says Carl L. Klein, the burly, aggressive Assistant Secretary of the Interior for Water Quality and Research.

The water section of President Nixon's message came right from Mr. Klein's desk, and the former Illinois lawyer-legislator comments buoyantly: "We went for broke in what we asked. And the White House bought it."

HEARING TO BEGIN SOON

Typical of a dozen major proposals in bills that Congressional Committees will soon begin hearings on is a potentially controversial provision extending Federal pollution abatement powers from interstate waters to virtually all waters of the country.

Another is a requirement that the states establish "effluent standards," or permissible discharge limits, for each and every pollution source—standards subject to Federal approval.

These are radical steps, measured against fast pollution-control measures, and they are expected to elicit opposition of many sorts from members of Congress, states, cities and industry. It has taken years of argument and maneuvering simply to shape a law covering the relatively uncontroversial problem of maritime oil spills.

A complicating element in the whole outlook is the fact that Mr. Nixon's party does not control Congress. Moreover, the chief Congressional shepherd of water pollution legislation for years has been Maine's Senator Edmund Muskie, who has criticized the Nixon program as inadequate and who is a putative electoral opponent of the President.

But the sweeping new proposals were conceived as vital to getting pollution abatement off what Assistant Secretary Klein calls "dead center."

REASON FOR CONCERN

Why all the attention to dirty water when, with modern drinking water systems, instances of death or sickness have become almost nonexistent?

Essentially the reason is that the nation needs clean water not only for drinking but also for industry, agriculture and recreation.

In the last two decades, waterways be-

came so overburdened with fluid refuse as to point toward only one conclusion: a day not far off when rivers and lakes would be nothing but open sewers.

It was evident to all concerned that rehabilitating enough water for domestic and commercial uses would be problematical or prohibitively expensive and that the natural attributes serving recreation—fish and plant life and general beauty—might be destroyed forever.

Federal efforts against large-scale water pollution date to 1956, when a law set forth what has become known as the "conference procedure." Under this, Federal officials step into an interstate pollution situation, join with state officials in a public hearing on conditions and formulate a scheduled corrective program theoretically enforceable by Federal court action.

PROGRAM OF INCENTIVES

Using this procedure, 50 formal abatement actions have been instituted, involving most of the states, 2,000 communities and 2,000 industrial sources.

This policing action was coupled with an incentive program: Federal subsidies to localities to cover up to 55 per cent of construction costs of sewage treatment facilities. Some 9,000 projects have been so aided.

Secretary of the Interior Stewart L. Udall calculated in 1968 that this carrot-and-stick approach had brought improvement to upward of 50,000 miles of waterways.

But with population, industry and the volume of pollutants increasing by the day, these tactics began to appear glaringly insufficient.

There is general agreement that the subsidy program has been hamstrung by Federal budget-cutting. The conference procedure has proved cumbersome and slow. Abatement actions have dragged on for years while Federal officials tried to cajole, prod and cudgel state authorities—many of them plainly under the influence of polluters—into taking decisive action.

Progressive segments of industry have spent hundreds of millions of dollars on pollution abatement. Hundreds of municipalities have improved their sewerage systems. New York State alone mounted a billion-dollar water cleanup program, as the first phase of what Governor Rockefeller sees as a $3-billion task.

But such activities seemed neither extensive enough nor coherent enough. A factory's reduction of its discharges into a river might be offset by increased emissions from an overtaxed sewage plant.

ACCOUNTING OFFICE STUDY

A Federal General Accounting Office study last year concluded that despite the expenditure of $1.2-billion in Federal grants and $4.2-billion by localities for new sewage treatment facilities, there had not been improvement in the quality of the nation's waterways.

"In the last 10 years," says David D. Dominick, the youthful, bespectacled Commissioner of the Federal Water Pollution Control Administration, "the quality of the nation's water has probably degenerated."

While it has always been assumed that community water systems could transform even tainted supplies into something harmless and potable, that assurance is wearing thin.

"Our treatment plants," says Dr. C. C. Johnson, head of the Department of Health, Education and Welfare's consumer protection division, "are not designed for, nor are they prepared to take the chemical onslaught now coming from our streams."

FEW PURE STREAMS LEFT

For evidence, most citizens need look no farther than the nearest river. The only conspicuously unsullied streams in the country are the few that have been insulated in the Federal "Wild Rivers" wilderness preservation program.

The Hudson's lower reaches are filthy. Major rivers like the Ohio, the Mississippi and the Missouri are still heavily polluted. The Detroit River, the Cuyahoga at Cleveland, and the Houston ship canal are essentially industrial, sewers. Lake Erie, in scientists' estimation, is an ecological disaster area. Lake Michigan is heavily contaminated in some areas. Even the clarity of Lake Superior is threatened.

All of these situations and many others are theoretically in the course of improvement under Federal abatement actions. But abatement involves design, engineering and construction—a process measured in years, not months. Polluters haggle endlessly with state and Federal officials over their technical and financial capabilities.

A new industrial facility can, generally speaking, incorporate proper waste-water treatment for no more than 10 per cent of total construction costs. With an old facility, economically marginal already, a big corrective outlay may be a back breaker. This is when the foot-dragging sets in, mainly.

NEED FOR MONEY CITED

Many communities have long since bonded themselves to the limit for public facilities. They plead that they just can't raise the money for the new sewage plant they need.

According to the latest data of the pollution control agency, only some 140 million of the nation's 200 million people are served by any kind of sewer system. The sewage of nearly 7 per cent of those 140 million, including many right in New York City, is discharged "raw," or untreated. With only about 85 million of the nation's people does sewage get the "secondary," or two-stage, treatment now considered minimal.

Yet many states have resisted Federal intervention. Iowa contended last year that it was unconstitutional. Colorado's Gov. John A. Love is on record as saying it would be "traitorous" for states to submit to Federally prescribed water quality standards.

Such attitudes are so prevalent that the Federal states standards program enacted by Congress in 1965 is still bemired, despite repeated official statements that water quality commitments from all 50 states had been "approved."

A recent check with the Pollution Control Agency disclosed that arduous negotiations were still going on with most of the states to bring their stated water quality goals—not accomplishments—to a satisfactory level.

CUTS IT. APPROPRIATIONS

States and cities, on their parts, have been vexed that Federal appropriations for matching-fund subsidies for sewerplant construction over the last three years have run nearly $1-billion short of what Congress originally authorized, and that the Government owes 19 states some $800-million as its share of construction projects approved and started. (The largest such obligation is $382,618,000 to New York.)

As an interim move to outflank the various obstacles to expeditious abatement, Secretary of the Interior Walter J. Hickel last September invoked an unused section of the 1965 water pollution law providing for direct Federal action against individual polluters.

Over bitter protests from the State of Ohio, he gave four steel companies there and the City of Toledo six months to get specified corrective measures under way or face Federal suits.

The action elicited quick compliance. But the maneuver of bypassing state administration was exemplary rather than a serviceable long-term tactic. There are countless thousands of polluters, industrial and municipal, and the Federal Government does not have the machinery to pursue them individually.

Recapitulating the highlights of this travail in a recent interview, Assistant Secretary Klein said: "It was imperative that we get new tools to do the job people are expecting to be done."

The measures now before Congress in effect shrink down to six months the indefinite period of years over which the law now allows meaningful remedial action to be protracted.

If a polluter does not start satisfactory remedial action to be protracted.

If a polluter does not start satisfactory remedial action in six months after due notice and a hearing, the Secretary of the Interior could ask the Department of Justice to bring court action leading to fines of up to $10,000 a day.

In place of the present often tortuous process of establishing that pollution is interstate, the Interior Department would have jurisdiction over any water pollution, even of invisible ground-water.

Communities' financing problems would be eased by creating a new Federal agency to buy their bonds and in turn issue its own bonds with the more marketable Federal imprimatur.

A TACIT COMMITMENT

The matching-grant subsidy program would be continued, on the $4-billion four-year basis, with a tacit commitment from the Nixon Administration to fund Congress' authorizations instead of chopping them with the budgetary cleaver.

President Johnson cut a $700-million authorization for fiscal year 1969 to $214-million and President Nixon last year cut a $1-billion authorization to $214-million, but Congress overrode him and appropriated $800-million.

Thus, regardless how long it takes Congress to broaden interior's policing powers, the subsidy program is on a firmer footing.

How big a dent it will make in the over-all problem remains to be seen. Secretary Udall a year ago estimated basic national pollution control needs through 1973 as totalling nearly $30-billion—$8-billion for sewage treatment plants, over $6-billion for sewer lines, some $6-billion for industrial treatment facilities, and nearly $6-billion for new operating and maintenance costs.

Senator Muskie has suggested that the Federal Government should be spending $12.5-billion in matching-fund grants over the next five years, to stimulate upward of $25-billion in construction rather than the $4-billion in the Nixon program.

Current projections, by whomever, are generally premised on providing only two-stage treatment for sewage—precipitation of gross solids, and neutralizing of most of the other pollutants by biological or chemical action. But this leaves some stubborn residual substances, notably nitrogen and phospohrous—natural fertilizers that propagate undesirable plant growths in waterways, disrupting their entire ecology.

The belief is growing that the only ultimate solution is widespread "tertiary" or three-stage treatment, which will remove practically all adulterants and leave clean, if slightly saline, water.

This cost twice as much as two-stage treatment (including amortization of plant costs), but is already being applied on a small scale in a number of places. Assistant Secretary Klein sees it as essential, for instance, in rehabilitating the Potomac, now overburdened with inadequately treated District of Columbia sewage.

THERMAL POLLUTION

Meanwhile the over-all water pollution problem has been growing in complexity. A new focus of attention is the detergents—of which some 5 billion pounds were sold last year—because they consist of up to 44 per cent of phosphate.

The detergent industry contends that its product is only a secondary source of such troublesome nutrients (human waste being

another). But Canada has announced plans to ban phosphate detergents, and a Federal representative recently told an international conference that his agency favored "an immediate reduction of phosphate levels in detergents."

Another growing problem is "thermal" pollution of waterways by heat from industrial cooling water, particularly power plants. Some fish species are blighted by as little as a four-degree chronic alteration of their accustomed milieu.

Thermal pollution will worsen as atomic power plants, which produce more waste heat, replace conventional fossil-fueled plants. The pollution control agency in February instituted its first thermal pollution abatement proceeding, against a Florida electric plant that is heating part of Biscayne . . . degrees, an intolerable temperature for fish and aquatic plants.

Nor do any of the current cost estimates cover two big pollution sources that will have to be controlled to really clean up the nation's waters.

One is agricultural wastes, ranging from manure to fertilizers, which some officials have suggested may be responsible for as much contamination as municipal and industrial wastes. Little has been done about this because it is hard to get at.

The other problem is urban storm-water run-off. In most communities it goes down the same pipe as sewage, and often is nearly as dirty. But the volume at the time of a downpour is more than any sewage plant can handle. So sewage plants customarily "blow the switch," diverting large amounts of both storm water and sewage toward waterways untreated.

The only solution is to separate sewage and storm-water conduits and somehow handle storm water by itself. Commissioner Dominick estimates this alone as a $50-billion problem.

THE UNITED STATES MUST TAKE THE LEAD IN PROTECTING THE POLITICAL RIGHTS OF WOMEN INTERNATIONALLY

Mr. PROXMIRE. Mr. President, I invite the attention of the Senate to an article entitled "Political Rights of Women Internationally," which was published in the March issue of the National Business Woman magazine. This excellent article on women's rights was written by Mr. Bruno V. Bitker, a prominent Milwaukee lawyer and a tireless fighter for Senate ratification of the human rights treaties. As a member of the President's Commission for Observance of Human Rights Year, Mr. Bitker has spoken out forcefully and eloquently or many occasions for international protection of women's political rights and Senate ratification of the U.N. Convention on the Political Rights of Women.

The end of this month will mark the 17th year since the U.N. convention on women's rights was opened for signature. As Mr. Bitker points out, the inaction of the U.S. Senate in regards to women's rights creates a highly embarrassing and incongruous situation for this country.

The same basic political rights protected by the U.N. treaty are guaranteed by our Federal Constitution and State laws. Senate ratification of this treaty would not alter national or State policies in any way. Senate ratification would, on the other hand, demonstrate to the world that we are concerned with this vital issue. It would reinforce our present national policies and laws, and extend our influence in this area to the international sphere.

The United States must exert its moral leadership in the international protection of the political rights of women. Not to do so, as Mr. Bitker points out, only creates the impression that this country sides with those nations that violate these basic rights.

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:

POLITICAL RIGHTS OF WOMEN INTERNATIONALLY

(Bruno V. Bitker)

It is unbelievable—but it is a fact—that the United States is not one of the nations which has ratified the UN Convention on the Political Rights of Women, approved 18 years ago by the UN General Assembly.

It is unbelievable because the convention deals with fundamental rights already guaranteed by the federal Constitution; because it is not in conflict with state laws, and because it is a part of the accepted standards to which the United States is already committed.

The incongruity of the country's failure to support the convention becomes evident at international conferences. It is always a matter of embarrassment at such meetings when we are charged with failure to adopt this and other human rights treaties. I experienced this personally at the UN International Conference on Human Rights in Tehran in 1968. Although our delegation voted for endorsement of this and other treaties, the inconsistency between our statements and our failure to sign on the dotted line was obvious.

Of the 126 member nations of the UN, only a dozen or so deny women the right to vote and hold office. Our failure to act appears on the surface to give support to that handful of nations rather than to our own constitutional provision of national political equality.

An early obstacle to ratification was the claim that Article 3 of the convention, which covers equality of men and women in "public office," might be construed to include military service. When the United States, acting through our then representative, Mrs. Eleanor Roosevelt, cast its vote for the convention in the General Assembly, it was formally recorded that the U.S. did so with the understanding that Article 3 did not include military service. President Kennedy included a similar understanding when he transmitted the convention to the Senate in 1963. This should suffice to still any doubts on that point.

Numerous official and private witnesses, including BPW, were *unanimous for ratification* in testimony before a special subcommittee of the Senate Committee on Foreign Relations early in 1967. The full Committee later tabled the convention, however, following opposition by the American Bar Association, on the grounds that the convention was a matter of domestic, not international concern—a contention without merit, according to many legal scholars.

The 1968 U.S. Commission for Observance of International Human Rights Year recommended that the United States ratify the convention.

But the convention remains tabled, although the Senate Foreign Relations Committee chairman has stated that it could be taken off the table whenever the Committee so decided.

Thus it is up to organizations like the The National Federation of Business and Professional Women's Clubs, Inc., to demand that the matter of the convention be reopened. *If sufficient voices are heard either in the Senate or the White House, the matter will get attention.* The question is, if we are really serious in our support, should we not back up our words with added deeds?

What better way to observe the 25th anniversary year of the UN than by making sure our voices are heard in the highest councils of our government in behalf of this measure.

If this Administration and this Senate are listening for the silent majority to express itself then let the message go forward from American men and women that the United States commits itself by treaty to supporting the political rights of women throughout the family of nations.

CHAIRMAN CRANSTON REPORTS ON WORK OF THE SENATE SUBCOMMITTEE ON VETERANS' AFFAIRS

Mr. SCHWEIKER. Mr. President, as ranking minority member of the Subcommittee on Veterans' Affairs of the Committee on Labor and Public Welfare I have been privileged to work closely, in a truly bipartisan manner, with the chairman of the subcommittee, the able Senator from California (Mr. CRANSTON).

Our subcommittee has, in the past year, reported out six different measures to improve the hospital and medical care available to veterans, and all have been passed by the Senate. Three have been signed into law by the President and three are pending in the House. We have also written the comprehensive veterans education and training bill which passed the Senate 77 to 0 last October and has just been reported out of a conference with the House.

Senator CRANSTON discussed the work of our subcommittee at a recent meeting here in Washington of the American Legion's National Legislative and Rehabilitation Commissions. In his address he outlined both the past accomplishments of the subcommittee under his leadership and the future plans he has for new legislation to improve the VA health care program. I recommend Senator CRANSTON's remarks to all Senators and ask unanimous consent that it be printed in the RECORD:

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

SPEECH BY SENATOR ALAN CRANSTON

It is a great privilege for me to address you this morning—one year after my maiden voyage—so to speak—as chairman of the Veterans Affairs Subcommittee of the Labor and Public Welfare Committee of the Senate. When I spoke to you a year ago, I had very little to report. But today I am in a position to give you a concrete report on the Subcommittee, and a preview of the activities I plan in the second session of this Congress.

Let me first pay well-deserved tribute to the outstanding efforts of your Washington staff. We have received excellent testimony from Legion witnesses through the help of Herald Stringer, Chuck Mattingly and Terry Wertz, and Ed Golembieski and Austin Kerby have greatly aided us on rehabilitation and economic matters.

I also want to thank your California State Director of Rehabilitation, Lou Sloneker, who testified so ably at our Subcommittee medi-

cal hearings in Los Angeles. All of these gentlemen have given me valuable counsel and assistance, and I am deeply appreciative.

On the cooperation theme, I wish to emphasize the excellent bipartisan help of Senator Richard Schweiker of Pennsylvania, the ranking minority member of the Subcommittee, and Senator Ralph Yarborough, who is both the ranking majority member and, of course, the chairman of the full Labor and Public Welfare Committee. All the legislation we have reported from Subcommittee has been acted on unanimously and I plan to do all I can to continue this bipartisan approach.

This cooperation extends beyond our own committee to include Senator Herman Talmadge of Georgia, chairman of the Veterans Legislation Subcommittee of the Finance Committee, and Congressman Olin E. Teague of Texas, chairman of the House Veterans Affairs Committee. I will speak more about the great work of these gentlemen later.

Now to the work accomplished thus far during the 91st Congress.

The Subcommittee has conducted 12 days of hearings, involving over one hundred witnesses. We have considered 19 bills. The Senate has already passed six improving and expanding hospital and medical care. Three have been signed into law:

H.R. 2768—to provide unlimited care in community nursing homes for veterans hospitalized with service-connected conditions;

H.R. 3130—to authorize outpatient care for the non-service-connected disabilities of a totally and permanently disabled veteran;

H.R. 9334—to improve and expand VA aid to state veterans' homes and hospitals.

Three others are pending in the House:

H.R. 693—dealing with the requirements for admission to VA hospitals and domiciliaries and with drugs, medicines and medical care for the most severely disabled;

H.R. 9634—providing needed administrative authorities for the VA;

S. 1279—creating a rebuttable presumption of service-connection for the disabilities of former prisoners of war and certain other veterans whose military medical records are destroyed.

Last October the Senate passed 77–0 a comprehensive Veterans Education and Training bill, which included the provisions of 9 bills. In the form of a substitute amendment to the House-passed H.R. 11959, it is now pending in conference with the House.

The Senate version of this bill contains a much-needed 46 percent increase in G.I. bill rates, retroactive to last September, to restore comparability with Korean G.I. bill coverage. It also contains several new programs to make education available to those who need it most—the high school drop-outs. Drop-outs represent about 25 percent of all men separated from the service. Yet, sadly, less than one-tenth of them take advantage of their G.I. bill benefits.

Our society cannot afford to waste these resources, to "turn-off" again men who have been turned off once already. These new programs, drawn from three bills I introduced last summer, will help the veteran student who is in academic difficulty or who needs part-time work. It also is aimed at helping the serviceman who doesn't have either a marketable skill or a college degree.

The great need for these programs is made clear by recent studies of 109,000 army veterans discharged in 1968. They show that a veteran's likelihood of taking advantage of G.I. bill benefits is determined almost entirely by his pre-service educational achievement rather than by his aptitude. For example, three times more veterans with some prior college experience returned to school than those who hadn't gone to college. Yet both groups were found to be equally intelligent.

Similarly, high school drop-outs are four times less likely to take any further education or training than men who have had two or three years of college. Men of average intelligence who complete high school are twice as likely to further their education as high school drop-outs with the same aptitude. These participation rates, which seem virtually inverse to need, are what Title 2 of the Senate bill seeks to correct.

This bill was the subject of a conference with the House on February 5. At the direction of the conferees, the two committee staffs have worked together intensively to boil down and reconcile the differences, and find common ground to resolve disputed statistics. They have been quite successful in laying valuable groundwork for agreement. Mr. Teague and his most able and experienced Committee staff director, Oliver Meadows, have been most cooperative, and I can tell you that the conference is now scheduled to reconvene on March 10. I shall continue to do all in my power to see that a fair and equitable bill is agreed to and sent to the President as quickly as possible.

Next in the Subcommittee's activities were our oversight hearings into the quality and quantity of medical and hospital care in VA facilities. I announced the hearings on Veterans Day as the most meaningful tribute I could pay to the war dead and the war maimed.

That very same day, appropriately enough, the Senate considered the VA fiscal year 1970 appropriation. I offered an amendment to restore the full amount cut by the administration from President Johnson's budget. The House had already restored one-half. I withdrew that amendment only after Senator Pastore, chairman of the Independent Offices Appropriations Subcommittee, assured me he would sympathetically consider my recommendations after the hearings.

We then held six days of oversight hearings, which we completed in January. Testimony should be published in about a week and my specific recommendations will be forthcoming shortly. I intend to urge significantly more money not only in the 1970 VA supplemental appropriation, but also in the 1971 budget request.

The Subcommittee has received over 500 pages of testimony from some of the country's most outstanding medical experts in medical schools, hospitals, service organizations, the VA residents and interns, and from individual veterans themselves. They have given clear and convincing evidence that we are facing a crisis in VA medicine; that staffing ratios are at dangerously low levels, and that much needed renovations, equipment purchases and construction have been put off far too long.

All this is happening at a time of increasing strain on VA facilities because of the influx of wounded Vietnam veterans.

They are victims of what is probably our nation's most crippling war. At least 10 percent of the men surviving severe wounds in Vietnam would have died in earlier wars. We must ensure that the crisis medical attention they receive at the battlefield that enables them to survive is continued with the same urgency when they are transferred to VA hospitals for longer term care.

More money is an answer to many of the VA's problems. In a coordinated effort with "Tiger" Teague, who we all know is performing an outstanding service, as always, I plan to press for substantially more VA funding so Vietnam veterans will receive the high quality of care to which they are entitled. We will fight to see that all veterans of all wars receive the highest possible quality and quantity of care.

The VA's supplemental budget request has not yet been submitted to the Congress. Hence, final Congressional action is unlikely until late April. That means we may be dealing with only the last two or three months of this fiscal year. Thus, the amounts to be requested and ultimately expended will be only a portion of a full year's needs.

But it is urgent to add supplemental funds in a number of areas not only to ensure adequate continuation of vital FY 1970 programs, but to enable the VA to finance these programs at a supplemented level when it begins to operate under a FY 1971 continuing resolution. That will undoubtedly occur beginning July 1 prior to passage of the FY '71 appropriation. Otherwise, under the terms of the continuing resolution, the VA will be restricted to the FY '70 level, and needed expansions in care will be deferred still further. This underscores the need for immediate action on the supplemental appropriation before this fiscal year ends.

With this background, I will mention a few of the specific recommendations I am considering.

First, as is being illustrated by the state-by-state press releases of the House Veterans Affairs Committee, there are numerous VA hospital budgetary deficiencies, just in maintaining the level of FY '69 care. And that care, of course, now costs much more to deliver than it did a year ago. We thus must supplement the VA's budget to hold the line in the most critical areas. Some of the most glaring shortages are in the community nursing home care field, in the Vietnam veterans' dental care programs, and in hospital maintenance and essential equipment replacement costs.

Supplemental funds are also needed to open and fully operate as soon as possible most of the 61 specialized medical programs in VA hospitals which are not planned for activation in FY 1970 at all. Also, we will seek funds to permit understaffed spinal cord injury units to operate at the staffing ratios recommended by the VA's advisory group.

Also under consideration are additional supplemental funds for veterans' benefits personnel to help cut into mounting application backlogs across the country, backlogs that many of you who work in this field are well aware of. Finally, there will have to be supplemental funds added to meet the costs of G.I. bill legislation eventually passed by Congress.

Unfortunately, the VA FY '71 budget really offers no increased resources to meet the dimensions of the needs we have been uncovering. A great deal more money is needed to move the VA medical care staffing ratio to an adequate level, to construct new facilities and renovate the old, particularly to begin air conditioning the 33 VA hospitals in the hottest parts of the country.

I also will recommend substantial increases for funding the VA health personnel training and education program, and I shall seek to make that item a separate figure in the appropriation bill to permit and expanded, on-going effort. I also think the same separate appropriations treatment should be accorded the research budget, rather than lumping it with education and training in the medical care appropriation item.

But I do not think even substantial appropriations increases will make the VA hospital and medical care system what it really should be. I am convinced that much new legislative authority is needed for the VA health care program, and I would like to outline some of the legislation I hope to introduce in the next several weeks.

I believe several principles should guide the VA medical program in producing first quality care for our veterans.

First, the VA system must be viewed as part of a larger pattern of community medical care if it is to prosper as a modern, high-quality health system. Now, I am not suggesting diluting the VA system or its distinctive veterans orientation. But the VA

cannot share in innovations and new techniques if it is not involved in planning the health activities of the communities where its facilities are located.

Time and again, our hearings have shown the VA health care crisis to be symptomatic of a massive nationwide medical care crisis. The VA's problems cannot be resolved in isolation. In virtually every community, there are shortages of doctors, nurses, allied health professionals, medical equipment, physical facilities, and outpatient care.

Thus, I will shortly introduce legislation to build upon the present VA relationship with regional medical programs and other community health planning efforts. The bill would require that both the VA and the Department of Defense be represented on the national and area-wide regional medical program advisory councils. I am also asking that they be represented on the state advisory groups of comprehensive health planning agencies and community mental health centers. This should increase coordination and promote an interchange of ideas to improve the VA's and the community's capacity to deliver quality medical care.

I will also introduce, with some modifications, an administration proposal to permit VA hospitals to participate more actively in regional medical programs. It will also authorize the VA to receive direct grants for multi-program projects, and to enter into subcontracts with regional medical grantees for coordinated improvements in VA programs, on heart, cancer or stroke.

Another principle of which I am convinced is that the VA system should be more fully responsive to the medical needs of all veterans and their families. The system is dedicated to them. If there is a lessening demand for hospital beds as the VA contends—although restrictive admission policies could very well be the cause of reduced inpatient levels—then we must change eligibility requirements if we don't want to dangerously weaken the whole system. I plan to introduce a number of bills to meet this crisis.

One is a "Family Bill" to provide full VA medical and hospital care for the dependents of totally and permanently disabled living veterans, as well as survivors receiving disability and indemnity compensation. Caring for the dependents of sick or deceased service-connected veterans surely should be a vital purpose of the VA.

Existing personnel capacities, especially at VA hospitals affiliated with medical schools, appear adequate for this job. And broadening the variety of cases to include children and women should help the VA recruit higher calibre medical personnel.

This "family" bill will also enable the VA to treat a veteran's family where that is necessary for the veteran's total care and rehabilitation. Two examples will illustrate my intention.

Eminent psychiatrists have pointed out that most patients with psychological disturbances cannot be properly treated apart from their family situation. But the law doesn't permit family treatment and so it is often bootlegged. I maintain that when the veteran's total care requires that his family be treated with him, he should be entitled to such total care for his condition through his family.

Similarly, total care of a physically disabled veteran may require that his family be fully oriented on the philosophy of his rehabilitation program. The VA should be able to bring key family members to the hospital for this orientation, as is done now on a limited basis at the blind centers, with non-appropriated funds.

This "family" bill also would provide specific authority for the VA to stress home care programs for any hospitalized veteran. Although a start has been made by the VA in home kidney dialysis, much more needs to be done, especially in the psychiatric field. Most medical experts agree that institutional care is the least desirable. Alternatives should be fully explored.

"Home care", employing mobile teams to train families and conduct post-hospital follow-up, can in many cases provide more compassionate, more effective and far more economical care.

In line with the idea of total care, I am considering another bill to amend present restrictions on care for a non-service-connected condition unrelated to the condition for which a veteran was hospitalized. Clearly, a physician cannot ethically assume responsibility for only a portion of his patient's health, and we should stop asking doctors to walk this impossible line. Instead, we should authorize necessary medical care for any illness of a hospitalized veteran.

Along these same lines, I am exploring expanding prehospital outpatient care for non-service-connected conditions to include reasonably necessary care to prevent hospitalization, as well as to prepare for it.

Another bill I am working on would insert into VA law a full definition of rehabilitative services.

It would stress the right of a severely disabled veteran to a comprehensive program aimed at restoring him to his family and community as a productive, self-respecting, and self-sustaining member of our society. The VA is hampered by many difficulties in this area, and new legal definitions will not resolve all of them. But at least the goal would be clearly and authoritatively established. Moreover, I plan other steps to implement it, such as fighting for necessary appropriations for staffing spinal cord injury units.

Another bill I plan to introduce would establish nursing home care as a clear part of hospital care, thereby permitting veterans to apply for direct admission to a VA nursing home without prior VA hospitalization. This bill would also raise the present statutory minimum of 4,000 VA nursing home beds to 6,000. There is an unmet demand for VA nursing home beds by World War I veterans which will expand as our World War II veterans grow older. We should consider converting hospital beds not being fully utilized into VA nursing home beds. Community nursing homes are already greatly in demand among the aging non-veteran.

Another bill I will shortly offer would deal with psychiatric disturbances, alcoholism and drug abuse among Vietnam veterans. These problems may prove to be enormous in the years ahead. I propose expanding the present presumption of service-connection for mental conditions, which now applies only to an active psychosis occurring within two years of discharge, to include any psychosis, neurosis or character disorder or chronic alcoholism or drug abuse problem arising within three years of separation. That would make outpatient treatment available to men whose problems were accelerated or aggravated, if not caused, by their service. Outpatient care is often the most appropriate for low-grade emotional disturbances and drug abuse. Vietnam veterans seem especially likely to suffer from these problems.

Also being developed is a bill to provide the VA with new responsibilities to train and employ more doctors, nurses, and allied health professionals, especially so-called physicians assistants. It would also revise personnel authorities to enable the VA to compete more effectively for scarce health professionals. The VA must be able to enlarge its training program if it is ever going to make up its personnel shortages. The VA should perhaps be authorized to pay special salary differentials for posts they are having difficulty filling. And the VA should be able to peg general salaries geographically to an index community hospital.

Such a personnel system bill would also require that every VA facility reach a comparable staff-to-patient ratio with an index community hospital within three years. The present disparities are shocking: 1.5 for the VA general hospital, 2.7 for the average community hospital, and 3.5 to 4.0 for the university hospital; and that means inadequate care, inadequate attention, and inadequate time for the veterans in those hospitals.

Legislation I plan to introduce for Armed Services Committee consideration in related fields would require the military to consider chronic alcoholism a disease. Rehabilitative services and disability retirement, when indicated, would be provided for chronic alcoholics. I might add that Senator Harold Hughes of Iowa, Chairman of the Special Subcommittee on Alcoholism and Narcotics, and I are both convinced that the armed services are doing a very inadequate job in dealing with the alcoholic problem at present.

Another bill would enable a doctor to satisfy his military obligation by serving as a VA hospital staff physician. That proposal would be written in a way that would not detract from the Defense Department's needs for physicians.

It would merely give VA medical service at least the same national priority as the Public Health Service. And why they should not have that same priority is a mystery which we intend to unravel. Hundreds of doctors meet their military obligation through the P.H.S. every year. I don't think the VA is any less essential to our national security.

I hope you will agree that this is an ambitious and comprehensive veterans legislation medical program for one session.

And I will also be introducing at least three other pieces of veterans legislation in different fields. One will eliminate the delay of several months in the arrival of the first G.I. bill allowance check. I will probably propose an immediate automatic $200 educational assistance allowance advance, interest-free, to any eligible veteran certifying his intention to enroll in an approved course. The advance would be repaid through withholdings from his monthly G.I. bill payments. He could also pay off his advance payment by doing special work for the VA, such as helping in G.I., bill registration and processing or serving in the VA outreach and veteran benefit program.

Another piece of legislation, which I have already announced in the Senate, would amend the administration's proposed manpower training act to stress job training opportunities for veterans. That provision was recommended by your national economic commission director in testimony February 9 before the Employment, Manpower and Poverty Subcommittee.

A third bill will incorporate the administration's proposal to cede concurrent jurisdiction over VA installations to the states on an across-the-board basis rather than waiting for jurisdictional problems to occur and then proceeding legislatively in piecemeal fashion as we have in the past.

Before closing, I want to comment on the outstanding work being done for our veterans by Senators Talmadge and Long on the Finance Committee. I was privileged to join with Senator Talmadge last session in sponsoring the D.I.C. program bill which recently became law, as well as the bill, which passed the Senate last session, to increase S.G.L.I. insurance coverage.

This session I have been delighted again to join with Senator Talmadge in introducing bills to improve and expand benefits under both the compensation and pension programs. Senator Talmadge, for his part, has closely cooperated with me in our recent VA medical care investigation and will work with me to obtain the appropriations and new legislative authorities needed for the VA.

That, then, is the past record and the prognosis of my veterans legislation program that I am working on. I solicit your views and sug-

gestions. I urge your support. The program needs it.

And I welcome your assistance in the critical days ahead to help me improve and expand health care, education and training for the men and women who serve our nation.

WE OFTEN FORGET THE IMPORTANCE OF VETERINARIANS

Mr. YARBOROUGH. Mr. President, last week I discussed a letter I received from Dean Price, College of Veterinary Medicine, Texas A. & M. University, on the role of veterinary medicine in our society. I invite the attention of the Senators to an article I read sometime ago on the subject of veterinary medicine which I feel is equally applicable. The article, written by Frank B. Berry, M.D., is entitled "We Often Forget the Importance of Veterinarians," and was published in the Resident Physician of June 1968.

As the title indicates, Dr. Berry discusses the important contributions of veterinary medicine to the betterment of American society. Clearly, veterinary medicine is vital to the health and welfare of man. Unfortunately this fact is often overlooked by the general public.

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

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

WE OFTEN FORGET THE IMPORTANCE OF VETERINARIANS

(By Frank B. Berry, M.D.)

In 1904, the Regius Professor of Physic at the University of Cambridge, T. Clifford Allbutt, M.A., M.D., delivered an address at the St. Louis Congress, on the "Historical Relations of Medicine and Surgery." In it he stated, "One cause of the poverty and defect of medieval medicine lay in the jealous secretiveness of its practitioners, a reticence which they carried even into their private consultations." And in a footnote: "A veterinary surgeon, who flourished greatly in Yorkshire some hundred years ago as a marvelously successful operator, astutely evaded all prying and questioning into his secret, even when in imminent peril on a bed of sickness. He survived to carry all before him for many years longer. At length, bowed down by old age and decreptitude, he was again implored by his son to tell what he did in the secret half hour before operating. Life was ebbing at last, and the worn out old man whispered with his passing breath 'I biles my tools'."

One may be almost sure that he washed his hands and the animal also. Thus this old veterinary surgeon was more than half a century ahead of his brothers, in both human and veterinary surgery, in the realization that cleanliness and sterilization of instruments meant better results and saving of lives following surgery, thus anticipating the revolutionary work of Lister.

When I was in medical school in the early years of World War I, little attention was given to veterinary medicine and its close relation to human medicine. Of course, we heard about vectors, parasites, rabies, anthrax, glanders and a few other diseases of animal origin; the risk of rats, certain snakes, and animals; and the great work of Walter Reed in Cuba and Gorgas in Panama. But these were all regarded as a branch of human medicine, which of course they are, but little attention was given to the veterinary aspect.

Fortunately, however, Dr. Theobald Smith met with us during part of our course in bacteriology. He was an extraordinary person and one of the leaders of his time in both human and animal bacteriology. It was he who introduced us to the close relationship between animal and human diseases and their bacteriology and pathology. He had demonstrated some years previously that filtrates of the bacillus of hog cholera conferred immunity on injected animals, and that the cattle tick was the vector in causing Texas cattle fever. Both of these were major contributions to veterinary medicine. And, furthermore, he differentiated the bovine from the human tubercle bacilli; and in 1903 he had discovered the sensitization to specific proteins on re-inoculation.

Over the years, the veterinary profession has played an ever increasing role in our food inspection: livestock, poultry, dairy products, and processed and canned foods. This is performed incredibly well and with little fanfare by veterinarians in the Department of Agriculture, the Army, Air Force, and Public Health Service, as well as by veterinarians in state and municipal employ. And now also, with the large numbers of all sorts of animals used in medical, toxicological, and aerospace research, the demand for veterinary pathologists is increasing. There is likewise a growing need in large animals husbandry and research in animal genetics.

At present, there are somewhat over 100 diseases that are transmissible from animals, insects, and parasites to man; and with the increase in communications and travel (both in speed and numbers), and in the many exotic animals, birds, and reptiles that are benig imported for various purposes, the veterinary load and responsibilities are greatly augmented.

In the February 1, 1968 issue of the *"Journal of the American Veterinary Medical Association,"* there is a letter from Dr. Robert B. Northway, D.V.M., in which he describes a boa constrictor "loaded" with ticks that was brought to him for riddance of the ticks. He stated that these ticks were very similar to two species that transmit Rocky Mountain spotted fever, and then remarked that heartwater (Nairobi) sheep disease could readily enter this country in a similar manner. He made a sound plea for careful veterinary inspection for all such animal "immigrants" both at the port of embarkation and again as they enter the United States.

Some years ago, when I was at Bellevue Hospital, New York City, a patient was shown at a combined chest conference with many tiny cysterceri scattered throughout his lungs. He was a professional snake handler and it was thought that these were the intermediate stage of a tapeworm acquired from the snakes.

THE VET AND PUBLIC HEALTH

At the annual meeting of the American Veterinary Medical Association in Dallas last July, both President H. E. Furgeson and President-elect Robert J. Schroeder emphasized the need for more schools of veterinary medicine. Dr. Furgeson said that expansion of veterinary medical education meant more than a building program; it meant also bringing it in step with the times and demanded constant critical examination. He then spoke of the importance of the veterinarian in the large animal industry, where the vet's "chief stock in trade will be the tools of the diagnostician, the epizootiologist, and the expert in preventive medicine, and (where he) is likely to apply these tools as a member of a team of highly skilled specialists."

Dr. Schroeder spoke of the present lack of control of advertising of veterinary foods and nostrums, and the present lack of adequate regulations and screening for those desiring to run animal laboratories. He then made a cogent criticism: "Despite our close relations with agriculture, we all insist that we are a medical profession. However, by and large, I believe that our insistence that we are a part of medicine has fallen on deaf or at least indifferent ears. It seems that whenever recommendations are made concerning the medical sciences, physicians and dentists are invariably named, while veterinarians often are not. This happens particularly in legislation involving such things as educational facilities, public health activities, recognition of military status, and salary considerations. It is often only after considerable effort on the part of AVMA and our constituent associations that we are added to the medical team. I intend to speak out for more recognition of veterinarians as major partners in our national and state health activities."

And so they are.

THE AIR FORCE B–111

Mr. GOLDWATER. Mr. President, once again the Air Force's B–111 is coming under investigation of the McClellan subcommittee. I sincerely hope that this effort is carried through to a final decision because a lot of things should be made known about this aircraft, although its modern-day performance is not the chief point.

What should be thoroughly investigated, in my opinion, is the way the contract was handled which was given to the highest bidder at a time when the Pentagon was supposedly cost conscious. I have flown this aircraft myself, and I find it wonderfully adapted for tactical bombing and for strategic bombing, but under no manner of judgment could it be called a fighter, which is why I have labeled it the B–111, or, if we want to be exact, we could call it the AB–111.

This airplane was really a sort of dream of Gen. F. F. Everest when he became Commander of the Tactical Air Command in 1959.

Mr. Orr Kelly has written a most interesting article on this subject, which was published in the Sunday Washington Post. I ask unanimous consent that it be printed in the RECORD.

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

THE IMPOSSIBLE DREAM FOR THE F–111 IS COMING TRUE

(By Orr Kelly)

Gen. F. F. Everest had an impossible dream when he became commander of the Tactical Air Command early in 1959.

His dream was an airplane that could cross the ocean without refueling and yet fly supersonic speeds when it got close to its target; a plane that could fly high and slow or low and fast; a plane that could find its own way in and out of increasingly sophisticated defenses.

The dream has come true. But it also has, in many ways, become a nightmare.

The plane is the F–111, once known as the TFX.

Sen. John J. McClellan, D-Ark., will resume hearings Tuesday on the TFX program that filled the headlines for 10 months in 1963 and then went into hibernation after the assassination of President Kennedy.

Ironically, after all the controversy surrounding the program, the F–111 now is almost exactly what Everest dreamed of in 1959—and almost all the other factors that made the program so controversial have faded away.

One of the major issues about the plane was the decision of Robert S. McNamara, in one of his earliest actions after taking office as defense secretary, to push the Air Force and Navy into developing the same plane to serve them both.

Since the Air Force first dreamed of its plane, the program has gone through five transformations—and is now back essentially to the original Air Force concept.

But, largely because of the long controversy, the Air Force will get far fewer of the planes than it had hoped for. Air Force officials have told Congress in recent days that the money requested in the 1971 budget will be used both to carry out an expensive inspection program to avoid problems with the wing structure and to buy enough planes to fill out a fourth wing of F–111 fighter-bombers. This will end the construction program, at least as things stand now.

This is a far cry from the plans in 1964 when a total purchase of 2,411 planes for the Air Force and Navy was approved.

The Navy dropped out of the program in early 1968, shortly after McNamara left the Pentagon, and is now developing its own plane, the F–14, as it had wanted to do all along. The British, who had originally hoped to buy their own F–111 fleet, dropped out and the Australians are talking, as if they, too, want to get out.

The result is that, of six different models of the plane to be developed and built, only two will go into service. There will be 77 strategic bomber versions for the Air Force and the remainder will be tactical fighter-bombers.

The McClellan Committee, in its renewed hearings, thus will find that the cost of each plane has risen far above the original estimates.

In recent testimony, Gen. James Ferguson, commander of the Air Force Systems Command, outlined the reasons for the increase in costs, which included technical problems and inflation.

"However," he added, "the biggest single cause of the increase in unit flyaway cost has been caused by the decrease in the total quantity procured and the extended time frame in which the remaining aircraft were to be produced.

"For this reason, we have seen the estimated average unit flyaway cost rise from $2.8 million to just over $8 million."

The decision to cut back on production of the plane is a source of considerable frustration for both Air Force officers and officials of General Dynamics, which won the contract over Boeing in a bitterly contested competition in the early 1960s.

According to an analysis done by the company, 58 percent of the work done by fighter-bombers in World War I, Korea and Vietnam has been interdiction—hitting military and transportation targets behind the enemy's front lines. This, according to the analysis, is exactly what the F–111 is designed to do best.

The analysis also shows that the decision to cut off F–111 production has come when the cost for each additional plane could be expected to drop sharply.

If the number of planes to be produced under present plans is divided into the program's total cost, the amount for each plane comes to $13.3 million. (Ferguson's figure of $8 million included only the airframe, engines and electronic equipment for each plane and not a share of the research and development costs.)

But the company's analysis shows that most of the money to be invested in the program already has been spent and that the cost of additional planes could drop to as little as $1.8 million apiece if construction were continued.

As things stand now, the total number of planes to be built probably will work out to 552. Of these, 77 are strategic bombers; two are the British version, now used for testing; seven are the Navy versions, also used for testing and 24 are the Australian version, which could end up in the U.S. Air Force. The remaining 442, which include 18 research and development planes, are the tactical fighter version.

The McClellan hearings are expected to last as long as two weeks, with a break for the Easter recess.

In the more than six years that have elapsed since they attracted such attention, much of the heat has left the F–111 controversy.

McNamara has moved on to the World Bank, the contract has turned out to be something less than a golden bonanza for General Dynamics and the plane, despite the wing problem that has grounded most of the fleet, has a good safety and performance record.

When the hearings end, it is unlikely that an answer will have been found to one of the most intriguing questions surrounding the whole F–111 program. That is whether or not the fight over the F–111 was a necessary and desirable part of McNamara's effort to exert civilian control over the Pentagon and whether, after all the controversy and cost, that effort was successful and worth the cost.

PRISONERS OF PRINCIPLE

Mr. HART. Mr. President, a number of weeks ago, Chief Justice Burger advocated a massive reform be undertaken of our Nation's prison facilities and activities. At that time, Chief Justice Burger was quoted as saying that "to put a man behind walls and not to try to change him is to deny him his humanity—and ours." He was quoted as going on to say that he would like to consider prison sentences "a period of enforced education" rather than a period of "enforced and frustrating idleness."

Mr. President, it is with these thoughts in mind that I invite the attention of Senators to an article published in Christianity and Crisis for December 22, 1969. Willard Gaylin, who is a practicing psychoanalyst in New York City and an associate professor of psychiatry at Columbia University, has done a study on what happens to some of our young men during their stay in prison. On the group which Mr. Gaylin chose to study, he found that prison causes a "hardening, an increasing hostility toward the environment, combined with an increasing distrust of self."

Mr. President, I believe that Mr. Gaylin documents the statements made by Chief Justice Burger about our need for prison reform. I ask unanimous consent that the article entitled "Prisoners of Principle" be printed in the RECORD.

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

PRISONERS OF PRINCIPLE

(By Willard M. Gaylin)

In September, 1967, I was approached by a friend who was concerned about his son, a graduate student. When the draft was revised to deny deferment for graduate study he dropped out, his sole motivation for advanced study having been eliminated. He was now eligible for induction and unalterably opposed to the war. He was not a religious objector in the sense defined by law, nor a pacifist opposed to wars in general. He would not lie (he later did) and, therefore, realized that the only courses open to him were to go to jail or to flee the country.

The father approached me as both a friend and an expert. He wanted facts or at least a professional estimation as to the potentially harmful effects of the two alternatives. It was a reasonable question logically directed to precisely the person who should be expected to know. In fact, I was totally unequipped to present any intelligent answer.

Although one of my special interests had been the borderline area of psychiatry and the law, I had never spent one hour within the walls of any penal institution. My subjective impression of prison had been formed at an early age by watching too many Warner Bros. movies at Saturday matinees. Balancing this was a limited intellectual conception based on those few articles on prison reform or rehabilitation that I had chanced upon.

Being so personally ignorant I began to wonder on what facts a 19-year-old boy bases his decision, particularly since the problem for him is not a theoretical one but a matter of survival.

Examination of the literature uncovered no papers published on the imprisoned war resister. Assuming that many incomplete studies must be ongoing, I inquired at the Bureau of Prisons. To my amazement I found that no one, at least officially, was currently doing research in this area. Even such pertinent information as the number of imprisoned objectors and their stated reasons for choosing prison had not been tabulated.

I felt that it was urgent that some understanding of who these men are, why they chose to go to prison and what became of them while in prison be made part of the public record. To this end I requested the permission of the Bureau of Prisons to start a pilot study of a sample of these youth, perhaps 20 to 25, to be interviewed over the period of their prison stay. I have been involved in this research now for two years. Since the research is still on-going many of my conclusions are still tentative, although certain things have emerged with absolute clarity.

ALIENS IN A HOSTILE ENVIRONMENT

Neither the prisons nor the prisoners were what I expected. It is not within the scope of this article to go into the nature of the prisons, but I might say that if the Warner Bros. picture of "screws" and "cons" and clanking tin cups is an inaccurate one, so are the official publications of the Bureau of Prisons with their emphasis on rehabilitation, educational opportunities, etc.

The feel, the pressure, the tensions of the typical prison are hard to describe and contain elements of both the above reports. It is true that there are no tin cups (there is a cafeteria); on the other hand, it is still true that there are homosexual rapes, physical violence, personal intimidation and humiliation of prisoners by personnel.

I began to find that my ignorance of conditions in prison was shared by most of my friends in the professions. Physicians, lawyers, ministers—all of the major groups from whom the young would seek counsel—might be expected to have some authoritative knowledge of conditions of prison life. This is, of course, not the case. The professions in general are servants of the middle class in our society; for the most part, prisons are a working-class institution.

The political prisoners, however, are from the middle class, and this immediately creates a problem. Automatically, there is a de facto, unintended discrimination exercised against them. They cannot learn or advance themselves in their professions, they cannot utilize the facilities of the library, they cannot educate themselves—their level in all of these things is beyond the ordinary scope of facilities of the prison. Instead, they are often found in the scullery or shovelling manure.

In addition, they are aliens in a hostile environment where their middle-class manner is resented and arouses hostility, or is interpreted as weakness and invites exploitation. To some degree they are protected by being put in minimal custody camps. Here their

fellow prisoners expect discharge relatively soon and are presumed to have sufficient self-control not to attempt escape or misbehave. Despite this (though my research has been of short duration and with a fairly small group) there were two physical assaults of a nonsexual nature, one rape and one serious group-rape attempt.

The special nature of these prisoners makes them susceptible to a unique kind of discipline—if they do not toe the line, they can always be transferred to the parent institution, a maximum security prison. The implications are obvious. Few punishments that the administration can do directly are as potentially severe as what might be done by a general prison population. Even if they manage to avoid direct assault, it is at the cost of constant vigilance and constant terror.

SERVING CONSCIENCE RATHER THAN A CAUSE

Who are these men who find themselves in this position? When I began my actual visits to the prison on June 20, 1968, there were 739 imprisoned violators of the Selective Service law. This is an artificial figure because over three-fourths of them are Jehovah's Witnesses; their primary objection is not necessarily on a political or moral ground to this or any war; it is in terms of allegiance. They refuse to serve the government in any form. The decision was made for them; they are men obedient to authority—in this case, their church rather than their country.

Eliminated also are those who were not opposed to the war but who had been involved in conflict with law in general. They registered for nothing, were chronic criminals, and not registering for the draft was merely one of many crimes committed. I was not interested in either of these groups but in those who had made a decision of conscience to enter prison. Thus, I was left with somewhere between 60 and 70 men. Therefore, my small sample ended up being close to one-third of the total imprisoned population of war resisters.

Most people will visualize the war resister in prison in terms of the college radical. The imprisoned war resister is not this at all. He is generally less political, less self-dramatizing or self-serving, quieter, more withdrawn, more idealistic, more introspective and not generally an aggressive leader type. He is someone who is primarily serving his conscience rather than a cause. This, of course, is a generalization that is only partially true, for the most striking feature of the group is this heterogeneity.

An interesting aspect is that about 40 percent of these boys were eligible for draft deferments. Some were seminarians. Some were 4-F: one limped badly from childhood polio, one had severe asthma, another was almost blind. Invariably they refused to take this course, and the reasons most often given were twofold. First, if they are to preach or counsel against the war, what respect could a person receiving such counsel have for someone protected by a 4-F status. Second, they felt it would be an abandonment of all those who shared their emotional beliefs but had no built-in excuse for avoiding this crucial decision.

A SCAPEGOAT GROUP

In essence then, what we have, as demonstrated by the small number and nature of these men, is a testament of the effectiveness of the draft law. The United States Government has assumed that if you punish people severely for not going to the army, they will go—and, indeed, for the most part they do.

Not all of them though, because there are thousands who emigrate to Canada. More important, however, are the devices available—if the conscience of the individual permits—for avoiding the draft besides going to jail. You can lie and claim to be a religious objector, which will be effective in some cases; you can manufacture false medical records; you can claim to be a homosexual; you can claim to be a drug addict; you can become a drug addict.

All of these dodges are readily used, for while there are only a litle over 700 imprisoned war resisters, there are estimates of 25,000 to 30,000 draft evaders. And draft evaders do not include those who have legitimate deferments for illegitimate reasons, i.e., those who have developed physical or psychological ailments for purposes of evasion.

In addition, until recent years, the perpetual graduate student role became a way out. Prison authorities expected a flood of Selective Service violators when draft deferment was not allowed for graduate studies. The flood has not materialized. What has been flooded instead are the teaching professions. Draft deferment is offered by many larger cities in critical and often not so critical areas. In New York City alone, with the changing of the draft laws, there was an increase of 20,000 in the number of applications for teaching positions, primarily from men under the age of 26. So there are many ways to beat the draft.

What we have in prison, then, is a population that chooses not to "beat the draft" but chooses instead to bear witness against it. In essence it is a scapegoat group because under the broader interpretation of the law most of these prisoners are sincere conscientious objectors. It is presumed that their imprisonment will serve as a deterrent to others who may not have the same idealism.

Society may find it necessary to have such scapegoats in order to function, but one would think that there might be some recognition of this role and a consequent tempering of justice with mercy. The opposite seems to be the effect. The political war resisters are discriminated against in every way. Whereas Jehovah's Witnesses can expect parole after 12 to 15 months imprisonment, the political war resisters or moral objectors cannot. Up until recently they have not been granted parole at all. And as the frustration with the war increases to do the sentences—up to four and five years now.

ONE SEES A HARDENING

What happens to these young men when they enter the prison? Prison is both easy and hard—easy in the sense of the rawness of life, hard in the psychological sense. There is less brutality and more humiliation. A serious deterioration often occurs, a marked increase in depression, a loss of self-confidence, a sense of despair. These men feel they are isolated from the world about them, that they are forgotten men, and indeed they are. There is very little hue and cry in the community. They find few allies within the prison (the conventional prison chaplain and the chaplaincy service in general does not do credit to the churches).

These young men are struggling through a difficult period of their lives. Because of their youth their sense of identity has not yet been established, and they are put into a situation where individuality and identity are discouraged. They are treated as property to be moved around. The result is an arrest in that self-pride and self-confidence normally consolidated in this period.

This situation is particularly destructive in the sexual area. When you take a 19-year-old who has not yet completely established his sexual identity, who is not firmly in command of himself as a man, deprive him of his normal sexual outlets and then expose him constantly to homosexual seduction you run the risk of crippling or distorting his normal sexual development.

Another aspect of these men is their coarsening in all areas. They become less gentle and considerate, more survival oriented, more paranoid. They are keenly aware of this and are frightened that the changes may not be reversible after release. Their thought is also directed away from pacifism and idealism. They learn to hate the country and its institutions because, as represented by the prison, they warrant hatred.

Almost to a man they describe their change as a reconsideration of the idea of nonviolent resistance. A former Catholic seminarian said to me: "When I came in here I knew precisely where I stood. I would have called myself a Christian pacifist. Now all that is changed."

"Which has changed," I asked, "the Christian or the pacifist?"

"Both, I'm afraid, the pacifist as an act of reason, the Christian as an act of despair."

In every direction, therefore, what one sees is a hardening: an increasing hostility toward the environment, combined with an increasing distrust of self.

It is an enormous price we extract, not just from these men but from all prisoners. This country has ruled out cruel and unusual punishments. We no longer flog a man, cut off an ear or brand him for crimes; we merely "imprison." But the problem with imprisonment is that it becomes a word and words become institutionalized, and the vast majority of thinking men have never visited a prison. (How many readers of this journal have spent any appreciable time in a prison?)

What is cruel and what is unusual? We are taking from these youths two to five years of their lives. If a man is given an option whether he will sacrifice a lung that has become malignant to guarantee a continuation of life for a few more years, it is a rare person who refuses it. And this usually occurs in the middle or late years. What, then, is the value of these irreplacable years of youth, vigor and virility? What severity of crime warrants this punishment?

Yet how readily does society deprive these young men of this most precious and rarest of commodities, and how readily do the normal watchdogs of our society, the keepers of morality, the defenders of right close their eyes, maintain their silence, and sleep with conscience.

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. EAGLETON). In executive session, the Chair lays before the Senate the pending question, which the clerk will state.

The ASSISTANT LEGISLATIVE CLERK. The question is, Will the Senate advise and consent to the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States?

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. 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.

THE CUSTOMARY CONFIRMATION TEST IS NOT SUITABLE FOR SUPREME COURT NOMINEES

Mr. CHURCH. Mr. President, the Senate is being asked to advise and consent

to the appointment of Judge George Harrold Carswell as an Associate Justice of the Supreme Court of the United States. If he is to be given the benefit of every reasonable doubt, which is the usual practice of the Senate in passing on Presidential appointments, then Judge Carswell should be confirmed. The question is, Whether the usual practice should be followed when it comes to filling vacancies on the Supreme Court.

I believe that it should not.

The Supreme Court, a separate and coordinate branch of the Federal Government, plays too vital a role in our national life to allow for the appointment of men whose qualifications are subject to serious doubt. During the 1968 presidential campaign, Richard Nixon said that he would appoint only men of high distinction to the Supreme Court. The record clearly reveals that Judge Carswell fails to meet such an exacting test.

If he were being nominated for a legal position in the executive branch of the Government, there is no question but that Judge Carswell should be confirmed. In such cases, the Senate quite properly gives the President wide latitude in the exercise of his discretion. As the Nation's Chief Executive, it has long been recognized that the President is entitled to have in his administration men and women of his own choice. Except on those rare occasions when the evidence points to immoral or unethical conduct on the part of the nominee, the consent of the Senate is given in a routine manner for the purpose of accommodating the President.

After all, executive branch officials, from the highest to the lowest, act on behalf of the President. The most important among them form his executive "team." Whether they serve as members of his Cabinet, as directors of Federal agencies, or as his ambassadors abroad, they must be individuals in whom the President can repose personal confidence, with whom he can easily work, and from whom he can expect full political support.

For example, a Secretary of State, though charged with great responsibility in the conduct of American foreign policy, remains, nevertheless no more than an arm of the Presidency. He may offer advice which the President is free to accept or reject. However, once the President makes his decision, the Secretary of State is obliged both to accept and to implement the decision to the best of his ability.

Typically, a Secretary of State might urge the President to submit a larger foreign aid bill to the Congress. Taking his entire budget into account, the President might decide against it, thereby overruling his principal foreign policy adviser. It then becomes the duty of the Secretary to publicly defend the smaller bill as if never a doubt had crossed his mind.

A treaty may be waiting submission to the Senate. The Secretary of State privately urges the President to delay moving it, owing to the delicacy of current negotiations on another front. But the President feels that other considerations are of greater importance. Despite the Secretary's dissent, the President instructs that the treaty be submitted to the Senate. That settles the matter.

Presidential primacy over the executive branch is too well settled for argument. Abraham Lincoln once dramatized it when he submitted a proposition to his Cabinet and called for a vote. Every member of the Cabinet voted "No." The President voted "aye," and announced "The 'ayes' have it." Those who act as the President's agents—no matter how highly placed in the executive branch—draw their authority from Presidential writ. They act upon the direction of the President and they serve at his pleasure.

Now, I submit that this principal-and-agent relationship which exists within the executive branch has no applicability whatever to the Supreme Court. An Associate Justice of the Supreme Court is not a subordinate of the President. Unlike executive officials, a Justice is part of no political administration. He takes no directions from the President. Indeed, he is expected to stay aloof. Mr. Abe Fortas, although a longtime friend of President Johnson, learned how ill advised it is to remain a White House confidant, once appointed to the Supreme Court.

The framers of the Constitution took special precautions to safeguard the independence of the Federal judiciary. The Federal courts are protected against being bent to the will of Congress or the President by specific constitutional guarantees for maintenance of salary and lifetime tenure. Moreover, the Founding Fathers implicitly recognized the gulf which separates Federal judges from the appointive officers in the executive branch. The latter generally may be removed from office on order of the President. But a Supreme Court Justice, like the President himself, can be removed from the bench only by Congress through the difficult procedure of impeachment.

There is yet another striking contrast between nominees for judicial and executive branch positions, even though both are filled by Presidential appointment subject to senatorial confirmation. When a President leaves office, he is customarily joined by members of his executive team who had served under him in appointive posts during his administration. But this is certainly not true of the men he has appointed to the Federal judiciary. Least of all is it true of the Supreme Court.

In fact, we have today, as sitting members of the Supreme Court, two Associate Justices who have rendered decisions while six Presidents occupied the White House—Roosevelt, Truman, Eisenhower, Kennedy, Johnson, and Nixon. There are three other Associate Justices who first took their seats on the Supreme Court during Dwight Eisenhower's term, four Presidencies ago. It must be clearly understood, consequently, that a nomination to the Supreme Court is "for the ages," not merely for the duration of the administration of that President who makes the appointment. It should be a sobering point to reflect upon, as we deliberate the nomination of Judge Carswell, that his expectancy in office is not limited to the 1970's but might last through the 1980's and extend into the 1990's as well.

Surely, the reasons why the Senate customarily applies a lenient standard to Executive appointments, giving the President so much latitude in the selection of his own official family, are utterly lacking in relevance when applied to the Supreme Court of the United States. Under our Constitution, the Supreme Court, highest tribunal in the land, presides over an independent judiciary, separate and apart from the legislative and executive branches of the Federal Government.

As the institution of the Supreme Court is unique, so the standard applied by the Senate in passing on appointments to the Supreme Court should be unique. If the test is to fit the office, it must be one of singular excellence.

A nomination to the Supreme Court belongs in the highest category of Presidential appointments. Such is the stature of the Court that it has been graced through the years with men of great distinction—John Marshall of Virginia and John Harlan of Kentucky; Charles Evans Hughes of New York and Earl Warren of California; Oliver Wendell Holmes and Felix Frankfurter of Massachusetts and Benjamin Cardozo of New York. These were men of differing political and philosophical inclinations, but they possessed probing intellects, profound insights and sensitive perceptions. These and others have represented all sections of the Nation—North, West, East, and South.

President Nixon has indicated a desire to fill the pending vacancy on the Court with a southerner. There are many fine legal minds in the South. There are Senators in this Chamber representing the South, serving today, whom I would willingly support for a seat on the Supreme Court. There are others already serving with distinction on the Federal judiciary in the South. But the President does not send us the nomination of one of these. Instead, he sends us a man of little depth and breadth.

In the course of the hearings, two distinguished law school scholars addressed themselves to the question of Judge Carswell's qualifications.

Louis Pollak, dean of the Yale University Law School, testified that Judge Carswell has "more slender credentials than any other nominee for the Supreme Court put forth in this century."

Prof. William Van Alstyne, who we should remember publicly supported the nomination of Clement Haynsworth to the Supreme Court, stated that Judge Carswell has shown nothing in the performance of his profession "to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States."

In earlier times, such damning testimony from expert witnesses would surely have resulted in rejection of the nominee. During the last century, the Senate refused to "rubberstamp" Presidential nominations to the Supreme Court. On the average, one out of four were defeated prior to 1900. The Senate exercised its confirmation role in a far more responsible way during the first 110

years of our Nation's existence than it has in the last 70. The time has come for us to begin once more to perform properly our constitutional duty.

In examining Judge Carswell's record on the Federal bench, one searches in vain for a mark of excellence. We have yet to be shown a single decision he has handed down that reveals any exceptional qualities of learning, any flash of brilliance, or any special insight. Taken altogether, Judge Carswell's service has been utterly pedestrian in character.

Even his suporters make no claim that Judge Carswell's career has been particularly distinguished. The strangest argument of all delivered in his behalf comes from Senator HRUSKA, of Nebraska, who was recorded in a radio interview as having said:

He is a good judge, has been and has great potential. But suppose he isn't a good judge? Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. Aren't they entitled to a little representation and a little chance?

In all charity, this extraordinary statement should serve as a fitting epitaph in the Carswell nomination.

The Supreme Court, our tribunal of last resort, calls for jurists of the highest caliber, who will dispense justice with fine impartiality and keen intelligence. Above all, the Court calls for jurists whose comprehension of the Constitution is as profound as their duty to uphold it is imperative.

As measured against these criteria, George Harrold Carswell is indubitably deficient. I must vote against his confirmation.

Mr. President, in the course of the last few weeks I have received a number of letters and telegrams from Idaho, from constituents who have voiced their opposition to the confirmation of Judge Carswell. I have selected a few of these letters as a representative sampling of this opinion. I have not had an opportunity to secure the consent of these correspondents to include their names in the RECORD. Rather than do so without their permission, I would prefer to read from their letters and to withhold their names, at this time. But, taken together, these letters do represent a cross-section of opinion in my State against the confirmation of Judge Carswell.

Here is a letter from Boise, Idaho. It reads:

DEAR SENATOR CHURCH: All I know about Carswell is what has been brought out in the news media. His record on civil rights and racism—alone would be enough to disqualify him from serving on the Supreme Court but I do not think his ability and stature as a Judge and Attorney warrant his confirmation to this high post.

I know you will vote as you think best—but it is my hope that you will vote against his confirmation. If he is confirmed we will have him for 30 years.

Here is a telegram from Moscow, Idaho:

Please vote against Judge Carswell's nomination for the Supreme Court.

Here is a letter from the AFL–CIO in Boise, Idaho. It reads:

DEAR FRANK: We urge you to vote against the nomination of Judge G. Harrold Carswell to be an Associate Justice of the United States Supreme Court.

We feel his record reflects a lack of reasoning, care, or judicial sensitivity overall, and nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction in the Supreme Court of the United States. Further, that the Administration's sole guide in making its selection was its southern political strategy.

We feel that for the senate to allow a nomination that is a calculated political attack on the responsible Negro leadership of this country would be a national tragedy. The Idaho State AFL–CIO urges the Senate to refuse to confirm the nomination.

Here is another letter which comes from Nampa, Idaho. It reads:

DEAR SENATOR: I have been asked as the executive officer of our Local to ask you to oppose the appointment of Judge Carswell to the Supreme Court.

We certainly felt that you took the proper stand when you opposed Judge Haynsworth and feel that Judge Carswell should be opposed for the same reasons.

We want to take this opportunity to thank you for your assistance and your concern so often in the past, and look forward to continued cooperation.

Here is a letter from a constituent in Pocatello, Idaho. It reads:

DEAR SENATOR CHURCH: Hopefully you will carefully consider the qualifications of Judge Carswell. His past history suggests a lack of competence and a tendency to conduct himself in a bigoted manner where minority races are concerned.

Here is another letter from Pocatello, Idaho. It reads:

DEAR SENATOR CHURCH: It seems like every time Nixon nominates another nobody to the Supreme Court you get a letter from me. In comparison to Mr. Carswell, Judge Haynsworth was by far the better man. In any event, I urge you to consider what the mediocrity of Mr. Carswell can do to the progressive ideas supported by the U.S. Supreme Court. It is truly amazing that out of several thousand qualified people Nixon would choose a man of such lack-lustre qualifications. Think about it!

Here is another letter from Moscow, Idaho, It reads:

SIRS: The nomination of G. Harrold Carswell to the Supreme Court is surrounded by conflicting testimony. If this man is not outstanding as a jurist and as a citizen, I urge you to vote against his confirmation. Mediocrity and expediency will accelerate the national divisiveness originated by the last administration and promoted by the present one. Confirmation of this man as a simple courtesy to the President would be a tragic neglection of responsibility at a time when people like myself are looking to see if the government can and will act to develop the nation so that life can be worthwhile for everyone.

A further letter from Boise, Idaho. It reads:

DEAR SENATOR CHURCH: I commend your rejection of the nomination of Judge Clement Haynsworth to the Supreme Court, and heartily support your conservation measures.

Now I strongly urge you to reject the nomination of Judge Harrold Carswell to the Supreme Court. Fatigue and harassment do not justify his confirmation: his presence would be an offense to the Blacks of the nation, and to anyone who opposes mediocrity on the bench.

Here is another letter from Boise, Idaho. It reads:

DEAR SENATOR: I would like to voice my opinion against the appointment of Judge G. Harrold Carswell.

The Supreme Court decides the most important cases in the nation in all legal fields, including labor law, civil rights, and civil liberties. If confirmed, Judge Carswell will sit on the Court for life, or until he resigns. His term is, therefore, likely to be several decades. The decisions he makes could affect the ability of Unions to organize and bargain collectively as much as any act of Congress. His treatment of lawyers appearing before him, his advice to sheriffs on how to re-arrest men whom he had freed, his aid to prosecutors to keep people in jail and counter his own decisions from the bench make him a dangerous addition to the U.S. Supreme Court.

I ask you to oppose the confirmation of Judge Carswell.

Here is another letter from Nampa, Idaho. It reads:

DEAR SENATOR CHURCH: As an Idaho citizen, I want to ask that you oppose the appointment of Judge Carswell to the Supreme Court.

I know that you opposed the appointment of Judge Haynsworth, and I feel that Carswell is even less qualified for this high position.

I know that we in Idaho can expect you to give this your most serious consideration and know that we can count on you to always have our best interests at heart.

Here is a letter from Osburn, Idaho. It reads:

DEAR SENATOR: I am writing to ask you to vote against the appointment of Judge Harrold Carswell to the Supreme Court. When the now famous "White Supremacy" speech of 1949 was publicized, I was willing to give Judge Carswell the benefit of the doubt (I, too, am a native Southerner who has changed his mind), but just yesterday I read newspaper reports that Judge Carswell has, in very recent years, sold residential property with racially restrictive clauses in the deed. I am not so charitable about that. If these latest allegations are true, then, perhaps the Judge's attitudes about the races have not changed so much after all, and if this is so, he is not qualified to sit on the highest court in the land.

Here is a letter from Coeur D'Alene, Idaho. It reads:

DEAR SENATOR CHURCH: I still feel, as I mentioned to you in my letter of November 26, that the appointment of a strict constructionist to the Supreme Court is a mistake, especially since below the Mason-Dixon line, "strict constructionist" is only another of the many euphemisms which boil down to "anti-Negro." Although I would personally favor a liberal judge, such as Judge Traynor of the California Supreme Court, probably the best choice for the country would be someone whose philosophy is midway between his and that of the latest nominee, Judge Carswell. Feeling as I do, it is my hope that you will oppose the Carswell nomination if you can do so in good conscience.

Here is a letter from Bovill, Idaho. It reads:

DEAR SENATOR CHURCH: The enclosed clippings say so much better than I can what is a serious problem in government today. We can not have the best when political

bartering makes us accept mediocrity. Please vote against Carswell and speak out against him. Yours is a voice that is heard.

Finally, a letter from Pocatello, Idaho. It reads:

DEAR SENATOR CHURCH: My husband and I wish to ask you to vote against confirmation of Judge G. Harrold Carswell to the U.S. Supreme Court.

After reading many reports about him in the newspapers and several newsweeklies, we can not see how it is possible for him to be qualified to sit in the seat that was too good for Abe Fortas.

The low esteem the judicial system in the U.S. is held in now will not be helped by a Carswell.

(At this point Mr. PELL took the chair as Presiding Officer.)

Mr. CHURCH. Mr. President, these are representative samples of opinions from many of my constituents against the confirmation of Judge Carswell.

Let me sum up the reasons why I shall vote against this nominee: In doing so I should like, once again, to stress the special responsibility that falls upon the Senate where nominations to the Supreme Court of the United States are concerned.

As I have attempted to point out, there is a vast difference between confirming appointees to the executive branch of the Government and confirming judges who will sit as members of an independent and coordinate branch of Government, a branch which is neither subject to direction by the President nor within his administrative jurisdiction.

As I mentioned earlier, the Senate, in the last century, used to recognize this distinction. It did not regard its responsibility to pass upon an appointment to the Supreme Court as comparable to the confirmation role of the Senate when it came to other Presidential appointees. As a result, one out of four nominations to the Court, on the average, was rejected by the Senate prior to 1900.

I think it is unfortunate that the Senate has tended, in more recent years, to blend all Presidential appointments together, and to assume that considerations which are applicable to the executive branch, where the President is entitled to wide latitude in the selection of his own official family, are also applicable to every other Presidential appointment. There is no logical reason why this should be so. Least of all, is there any reason why it should be so when it comes to men who will sit on the highest court of the land. Here, it seems to me, a special test is required, a test of unusual excellence.

When that test is applied to the nomination now before the Senate for confirmation, the nominee simply does not meet it. I have looked at the record. I have reviewed the hearings. I have carefully examined the committee report, fully weighed the arguments of those who favor the nomination and those who oppose it. I cannot find anywhere any evidence which would suggest that Judge Carswell has served on the Federal bench with that measure of distinction which ought properly to obtain when it comes to elevating him to the highest court of the land. If there is evidence, then let someone present it. If there is anyone with evidence that this high standard of excellence which should apply to the Supreme Court is met, in one way or another, and can be found in an examination and review of Judge Carswell's record on the Federal bench, then let it be presented now. No such evidence has been forthcoming, because no such evidence exists.

I have been handed a paper entitled "A Note on Senatorial Consideration of Supreme Court Nominees," a paper which will appear in the Yale Law School Review. It is a scholarly and careful examination of the question that is now before us.

I should like to read a portion of that article, because it bears out so strongly the argument I have made this morning.

The author writes:

I shall, however, open the discussion by taking strongly the position that a Senator voting on a presidential nomination to the court not only may, but generally ought to, vote in the negative if he firmly believes on reasonable grounds that the nominee's views on the large issues of the day will make it harmful to the country for him to sit and vote on the court, and that on the other hand no Senator is obligated simply to follow a presidential lead in this regard or can really discharge his own duty by doing so.

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

Mr. CHURCH. I yield.

Mr. TYDINGS. Mr. President, I am sure the Senator is acquainted with this matter, but let me refresh his recollection.

Does the Senator recall the circumstances confronting the Committee of Detail of the Constitutional Convention of the United States with respect to the selection of Supreme Court Justices?

Mr. CHURCH. I am generally acquainted with that discussion. And I think it is particularly pertinent to the question of whether the Senate should confirm the pending nomination.

Mr. TYDINGS. Is my recollection correct that the original draft or proposal prepared for the Constitutional Convention provided that the members of the Supreme Court were not to be selected by the President, but by the Senate of the United States?

Mr. CHURCH. The Senator is correct. As I recall, the reason for that proposal was to provide an additional check and balance, and also to fortify the independence of the judiciary and protect it against the possibility of executive control.

Mr. TYDINGS. Let me ask the Senator if it was not as a result of a compromise between those who felt that the President should nominate Justices of the Supreme Court and those who felt that the power should be retained in the hands of the Senate that the final terms of article II as they appear today were agreed upon—namely, that although the President would select a nominee, and send to the Senate the name of a candidate to fill a vacancy on the Supreme Court, that nominee would not sit on the Supreme Court until the Members of the Senate had seen fit to advise and consent on it.

Mr. CHURCH. The Senator is correct. And both roles were regarded as equally important. The President was to nominate; the Senate was then to pass judgment on the qualifications of the nominee to sit on the Supreme Court of the United States. And the confirmation power was viewed by the Founding Fathers as equally important as the appointive power.

Mr. TYDINGS. As a matter of fact, the relevant Federalist Papers, which were authored by Mr. Hamilton, spelled out the Senate's responsibility of advising and consenting and indicated that unwise choices of men who represented purely sectional or political nominations would not be permitted because the Senate would intervene.

Mr. CHURCH. The Senator is absolutely correct. It was contemplated that the Senate should exercise a checkrein on nominations to the Supreme Court to avoid this kind of possible abuse.

Mr. TYDINGS. Would the Senator agree that there is considerable difference between the responsibility and the function of the Senate of the United States in advising and consenting to the nomination of a member of the President's own personal Cabinet and the responsibility and the function of the Senate in advising and consenting to the nomination of what amounts to a lifetime position on the Supreme Court of the United States?

Mr. CHURCH. I not only agree, but I also endeavored in the course of my prepared remarks this morning to point out the great gulf that separates highly placed officers in the executive branch of the Government from Justices of the Supreme Court.

One can point to so many basic differences, but I suppose the most important of all is that anyone who serves as a Presidential appointee in the executive branch of the Government serves as an agent of the President. These executive officers are subordinates of the President. They take their instructions from the President. Their judgment can readily be, and often is, overruled by the President.

They serve at the President's pleasure and are subject to his dismissal. They are, in every sense of the word, Presidential agents, a part of his own administration, for which ultimately the President himself must assume responsibility.

Now, none of this is true—none of it—concerning a Justice of the Supreme Court. He is not a part of the President's administration. He is not subject to the President's direction or control. While he holds office, his salary may not be reduced. He holds lifetime tenure. When he makes a decision, he does not consult with the President concerning it. Indeed, he associates with the President, even in an informal way, at his peril—as the sad experience of Justice Abe Fortas so well bears out.

Everything about the Supreme Court, every specific provision contained in the Constitution intended to strengthen and fortify the independence of the judiciary, makes it clear that appointees to the court were to be treated differently from those who serve under the President in the executive branch of Government. So

the lenient standard we use in the latter case should not be applied to the former. Indeed, the importance of the Court is such that the Senate ought to insist upon a standard of the highest excellence, in passing judgment upon Presidential nominees to the Supreme Court. Many of them, as I earlier pointed out, serve during the terms of many Presidents. Two of them today served with six different Presidents. In a very real sense, an appointment to the Supreme Court is an appointment for the ages.

I want to underscore what the Senator from Maryland had in mind in asking me this question. When it comes to Supreme Court nominees, it is the duty of the Senate to apply an exacting standard. That standard simply is not met by this nominee; and no Member of this body has produced any evidence to suggest otherwise.

Mr. TYDINGS. I wonder if the distinguished Senator from Idaho would permit me to read to him from some very pertinent pages of Federalist Papers Nos. 76 and 77, which deal directly with the responsibility of the Senate to advise and consent on nominations to the Supreme Court. Before quoting from Federalist Papers 76 and 77, again I wish to point out, as we have discussed and as the distinguished Senator discussed earlier, in the Constitutional Convention there was much support for appointment of Judges by the Senate alone, a mode which was approved on July 21, 1787, and carried through into the draft of the Committee of Detail. The change to the present mode came on September 4 in the report of the Committee of Eleven and was agreed to nem. con. on September 7.

This last part, I think it can be reasonably concluded, must have meant that those who wanted appointment by the Senate alone, and in some cases by the whole Congress, were satisfied that a compromise had been reached and did not think the legislative part in the process had been reduced to the minimum, as some of our colleagues in the Senate would have us believe today.

The whole process today suggests a very reverse of the idea that the Senate was to have a confined role. I think these passages from Federalist 76 and 77, written by Alexander Hamilton, are to the point. I now quote from Federalist No. 76:

> But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.
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> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.
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> It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.
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> If it be said they might sometimes gratify him by an acquiescence in a favorable choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The power which can originate the disposition of honors and emoulments, is more likely to attract than to be attracted by the power which can merely obstruct their course. If by influencing the President be meant restraining him, this is precisely what must have been intended.

I think the language in the Federalist Papers stating:

> He [the President] would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

The paper almost could have been written having in mind the debate on the present nomination now before the Senate.

Mr. CHURCH. I agree with the Senator completely. I think that the extracts he has read into the RECORD from the Federalist Papers establish beyond refutation that the Founding Fathers believed the confirmation role of the Senate to be of the most serious and important character. As I mentioned a moment ago, it was the equivalent in every way of the appointive power itself.

It was meant, particularly where the Supreme Court is concerned, to hold the President to a high standard.

If we are not going to do what the Founding Fathers intended, if we are not going to be mindful of our responsibility, or the way the Senate exercised it during the last century; if we are going to make our standards ever more lenient so that the President can do pretty much as he pleases, even when it comes to the appointment of the highest Justices of the land; then we fail in our duty and we do not give effect to the role that was intended for the Senate by the Founding Fathers.

I know that the Senator shares with me an apprehension about the declining role that the Congress of the United States plays in the Government. Nearly every serious student of government today has observed that the Congress is, and has for a long period of years been, in decline. I think that is a tragic development. I know that there are many Members of this body so greatly exercised about it that an attempt is now being made to reassert senatorial prerogatives in many fields—in the field of foreign policy, where we have largely abdicated our role to the Presidency to the point where Presidential powers have become practically plenary in deciding on war or peace. I know that an attempt is being made to restudy the function of the Congress in the matter of regaining the control that the Constitution intended us to wield over the public money.

More and more, the purse strings have fallen into the hands of the President.

If we are to uphold the Senate, if we are to keep faith with what the Constitution of the United States intended, then the time has come for us to begin to give substance once more to the confirmation role of the Senate. Otherwise, our powers will continue to erode, the Presidency will loom ever larger until, at last, it becomes a Caesardom.

Anyone weighing the trend of power over the past 50 years who is unconcerned about the declining role of Congress has little regard for the checks and balances which were written into the Consitution to preserve the Republic.

As the Senator well knows, every representative government is jeopardized by the growth of excessive executive power. That is what happened to the Roman Republic. Let it not happen to ours.

Mr. TYDINGS. I wonder if I could address another line of questioning to the distinguished Senator from Idaho. I wonder if the Senator would agree with me that in the function of a judge, whether he be a police magistrate in a small West Virginia county, or whether it be a judge in a U.S. District Court for the Northern District of Florida sitting in Tallahassee, or whether he be a judge for the circuit court of Harford County sitting in Bel Air, Md. There is no more vital or important requisite than the ability to give every person before him a fair trial, no matter how poor or unpopular.

Would the Senator comment on that?

Mr. CHURCH. I agree fully.

Mr. TYDINGS. I know the Senator from Idaho has been very busy, but has the Senator, by any chance, been aware of the testimony of a young Department of Justice lawyer named Knopf, who, after subpena, came before the Judiciary Committee of the U.S. Senate and told what to me was a shocking story of judicial intemperance and unfairness that

would have been unbecoming for a trial magistrate in the poorest county in my State or in any other State, but, coming from a U.S. district judge, was unbelievable.

Mr. CHURCH. As a member of the committee who heard that testimony, I was going to suggest to the Senator that he read it into the record.

Mr. TYDINGS. Let me, first of all, tell how Mr. Knopf, who was a young lawyer for the Department of Justice, came to testify before the Judiciary Committee of the U.S. Senate.

After the first several days of the hearings, he called my office—I had never heard of Mr. Knopf before—and said that he had material relating to the Carswell nomination that he felt was important. This was a man who was employed at the will of the present Attorney General of the United States. I said I would see him. I did see him.

I could scarcely believe what he told me, except that it correlated or confirmed the testimony given Thursday by another lawyer from New York City.

I asked Mr. Knopf whether or not he would be willing to testify. He said he was fearful, and he felt that he could only testify if he were to receive a subpena from the Senate of the United States.

So he was served with a subpena from the Senate of the United States, and he came to testify. Although the national news media had little to say about his testimony, and although there were very few members of the Judiciary Committee present when he testified, I was present and heard what he said, and it is in the record; and it is absolutely incredible that a man nominated to the Supreme Court of the United States should have engaged in the intemperate that Mr. Carswell did when he was a judge of the U.S. district court for the Northern District of Florida.

Let me read now from his testimony. I am particularly interested in the testimony that appears on pages 175 and 177, I will be quite frank with Senators, until this testimony came in I was not as deeply disturbed by this nomination as I have been since the testimony came into the record.

Mr. Knopf, by way of background, attended Columbia law school. When he graduated from law school and passed the bar, he volunteered to work with the law students civil rights research council. This was an organization of law students who wished to assist civil rights lawyers. Being law students or recent gradutes, they did no try any cases. They went down to assist various lawyers, who had volunteered for 1-week or 2-week periods to work with a voter registration project in the South, including the panhandle of Florida.

Mr. Knopf went down to Florida and was there in August, and part of September. He was assigned to a CORE voter registration project to register black people in the northern area of Florida.

The CORE volunteer workers, many of whom were from Florida itself, some of whom came from the North, did assist in the registration of black people so that they could vote in the Federal elections in November.

I shall now quote directly from the testimony of Mr. Knopf, on page 175:

As I stated, the town, the whole general area was extremely hostile. We were harassed by the police. We were harassed by the white populace in general. We felt that there was no chance of a fair trial in the local courts. I believe the courtrooms were still segregated. Negroes did not use—they had special rest room facilities and so on. We believe there hadn't been Negroes serving on the jury. This was our understanding anyway, and we were under the belief that Federal law permitted these registration workers, gave them the right to go and solicit, constitutional right and statutory right to go and help black people register in Federal elections, and we felt that this right would be thwarted, if it had to be, if workers were to be tried in a court where it was felt they could not be assured of impartial treatment.

Therefore, the attorneys instructed me to file removal papers, believing that it was a Federal matter, since these workers were operating under Federal law, there were Federal statutes regarding the right to vote, and that perhaps they would get a fairer trial within the Federal court.

Now, he is referring to a specific instance when several volunteers, the majority of them from Florida, went on to a plantation to suggest that black sharecroppers register to vote. One of those black sharecroppers was a relative of one of the young people endeavoring to get them to register. The property that they were on was reached by a road leading from the public highway and was not posted and not fenced.

The overseer of the farm or plantation heard about it, came along, and asked them what their purpose was in being on the property. They explained to him that they were encouraging the people to register and vote. He told them that they were trespassing, it was on private property. They said they did not realize it, that they would walk right to the road and get off.

He said, "Oh, no, you are going to be arrested."

He had them arrested, and he took them into a local court, where the local judge refused to permit them to be represented by counsel, because the counsel was not admitted to the bar in Florida, and even had the counsel thrown out of the courtroom. He refused to honor their removal petition to the U.S. district court, although under the law the filing of the removal petition automatically divests the State court of jurisdiction. The mere filing of the removal paper is all that is necessary.

These young people were thrown in jail, and they were fearful for their physical safety. So they filed a writ of habeas corpus in Judge Carswell's court to insure the removal of their case, as was their statutory right, to the U.S. district court in Judge Carswell's district.

Let me read to you from Mr. Knopf's own testimony—and remember that by his mere presence at the hearing, he was risking his job with the Department of Justice.

I asked him:

Tell the committee to the best of your memory what you observed.

Mr. KNOPF. Yes.

Senator TYDINGS. And we are particularly interested in Judge Carswell's attitude.

Now, remember, this is not some lawyer from New York, or some lawyer from Minnesota or Maryland or somewhere else. This was an employee of the Department of Justice, testifying under subpena before the Committee on the Judiciary of the U.S. Senate. I am only sorry that more of my colleagues were not there to listen to him.

I quote, now, from the testimony of Mr. Knopf. Senators will find this on page 177 of the hearings record:

Mr. KNOPF. It is relatively clear in my mind. I remember this. This was my first court room experience—

Any lawyer in this body knows he remembers his first court room experience very well.

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.

How is that? How is that for judicial temperament, for a starter?

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.

I ask the Senator from Idaho, is it not the basic requisite of any judge, whether he is a people's court magistrate or a judge of the U.S. district court, that he is basically fair, and does not prejudge a case on the basis of his own personal biases and prejudices?

Mr. CHURCH. The Senator is quite right. The capacity for objectivity is one of the most important attributes that a judge can have, as well as a capacity to pass upon questions that are brought before him in a calm and unimpassioned manner.

Mr. TYDINGS. If this were the only instance in the record where this man, nominated to be a Justice of the Supreme Court, had permitted his prejudices, his hostility, and his biases to show and to influence his conduct as a judge, perhaps we might forgive him. But this record is replete with instances of that kind.

When I hear that some of my colleagues are tired and fatigued, worn out because they have had one fight on a nomination from the President, which was turned down, and that even though this nominee is much less fit than the former, they are too worn out or too fatigued to make a fight, I am concerned.

Mr. CHURCH. That is just a confession of abdication of our responsibilities.

Mr. TYDINGS. Let me call the attention of the Senator from Idaho to another witness we had, Professor Clark, who was responsible for the entire civil rights litigation in the State of Florida.

His testimony is equally strong, or even stronger than Mr. Knopf's. I refer the Senator particularly to page 227 of the record.

Mr. President, I ask unanimous consent that all of Professor Clark's testimony, beginning on page 221, be printed in the RECORD, at this point.

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

TESTIMONY OF LEROY D. CLARK, ASSOCIATE PROFESSOR, NEW YORK UNIVERSITY LAW SCHOOL

Mr. CLARK. My name is Leroy D. Clark, and I am an associate professor at the New York University School of Law. I have been on the faculty at New York University for approximately the last 2 years. From 1962 through 1968, I was staff counsel to the NAACP Legal Defense Fund, and in that capacity after the now Judge Motley left our office, I was put in charge of the entire civil rights litigation in the State of Florida, and I come to make a statement with that background, because I would suggest that there is not a lawyer in the country today who has appeared before Judge Carswell on more cases with specific reference to civil rights matters, and indeed on each occasion on which I appeared before Judge Carswell, it was in connection with a civil rights case.

I come here, however, not as a staff member of the NAACP legal defense fund, but to represent the National Conference of Black Lawyers. Our organization was founded in Virginia in December of 1968, to challenge the racism in our legal system, to articulate the needs of the black community, and to provide the legal expertise necessary in the black American's struggle for equality. We number in our ranks attorneys representing the entire spectrum of both the private and public sectors, as well as elected governmental officials from the local, State and national levels.

On behalf of the National Conference of Black Lawyers, I come before you today to speak in opposition to the confirmation of Judge G. Harrold Carswell. In the view of our organization, Judge Carswell is fit neither professionally nor personally to sit as an Associate Justice of the U S. Supreme Court. The acquisition of equal rights of citizenship for black people in this country has been a long and difficult task and in numerous instances almost totally dependent upon rulings by the Federal courts. As a Federal district judge prior to his recent elevation to the court of appeals, Judge Carswell was in a position to fulfill some of the American promise of equal rights under law. However, in disregard of the civil rights pronouncements of the Supreme Court, Judge Carswell frequently announced prosegregationist rulings which were then reversed by the court of appeals.

Moreover, repeatedly through the use of procedural devices, in cases in which I appeared before him, and the exercise of his broad judicial discretion, Judge Carswell caused unconscionable delay in civil rights cases, and limited their holdings to the narrowest possible scope.

In *Augustus* v. *Board of Public Instruction of Escambia County, Florida,* 306 F. 2d 862 (1962) the court of appeals unanimously rejected the school desegregation plan approved by Judge Carswell and required the school board to take further action toward desegregating the public schools. In that case, the court of appeals also unanimously reversed Judge Carswell's procedural ruling which had eliminated the claims of racial discrimination in the assignment of teachers and other school personnel.

Whether as a question of law or one of fact, we do not think that a matter of such importance should be decided on a motion to strike. (306 F2d at 868.)

I would suggest that no competent unbiased judge could have made that kind of blatantly inappropriate ruling which as a matter of Federal procedure was long settled.

In *Due* v. *Tallahassee Theaters Inc.,* an action against theater managers, city officials, and the county sheriff alleging a conspiracy to enforce segregation, Judge Carswell again dismissed the complaint against some of the defendants and granted summary judgment as to another.

The court of appeals again reversed Judge Carswell, and in many of these cases you will note that no elaborate description of the law is given because none is needed, because the law was firmly settled on these procedural points at that time. Judge Carswell took these procedural devices, I would suggest, as a means of delaying the civil rights goal.

The court in that case said:

"The orders of the trial court dismissing the complaint for failure to state a claim on which relief could be granted can be quickly disposed of. These orders were clearly in error. (333 F. 2d 630 (1964) at 631.)"

Singleton v. *Board of Commissioners of State Institutions* was a case in which I was counsel. This was a case which arose out of the St. Augustine demonstration. We had four young black children ranging in age from 14 to 16 years old, who were incarcerated in the State reformatory for participation in a sit-in demonstration which subsequently was found to be unconstitutional. We were trying to get the children released from the reformatory. We filed a writ of habeas corpus asserting that the incarceration was illegal.

At this time the children had not even been convicted. We were simply trying to get them out of the reformatory prior to their trials. The trial judge in St. Augustine held children were not entitled to bail, so that adults who were arrested in the same demonstration were released and these four children were put into the State reformatory.

We tried all sorts of collateral proceedings in the State court to have the children released. We then decided that tactically the only way we could get those children out of that reformatory was to take the risk of filing a suit to desegregate that reformatory.

The reformatory was in fact segregated from top to bottom, with the black children being kept in what I can only describe as shacks, while the white children were put in the new buildings on the grounds.

We were running one of two risks: That the children would be kept in the reformatory and subjected to harassment, or that the reformatory officials would want to get these troublemakers out. Fortunately, they did the latter, and within 2 weeks after filing our complaint in the Federal district court, the children were released from the reformatory.

I note also they were released prior to the time they were supposed to be released. I anticipated that Judge Carswell would at that point dismiss our complaint to desegregate the reformatories. That is precisely what Judge Carswell did. And, I took Judge Carswell up on appeal, and he was reversed.

He asserted that the case was moot because our four plaintiffs were no longer in the reformatory. Again, I suggest to you that it was either one of two things, either judicial incompetence or bias, because the law was fairly settled that when a major public institution such as those State reformatories were proven to be segregated, that the case was not moot on the set of facts which Judge Carswell had before him.

I will not repeat the long period of delay and dilatory tactics which Judge Carswell adopted in the *Steele* case.

Senator TYDINGS. What case?

Mr. CLARK. The *Steele* case, *Steele* v. *Board of Public Instruction of Leon Country,* which Congressman Conyers has given you the details on. It took me, and I was counsel in that case, from May of 1964 until May of 1967 to secure a change in a desegregation plan where I was prepared to prove in 1964 that in a black school population of 16,000 students, only four students were attending white schools, and Judge Carswell did not see fit to revise that desegregation plan.

Senator TYDINGS. Would you tell us a little bit about it? I think that the *Steele* case is a very important case. You go into a little more detail in your statement, and I think it would be interesting for the Senators to hear a little bit more about how that case was delayed for 3 years.

Mr. CLARK. We followed the typical process after a suit has already been filed in a county, as had been done in this county. It was to bring on a motion for further relief.

At the point where it was clear that the desegregation plan was not working, and in 1964 it was impossible for any judge sitting anywhere in the Fifth Circuit to not know that four children out of 16,000 was an inadequate plan, we filed a motion for further relief.

This was the appropriate form to revise the desegregation plan. We could not get a hearing, and I finally had to file a motion for a hearing. These hearings in other courts and before other judges, when they were filed were granted as a matter of course. That is, the filing of the motion meant you got a hearing date, and I would suggest also that the periods of time that it took to get a hearing before Judge Carswell were inordinately long, if I compared it to my appearance before other judges in the State of Florida, and I appeared before practically every judge in that State, including a few who are now on the Court of Appeals.

When we got our hearing, then there was another delay before you get a ruling, and then when the ruling came, it did not address itself to the basic issue in the motion, namely, a revision of the plan.

Judge Carswell at that point told us that the defendants were complying with his previous order, which was not the point of the motion at all. We were saying, look, this plan is not working, and it must be revised. So we don't get a ruling.

Now, I suggest that that, again, is either one of two things, either it is judge who has not read your papers, and therefore does not know what your basic allegations are, or has deliberately ignored your basic allegations, because as any lawyer who knows anything about procedural matters would know, at that point you could not take an appeal; because if you took an appeal, the appellate court would say: But the judge has not addressed himself to your basic allegations, so therefore we don't know what his ruling is.

So you could bounce up, get essentially a meaningless kind of statement from the court of appeals, and you would be right back in the district court and, again, you would have lost 5 or 6 months, and I suggest that from my view Carswell knew that.

We then had to file a motion asking him: Would you please rule on our motion, and finally we got from Judge Carswell this statement, because I asked for a ruling on a motion or at least a hearing, so we could produce evidence to show him how this desegregation plan was operating.

Judge Carswell's statement in ruling on my motion was that no evidence could persuade the court to reorganize a desegregation plan, and evidence to that end "would just be an idle gesture regardless of the nature of the testimony."

Now, I can only read that as a statement that no matter what we showed Judge Carswell about the inadequacy of the desegregation plan, some 7 or 8 years after the Brown decision, that he was not going to review that case.

Now, one can view that as strict construction, literal construction, or one can view it as a deliberate attempt to rule against plaintiffs with limited resources and limited amounts of money, and limited numbers of

lawyers, and say: All right, take me up. Get me reversed.

If I had had time, I could document now at least 12 or 13 other instances in which Judge Carswell ruled against us on subsidiary motions for subsidiary points of law, in which he was wrong, but in which we could not take an appeal because we literally did not have the money and the time, and we had to devote our energies to other priorities.

For example: in *NAACP* v. *The State Board of Parks*, I filed a suit to desegregate the State Parks. In 1964, all of the State Parks in the State of Florida were segregated. Brochures were sent out announcing to black people as to which parks they could attend and which parks whites could attend. There were racial signs up at entrances.

We could prove this. It was a very simple matter of proof. We had photographs, we had witnesses, and indeed when the other side came in, they admitted that the parks were segregated and had been segregated. They did not assert that they had at that moment any plan for desegregation. They said that: Well, we will start on it.

So I said to Judge Carswell: But we would like an injunction. I know that they say they are going to start to desegragate the parks, but we would like an injunction. And I believe that under the law we are entitled to it, and indeed we were, because if at that point you prove your case, the defendant cannot come in and say: Oh, I am sorry, I am going to do better in the future.

You have a right to be protected by an injunction of a court of law, so that if the defendant continues this behavior in the future, you have the right to come back in on a contempt proceedings, from which other kinds of consequences flow.

Need I say that Judge Carswell refused the injunction in that case, and asserted that, well, the defendants say they are going to desegregate. We had no way under those circumstances, really, to require reporting from the defendants, which we would have required if there were an injunction.

They could have been made to come back 6 months later and say: We have taken down the signs, we have revised the brochures, we have informed our employees that this is the policy of this board.

We were totally unprotected in that circumstance. We had to rely on the good faith of people who did not see the need to desegregate their institution until we filed suit.

Now, this unfortunately occurred at the time of the St. Augustine demonstrations, with three to four hundred people being arrested every week. There was absolutely no time or energy to spend on that kind of appeal, so we could not take the appeal. But Judge Carswell was wrong.

I do not want to belabor this with the committee; I know you have heard many witnesses today, and a great deal of rhetoric.

Senator TYDINGS. Professor, you take the time. We want to hear everything you have to say.

Mr. CLARK. In closing, let me say this. That the National Conference of Black Lawyers urges this committee to weigh carefully, the analysis we have made of Judge Carswell's suitability for the United States Supreme Court and weigh it along with those others that will be and have been made on his professional and other qualifications.

The constitutional requirement of confirmation by the Senate must mean more than a perfunctory ratification of the President's choice. The Supreme Court plays a unique role in the shaping and growth of our institutions. It describes the contours of freedom and sets the course of national direction. It is the court from which there is no appeal—the last resort of the man who accepts and believes in our system of law.

Whatever may have been Judge Carswell's suitability to serve on a lower Federal court, completely different considerations must come into play when the question is one of a seat on the highest court in the land. We are not in the realm of a simple "liberalism" versus "conservatism" debate. We are in the altogether different dimension of questions concerning our national destiny. Black people do not want their destinies in the hands of G. Harrold Carswell; nor can the Nation as a whole—black and white—afford to have any part of its destiny there.

Black people have long been the victims of the law in this society. It was the law which created, protected and enhanced the institution of American chattel slavery. It was the law which provided the onerous slave codes to govern in oppressive detail the lives of millions of blacks before their emancipation, and which returned to perform the same function through the notorious Black codes after emancipation.

The Report of the National Advisory Commission on Civil Disorders, May 1, 1968, told the Nation that we live in a racist society. Black people—and in particular, black lawyers—have known this for some time. Thus far, the law has proved inadequate in attempts to remedy this condition, but some advance has been made.

If, relying on the legal system, we are to continue to give our people hope, then that system must give us cause for hope. If we are to continue growing into health as a Nation of free and diverse men, we cannot afford a retreat now from the struggle for racial justice. The ascendance of Judge Carswell to the Bench of the U.S. Supreme Court, as the first step in such a retreat, would dim the light of hope for change through legal means in the hearts of millions of Americans and diminish, worldwide, confidence in the American system of justice.

For all of the foregoing reasons, the National Conference of Black Lawyers respectfully, but vigorously, urges this august committee to disapprove the nomination of George Harrold Carswell to the U.S. Supreme Court.

Senator BURDICK. Thank you, Professor Clark.

Senator Kennedy?

Senator KENNEDY. Professor, while I missed the earlier part of your testimony, I did come in at the time that you were describing your own personal experience in trying cases before Judge Carswell. You testified to that, I believe.

Mr. CLARK. Yes, I did.

Senator KENNEDY. And you have practiced quite extensively in the other Districts of Florida, as well?

Mr. CLARK. That is correct. Perhaps I should describe that in some detail. I was on the staff of the NAACP Legal Defense Fund. The senior lawyers had areas, geographical areas, which they were to supervise, and Florida was one of the States that was under my supervision. Now that meant that I knew every single lawyer in the State of Florida who practiced civil rights law, white and black, and indeed I know what their evaluation of Carswell was. In a sense I tried to manage the flow, you know, the ebb and flow of litigation, what was to be filed, what appeals would be taken, trying to deploy lawyers in areas where there were few lawyers who would handle civil rights matters, so that in that capacity I not only got to know the civil rights lawyers but I had to appear in practically every district court in the State of Florida.

Senator KENNEDY. How many times did you appear before Judge Carswell?

Mr. CLARK. I would say at least nine or 10 times.

Senator KENNEDY. And as far as the other districts in Florida, this was an area of prime responsibility for you. Did you appear in the middle district nine or 10 times?

Mr. CLARK. Yes, that is true.

Senator KENNEDY. And in other districts as well in the State of Florida about a similar number of times, or did the nature of your practice bring you more often in front of Judge Carswell?

Mr. CLARK. I would say my practice or appearances in Jacksonville, Fla., and Tallahassee were roughly equal. I appeared before Judge Brian Simpson when he was on the Federal district bench at that time, and before Judge McRae in Jacksonville. To some extent in Tampa, Fla., to a lesser extent in a place like Miami. They had fewer segregation problems in that area of the State.

Senator KENNEDY. And your comment regarding the judge's attitude on civil rights questions is really based upon your own extensive personal experience in terms of appearances before the judge, as well as preparing your appearances before the judges, and his attitudes on these questions, and your appearances before other Federal judges and their attitudes as well?

Mr. CLARK. That is correct.

Senator KENNEDY. And based upon that experience over how many years?

Mr. CLARK. From 1962 through 1968, roughly 6 years.

Senator KENNEDY. And it is based upon that personal experience, plus your own rather unique background, that you express the serious reservations for yourself and the group which you represent in terms of the attitude of the nominee toward civil rights cases and attorneys?

Mr. CLARK. That is correct. I have said this before to the press, and I will repeat it for the benefit of this committee.

Judge Carswell was the most hostile Federal District Court judge I have ever appeared before with respect to civil rights matters.

Senator KENNEDY. That is a very serious charge, and I hope you would be prepared to justify that claim and that charge.

Mr. CLARK. Well, let me say I have gone through in my testimony many of the cases, and I am sure there will be other persons who will appear before you who privy to Mary Kurzan's doctoral thesis. I, by the way, was probably the first to receive the thesis. Mary Kurzan was a friend of my wife when she was at the Yale Law School, and so I saw the document, but I had had by that time extensive experience with Carswell.

Let me talk a bit about his demeanor with respect to lawyers. And I say that with this caveat: I believe that the documentation as to his judicial performance is much more important than his demeanor with respect to myself and other civil rights attorneys.

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. But I mention those as asides, really, and I don't think them important because I am sophisticated enough, and other lawyers, black lawyers who appeared before him, were sophisticated enough to sustain that kind of personal insult.

What I am concerned about is whether it indicates that Judge Carswell is not only a political segregationist but is a personal segregationist, because that will have a great deal to do with whether or not this man can change when he is in a different environment.

Is Carswell, a man who really, personally, does not like black people? That is the question which you will have to answer, it seems to me.

With respect to what happened to us, to

some extent we expect that kind of thing. And I don't think it is as important as his record, but I put it before you for whatever it is worth.

Senator KENNEDY. How many Federal district judges have you appeared before or practiced before?

Mr. CLARK. I would say I have appeared before, maybe, 10, 11, 12 district court judges, ranging from Florida to Alabama and Mississippi. I have appeared before Judge Clayton when he was in Senator Eastland's State. I have appeared before Judge Algood in Birmingham, Ala.; Frank Johnson in Alabama; so that I have had a fair contact with men functioning at that level of the district.

Senator KENNEDY. No further questions.

Senator BURDICK. Senator Hruska?

Senator HRUSKA. No questions.

Senator TYDINGS. In response to Senator Kennedy's question, you said you had appeared before other judges in the South such as Frank Johnson of Alabama. Have you ever been insulted or treated rudely in any other Federal District Court?

Mr. CLARK. No.

Senator TYDINGS. Senator Kennedy was interrogating you about your overall supervision of the lawyers involved in voting rights and other civil rights litigation. You said because of your work and supervision, that you knew personally and were in contact with lawyers, black and white, who handled civil rights litigation in Florida. Is that true?

Mr. CLARK. That is correct.

Senator TYDINGS. What was their evaluation of Judge Carswell insofar as his ability to be fair and unbiased toward black and white lawyers representing civil rights petitioners?

Mr. CLARK. I have not polled them since this nomination became a possibility, but I can tell you on the basis of general conversation with them that it was the view of the lawyers in the State that Carswell was the most difficult judge you could appear before, and indeed 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.

Senator TYDINGS. You mentioned a treatise by a woman named Kurzan. Would you describe for the committee that treatise to which you referred?

Mr. CLARK. Yes, Mary Kurzan is the young woman who is married to Mike Kurzan, an attorney here in Washington, D.C., and she did her doctoral thesis at Yale University on a performance of Federal District Court judges from 1953 through 1963, so that essentially her document is a supplement to the testimony I have given here.

I have talked only about cases occurring after 1963. And indeed I was not involved in the cases that she used for her thesis. She used a number of indices of essentially whether or not a decision was pro-civil rights or anti-civil rights, and she used the more crucial index, that is the number of times the man had been reversed on appeal, and her study included 31 district court judges throughout the South, and their performance in the civil rights area.

Using these two indices of a pro- or anti-civil rights decision and the number of reversals, she found that Judge Carswell was 23d on a spectrum of 31 judges, moving toward the segregationist spectrum. She also found that his reversal record was above 50 percent, and she had private anonymous evaluations from men at the court of appeals level that if a given Federal district court judge was reversed over 50 percent of the time in any given area of the law, they would consider that poor performance.

Senator TYDINGS. Did you ever discuss with Mrs. Kurzan her evaluation of Judge Carswell?

Mr. CLARK. No, I did not. She was working solely from documents, recorded cases in the Federal supplements or through the Race Relations Law Reporter, so I would imagine that her evaluation really would arise out of her report.

It is a fairly long document, I would say some 35 or 40 pages, in which, by the way, I think one of her conclusions was that many of the Republican judges in the South were the best men in the civil rights area, so that on the basis of her documents, and certainly my experience in the South, those men who were Republicans were quite often the most liberal on the civil rights issue, and it would seem to me that even if the President had to choose a Republican and had to choose a southerner, that he had a spectrum of judges who functioned with integrity around that issue, which is very crucial.

Senator TYDINGS. Professor Clark, you are quoted in Time magazine of February 2, 1970, at page 9, and I just want to ask you if this quote is correct that, "He," referring to Carswell, "was probably the most hostile judge I have ever appeared before. He was insulting to black lawyers, and he rarely would let me finish a sentence."

Is that quote correct?

Mr. CLARK. Surprisingly, yes.

Senator TYDINGS. Mr. Chairman, I ask unanimous consent that Professor Clark's entire statement be incorporated in the record at this point.

Senator BURDICK. Without objection, it is so ordered.

STATEMENT OF THE NATIONAL CONFERENCE OF BLACK LAWYERS BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE

I represent the National Conference of Black Lawyers. Our organization was founded in Capahosic, Virginia in December, 1968 to challenge the racism in our legal system, to articulate the needs of the black community and to provide the legal expertise necessary in the black American's struggle for equality. We number in our ranks attorneys representing the entire spectrum of both the private and public sectors, as well as elected governmental officials from the local, state and national levels.

On behalf of the National Conference of Black Lawyers, I come before you today to speak in opposition to the confirmation of Judge G. Harrold Carswell. In the view of our organization, Judge Carswell is fit neither professionally nor personally to sit as an Associate Justice of the United States Supreme Court. The acquisition of equal rights of citizenship for black people in this country has been a long and difficult task and in numerous instances almost totally dependent upon rulings by the federal courts. As a federal district judge prior to his recent elevation to the Court of Appeals, Judge Carswell was in a position to fulfill some of the American promise of equal rights under law. However, in disregard of the civil rights pronouncements of the Supreme Court, Judge Carswell frequently announced pro-segregationist rulings which were then reversed by the Court of Appeals. Moreover, repeatedly through the use of procedural devices and the exercise of his broad judicial discretion, Judge Carswell caused unconscionable delay in civil rights cases, and limited their holdings to the narrowest possible scope.

In *Augustus* v. *Board of Public Instruction of Escambia County, Fla.*, 306 F2d862 [1962] the Court of Appeals unanimously rejected the school desegregation plan approved by Judge Carswell and required the school board to take further action toward desegregating the public schools. In that case, the Court of Appeals also unanimously reversed Judge Carswell's procedural ruling which had eliminated the claims of racial discrimination in the assignment of teachers and other school personnel.

Whether as a question of law or one of fact, we do not think that a matter of such importance should be decided on a motion to strike, 306 F2d at 868.

In *Due* v. *Tallahassee Theaters Inc.*, an action against theater managers, city officials and the county sheriff alleging a conspiracy to enforce segregation, Judge Carswell dismissed the complaint against some of the defendants and granted summary judgment as to another. The Court of Appeals unanimously reversed and stated:

The orders of the trial court dismissing the complaint for failure to state a claim on which relief could be granted can be quickly disposed of. These orders were clearly in error. 333 F.2d 630 [1964] at 631.

In *Singleton* v. *Board of Commissioners of State Institutions*, an action to desegregate Florida reform schools, Judge Carswell again dismissed the complaint and again the Court of Appeals reversed unanimously. 356 F2d771 [1966].

The school desegregation case, *Steele* v. *Board of Public Instruction of Leon County*, graphically illustrates Judge Carswell's practice of delaying civil rights litigation for extraordinary periods of time, giving defendants additional time under a segregated system.

In this case black plaintiffs filed a motion for further relief on May 7, 1964. May 26, 1964 the court sustained defendants school boards objections to interrogatories inquiring into teacher segregation. No further hearings were ordered before school opened and September 28, 1964 plaintiffs filed a motion for a hearing. January 20, 1965 the court found defendants to be in compliance with the outstanding order entered in 1963. February 15, 1965, plaintiffs filed a motion for hearing requesting an opportunity to present evidence on the motion for further relief noting that the January 20, 1965 order made no mention of the additional relief requested in the motion for further relief filed the previous May. April 5, 1965, plaintiff renewed the motion for further relief and asked for clarification as to whether the court intended to deny the motion for further relief by its order of January 20th. April 7, 1965, the court granted the motion for clarification declaring that the motion for further relief was denied, as it sought to change the basic structure of the desegregation plan.

A hearing was set for April 20th to determine if there was any necessity for an evidentiary hearing to reexamine the ruling on the motion for further relief. April 20th, the court reaffirmed its denial of the motion for further relief stating that no evidence could persuade the court to reorganize the desegregation plan and evidence to that end "would just be an idle gesture regardless of the nature of the testimony." Plaintiffs appealed to the Court of Appeals which remanded the case on January 18, 1967 for consideration in the light of its decision in *United States* v. *Jefferson County Board of Education*, 372 F2d 836. This was tantamount to a reversal. It was not until May 1, 1967 that Judge Carswell finally entered a Jefferson decree, requiring the school board to follow the standard as enunciated by the Supreme Court. At the time of filing the motion for further relief, in early 1964, there were already at that time, several Fifth Circuit and Supreme Court decisions entitling plaintiffs to the relief sought.

Nor has Judge Carswell's failure to follow the dictates of the Supreme Court in civil rights cases been limited to the distant past. In 1968, the Supreme Court ruled unanimously that school desegregation plans must offer a realistic promise of immediately integrating the schools in order to comply with the school boards duty to eliminate the racially segregated school systems created under segregation laws and practices. The Court particularly criticized the freedom of choice method of school desegregation then in widespread use throughout the South.

Green vs. *County School Board of New Kent County, Va.*, 391 U.S. 430 (1968). Black plaintiffs filed motions for relief consistent with *Green* in the three school cases pending before Judge Carswell. Despite the *Green* decision, Judge Carswell entered orders allowing the continued use of freedom of choice in all three cases. The Court of Appeals unanimously reversed all three of Judge Carswell's rulings. *Wright* vs. *Board of Public Instruction of Alachua County, Fla.*; and *Youngblood* vs. *Board of Public Instruction of Bay County, Fla.*, (both decided *en banc sub nom Singleton* vs. *Jackson Municipal Separate School System* 5th Cir. No. 25285 Dec. 1, 1969). *Steele* vs. *Board of Public Instruction of Leon County, Fla.*, No. 28143 5th Cir decided Dec. 12, 1969.

In his entire record as a district court judge, Judge Carswell was affirmed in only one of the seven appeals taken from his rulings on civil rights cases—his denial of relief to a Negro teacher seeking the opportunity to teach in an integrated school. *Knowles* vs. *Board of Public Instruction of Leon County, Fla.*, 405 F. 2d 1206 (1969). We submit that this record evidences a strong judicial bias against blacks asserting civil rights claims which should not be rewarded with confirmation as an Associate Justice of the Supreme Court.

In recent times, we have become increasingly aware of the importance of scrutinizing a judge's conduct off the bench as well as his judicial craftsmanship. In this regard, Judge Carswell must be found severely deficient.

In 1948, Mr. Carswell, while seeking public office, appealed for public support on the basis of some of the most blatantly racist assertions imaginable. His speech contained the following remarks:

I am a Southerner by ancestry, birth, training, inclination, belief and practice. And 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.

If my own brother were to advocate such a program [of integration], I would be compelled to take issue with him and to oppose him to the limit of my ability.

I yield to no man, as a fellow citizen, in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed. (Taken from New York Times, January 22, 1970, p. 15)

More recently in 1956, while serving as United States Attorney, Judge Carswell participated as an incorporator, in the conversion of a municipally controlled golf club to a privately controlled country club which excludes blacks from membership or guest privileges.

A person with the types of segregationists personal involvements and demonstrated judicial hostility to blacks is simply not suited to sit on the nation's highest court. Surely in 1970 a non-white litigant should not be forced to plead his case before a Supreme Court which includes a jurist who has made and acted upon such blatant racial assertions.

The National Conference of Black Lawyers urges this Committee to weigh carefully the analysis we have made of Judge Carswell's suitability for the United States Supreme Court and weigh it along with those others that will be and have been made on his professional and other qualifications. The constitutional requirement of confirmation by the Senate must mean more than a perfunctory ratification of the President's choice. The Supreme Court plays a unique role in the shaping and growth of our institutions. It describes the contours of freedom and sets the course of national direction. It is the court from which there is no appeal—the last resort of the man who accepts and believes in our system of law. Its impact and influence transcends administrations to determine and characterize whole eras of our history as a people. Whatever may have been Judge Carswell's suitability to serve on a lower federal court, completely different considerations must come into play when the question is one of a seat on the highest court in the land. We are not in the realm of a simple "liberalism" versus "conservatism" debate. We are in the all together different dimension of questions concerning our national destiny. Black people do not want their destinies in the hands of G. Harrold Carswell; nor can the nation as a whole—black and white—afford to have any part of its destiny there.

Black people have long been the victims of the law in this society. It was the law which created, protected and enhanced the institution of American chattel slavery. It was the law which provided the onerous slave codes to govern in oppressive detail the lives of millions of blacks before their emancipation, and which returned to perform the same function through the notorious Black Codes after emancipation. It was with the law that the racist architects of segregation built a Jim Crow society which is still intact a decade and a half after *Brown* vs. *Board of Education* and more than a century after the Emancipation Proclamation.

The Report of the National Advisory Commission on Civil Disorders (May 1, 1968) told the nation that we live in a racist society. Black people—and in particular, black lawyers—have known this for some time. Thus far the law has proved inadequate in attempts to remedy this condition, but some advance has been made. If, relying on the legal system, we are to continue to give our people hope, then that system must give us *cause* for hope. If we are to continue growing into health as a nation of free and diverse men, we cannot afford a retreat now from the struggle for racial justice. The ascendance of Judge Carswell to the bench of the United States Supreme Court, as the first step in such a retreat, would dim the light of hope for change through legal means in the hearts of millions of Americans and diminish, worldwide, confidence in the American system of justice.

For all of the foregoing reasons, the National Conference of Black Lawyers respectfully, but vigorously, urges this august Committee to disapprove the nomination of George Harrold Carswell to the United States Supreme Court.

CONTINUATION OF TESTIMONY

Senator KENNEDY. Thank you very much.

Mr. CLARK. Thank you.

Senator BURDICK. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. No question.

Senator BURDICK. Senator Cook?

Senator COOK. No questions. Thank you for appearing.

Senator BURDICK. Senator Mathias?

Senator MATHIAS. I would like to thank Dr. Clark for his conclusive testimony. It is very impressive.

Senator BURDICK. I believe that I have just a few questions.

Mr. CLARK. Certainly.

Senator BURDICK. You referred to some situations where you deemed Judge Carswell had decided wrongly but that for various reasons there was no appeal taken, so that we had no judicial determination whether he was right or wrong?

Mr. CLARK. That is correct, and indeed perhaps I shouldn't have referred to that.

Senator BURDICK. What appeals did you take during your experience down there in Florida? Can you name the cases?

Mr. CLARK. Yes.

Senator BURDICK. Do you have them in the record?

Mr. CLARK. I don't remember them all, but *Singleton* v. *The Board of Commissioners of State Institutions, Steele* v. *Board of Public Instruction of Leon County*. I am not sure but the Steele case might have gone up twice. And I was involved in the *Augustus* case, but I was not included on the brief at that time. I did research, but I had not been admitted to the bar.

Senator BURDICK. These two you handled, though?

Mr. CLARK. Yes, in *Singleton* and *Steele*, I was the prime lawyer.

Senator BURDICK. How far did those cases go?

Mr. CLARK. *Singleton* went to the court of appeals, and *Steele* went to the court of appeals.

Senator BURDICK. And what was the result?

Mr. CLARK. In *Singleton*, Judge Carswell was reversed. In *Steele*, so much time had gone by that the court had gone beyond even what I was requesting in my early relief in 1964, and they remanded the case and ordered the judge to revise the order in the light of the *Jefferson* case, which occurred at 372 F. 2d 836, but during the entire course of the proceedings from 1964 until May of 1967 there was absolutely no move made with respect to the court order in that case.

Senator BURDICK. The *Singleton* case was reversed?

Mr. CLARK. That is right.

Senator BURDICK. Are there any other cases?

Mr. CLARK. As I say, I worked on *Augustus* and that was reversed.

Senator BURDICK. And this is in your full statement, is it?

Mr. CLARK. That is right.

Senator BURDICK. Are there further questions?

Senator MATHIAS. Mr. Chairman, just one further thing, following up the question that you raised.

Senator BURDICK. Proceed.

Senator MATHIAS. You say there were a number of motions that, for lack of money, time, or people, you had to let go by the board. Can you estimate the number?

Mr. CLARK. It would be a loose statement, but I would say that, given the fact that I handled about nine or 10 cases in his court, and we were constantly trying to get revisions of the segregation plans, it must have occurred maybe 10 or 12 times, something like that, in which I took no appeal, so perhaps it is not appropriate to comment, but I felt that the judge had ruled against us on subsidiary issues of law, and it was clear that we had a right to get the relief which was requested.

In many instances, it was questions about the scope of discovery, how much could we inquire into the extent of teacher segregation, and the judge would cut off or limit the scope of the inquiry, things like that.

Senator MATHIAS. Were these matters which you felt were substantial?

Mr. CLARK. No.

Senator MATHIAS. Or would they have had an ultimate impact on the outcome of the litigation?

Mr. CLARK. They had an impact of slowing down litigation, but we had to make judgments in terms of priorities, so that if we felt that there was a major impediment to be created by a decision, then we took an appeal.

For instance, if a complaint were dismissed, which meant we would get no relief whatsoever, then in those instances we would take an appeal, but if it simply meant you would lose 6 months, or even sometimes a year, then we sometimes did not take an appeal.

Senator MATHIAS. Your feeling is that, taken as a body, that this amounted to a dilatory tactic?

Mr. CLARK. That was my impression, that that was the effect of it.

Senator MATHIAS. If you had been counsel for a large corporation with a big legal staff and plenty of money, would you have advised appeal?

Mr. CLARK. Then my testimony might here have gone on all day.

Senator BURDICK. Any other questions?

(No response.)

Senator BURDICK. Thank you.

The next witness will be Mr. Thomas Harris. I presume you have to be sworn, Mr. Harris.

Do you swear on this matter before the committee that you will tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CHURCH. Does the Senator have reference to page 227?

Mr. TYDINGS. Yes.

In response to a question from the Senator from Massachusetts with respect to a public statement Mr. Clark had made, Mr. Clark responded in the following manner:

Mr. CLARK. That is correct. I have said this before to the press, and I will repeat it for the benefit of this committee.

Judge Carswell was the most hostile Federal District Court judge I have ever appeared before with respect to civil rights matters.

Senator Kennedy said:

That is a very serious charge.

Which indeed it was, particularly in view of the fact that Mr. Clark tried cases before judges throughout the South, not just in the State of Florida.

Mr. CLARK. Well, let me say I have gone through in my testimony many of the cases, and I am sure there will be other persons who will appear before you who are privy to Mary Kurzan's doctoral thesis.

He is referring now to a thesis prepared by a Yale law student which shows Mr. Carswell very, very low on a proficiency rating. Back to Mr. Clark's testimony.

Let me talk a bit about his demeanor with respect to lawyers. And I say that with this caveat: I believe that the documentation as to his judicial performance is much more important than his demeanor with respect to myself and other civil rights attorneys.

I do not necessarily agree with Mr. Clark on that point, but let us concede that point.

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.

As a lawyer who has tried many cases, in my judgment, there is no more despicable conduct a judge can engage in than showing outright preference to one lawyer over another lawyer in the trial of a case. This undermines the fundamental constitutional system of judicial fairness under our system of law.

Let me go on:

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. But I mentioned those as asides, really, and I don't think them important, because I am sophisticated enough, and other lawyers, black lawyers who appeared before him, were sophisticated enough to sustain that kind of personal insult.

What I am concerned about is whether it indicates that Judge Carswell is not only a political segregationist but is a personal segregationist, because that will have a great deal to do with whether or not this man can change when he is in a different environment.

Is Carswell a man who really, personally, does not like black people? That is the question which you will have to answer, it seems to me.

With respect to what happened to us, to some extent we expect that kind of thing. And I don't think it is as important as his record, but I put it before you for whatever it is worth.

I would have to ask the Senator from Idaho whether or not the Senator agrees with me, and perhaps disagrees with Mr. Clark, that the manner in which a judge treats litigants, particularly poor and unpopular litigants in his court, is a fundamental sign of his basic judicial temperament and his ability to be a judge.

Mr. CHURCH. Of course it is. His demeanor is a mirror of his own deeply held personal feelings. If he is unable, while sitting on the court, to restrain himself, it is a serious reflection on his capacity as a judge.

Mr. TYDINGS. Let me just direct the Senator's attention to one other paragraph in the testimony of Mr. Clark. He responded to a question I directed to him.

Mr. CHURCH. On what page?

Mr. TYDINGS. Page 228. This is directed to Mr. Clark:

Senator TYDINGS. Senator Kennedy was interrogating you about your overall supervision of the lawyers involved in voting rights and other civil rights litigation. You said because of your work and supervision, that you knew personally and were in contact with lawyers, black and white, who handled civil rights litigation in Florida. Is that true?

Mr. CLARK. That is correct.

Senator TYDINGS. What was their evaluation of Judge Carswell insofar as his ability to be fair and unbiased toward black and white lawyers representing civil rights petitioners?

Mr. CLARK. I have not polled them since this nomination became a possibility, but I can tell you on the basis of general conversation with them that it was the view of the lawyers in that State that Carswell was the most difficult judge you could appear before, and indeed 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.)

Would the Senator agree that the ability to give a fair trial and not to prejudge because of your personal biases or prejudices is as important as whether or not you have owned a security or have failed to mention a security which you owned in a company that was involved in litigation or matter before your court?

Mr. CHURCH. I think that the attribute to which the Senator refers is really indispensable in a man who would be a competent judge.

Let me say that implicit in the Senator's question is the assumption many Members of the Senate have come to make, which is that when it comes to passing upon a Presidential nominee, it is somehow bad form to vote against him unless there is some evidence of illegal or unethical conduct on the part of the nominee that has cropped up in the course of the hearing. If we are going to exercise our confirmation power only in those rare, unusual cases where that kind of evidence is uncovered, then we have narrowed it almost to the point where it becomes meaningless.

I can understand why Presidents want us to view our powers in this restricted way, because it naturally tends to reduce the importance of the Senate in our political life. But I find it hard to understand how readily Senators acquiesce in this demeaning definition of the senatorial role. Yet, this has happened to us—even though our history shows that it was not so intended by the Founding Fathers, and that it was not so practiced by the Senate in the last century; and I would hope——

Mr. TYDINGS. It will not be.

Mr. CHURCH. That as a result of this debate, and as a result of the earlier deliberation of the Senate on the nomination of Judge Haynsworth, that finally we are awakening again to our constitutional duty.

I think that the questions which the distinguished Senator from Maryland has raised have been penetrating questions and have been very helpful in making the record against the confirmation of the nomination of Judge Carswell.

Mr. TYDINGS. I think that the distinguished Senator from Idaho has made a great contribution. I think it is important that the people of the United States know that the man whose name has been sent to the Senate for confirmation as an Associate Justice of the Supreme Court of the United States is, as Dean Pollak described him, a man of the most slender credentials. I think it is important that they know his entire record. I think that before this debate is over they will know that entire record. I think that when the time comes, the Senate will vote against the nomination and discharge its responsibilities to the American people and will not be a rubber-stamp of the President of the United States.

Mr. CHURCH. I thank the Senator very much.

Mr. HARRIS. Mr. President, will the Senator from Idaho yield?

Mr. CHURCH. I yield.

Mr. HARRIS. I join the distinguished Senator from Maryland and others in commending the distinguished Senator from Idaho for an excellent and helpful address with regard to the confirmation of Judge Carswell.

Particularly do I commend the Senator for his commentary upon the constitutional responsibilities of the Senate, especially in regard to confirmation of appointments by the President. I think the distinguished Senator from Idaho has pointed out usefully and well the extra importance of appointment to the Supreme Court as distinguished from other appointments of the President.

In recent days, I have heard a report which I thought I might ask the Senator from Idaho to comment upon; namely, an article in the Philadelphia Enquirer recently which reported that President Nixon was supposed to have said that if the Senate should reject the nomination of Judge Carswell, he might thereafter appoint another person who would be even less to the liking of those of us who oppose this nomination.

I have also heard from sincerely concerned Members of the Senate from time to time the question: What, if we were to turn down this nomination, and get one that we like even less.

What would be the response of the Senator in that regard?

Mr. CHURCH. I have seen this commentary in the press. I think it needs to be rebutted. I cannot think of a less persuasive argument than that we should confirm the present nominee because, if we do not, then the next one may be worse.

The answer to that specious argument is simple enough: If the President keeps sending us nominees who rate lower and lower on the scale of qualifications that should properly apply to the Supreme Court, then the Senate should continue to reject them, and should go on rejecting them until the President sends us a man who qualifies to serve on the Supreme Court of the United States.

That is what our power is for. That is why it is in the Constitution. We are duty bound as Senators to discharge that power in a responsible way.

If the Senate were to reject this nomination, I have no doubt the President would get the message, and the next nomination he would make would be one that meets the high standards that should apply to so important a post.

The Senate had no difficulty confirming the new Chief Justice of the United States. He was nominated by President Nixon. We found him fully to qualify and we confirmed the appointment.

There is nothing of a partisan character in our opposition to Judge Carswell, but clearly this man lacks those elements of distinction in his own career as a judge on the Federal bench that should be necessary to qualify him for service on the Supreme Court of the United States.

Thus the answer is, Keep rejecting nominations which are deficient until the President sends up here the name of a man who meets the criteria that properly should apply to the Supreme Court of the United States.

If we reject Judge Carswell, I do not think that we will get a worse nomination. I think that we will get a much better one. The next nomination, in all likelihood, will be one that we can readily confirm.

Mr. HARRIS. I certainly agree with the response of the distinguished Senator from Idaho. I think that his comments should set at rest what has been a spurious argument used by some and the concern expressed by others. I agree with the distinguished Senator from Idaho. I think that we must presume, if the Senate makes its position clear, that that message will be received clearly by the President of the United States. I also think that fear of a repeated error by the President is not the proper basis upon which the Senate should exercise its constitutional responsibilities. I think, instead, that we should presume that the error will not be persisted in, if it is so labeled by the Senate in the pursuance of its duties.

Again I commend the Senator for an excellent address. I hope that it will be heard throughout the country as well as in the Senate.

Mr. CHURCH. I thank the Senator very much for his comments.

(At this point Mr. GRAVEL took the chair as Presiding Officer.)

Mr. PELL. Mr. President, will the Senator from Idaho yield?

Mr. CHURCH. I yield.

Mr. PELL. Mr. President, I had the good fortune to be sitting in the chair as the Senator from Idaho was advancing his ideas. There is great merit in his thought that when it comes to confirmation, there is one set of rules which should apply for the executive branch, which is under the President, but it is not the same thing when we are dealing with confirmation to office in the third branch of Government, the judiciary, which is not under the direction of the President. But, I must add here, we have already confirmed Judge Carswell twice for the courts.

How would the Senator from Idaho equate those confirmations with the present, strong views held against him? Should not those views have come to light before? Should not they have surfaced earlier?

Mr. CHURCH. There is no question that they should and would have surfaced earlier if the Senate had the time to make a searching inquiry into every appointment made by the President to the district and appellate courts. Then, I am sure, those objections to Judge Carswell would have surfaced earlier.

But, as the Senator knows, we are so burdened with our workload here that we cannot possibly spread ourselves over the entire appointive field. I think that this is unfortunate but, nonetheless, we must recognize that it is true. As the Constitution prescribes our confirmation role, it covers a vast array of appointive offices. Every time a second lieutenant in Armed Forces of the United States is promoted to a first lieutenant, the confirmation of the Senate is required. We have long lists of appointments that come in here as thick as these hearings on Judge Carswell, and we are asked to confirm them. Naturally, the Government has grown so large, and the Nation so big, that we cannot give the scrutiny we might like to each appointment. But when it comes to the Supreme Court, our duty is plain, because here we are dealing with Justices of great importance on the court of last resort, whose decisions will have a lasting and indelible effect upon the country. As to them, we cannot discharge our duty in a perfunctory way. It is incumbent upon us to make a searching examination of each nominee.

As the Senator has pointed out, twice we failed to do this in the case of Judge Carswell, but in the earlier cases he was not being urged upon us as an Associate Justice of the Supreme Court. That makes a big difference.

Mr. PELL. I thank the Senator. I think his argument is compelling. I had not properly considered it until it was being advanced at this time, that there is this peculiar situation applying to that small number of people who are appointed to the third branch of the Government.

In connection with the Senator's statement that he thought if Judge Carswell is rejected, we might hope for a nominee of a higher caliber. I gather that the Senator discounts the press reports that the administration was giving thought to sending General LeMay to law school. [Laughter.]

Mr. HOLLAND. Mr. President, will the Senator from Idaho yield?

Mr. CHURCH. I yield.

Mr. HOLLAND. Of course, it is true that Senators do not have time to give complete consideration to judges nominated to the lower courts. It happens, however, that Judge Carswell is from my State.

I gave very careful consideration to his nomination both at the time he was appointed to the district court and at the time he was appointed to the circuit court of appeals. In neither case was he my nominee, because he was appointed both times under a Republican administration. On both occasions there were good judges, whom I nominated, who came from the other side of the political scene and who were just as competent.

I did, however, give careful consideration to Judge Carswell. And I would not want the record to be in such a state as to indicate that the two Senators from Florida, simply because a judge came from their State, would be willing to confirm just anyone.

That is not the case. The Senator from Florida was offered a district judgeship himself many years ago, and he turned it down. And he was offered a circuit court judgeship, and he turned it down.

I know something of what is required of judges. And I know that Judge Carswell has a fine record. He was named by all of the judges of the fifth circuit to represent them on the Judicial Conference, which is a matter of great honor and would not have happened unless they regarded him highly.

I had occasion to testify in Judge Carswell's court a number of years ago in the largest case ever tried there. The case was very hotly contested, with some 20 or 30 lawyers involved, some of them lawyers from outside of Florida, one of them a former Attorney General. I sat there all day and answered questions, and many times there were objections to those questions.

I felt and feel now that Judge Carswell handled himself in a careful and fair manner. That was the case of Crummer against du Pont, and others. It involved, as I recall, a $39 million claim for damages and involved alleged gross violations of the antitrust laws of the United States.

After that case was tried and the jury rendered a verdict, the attorneys on the losing side—and there were many and they were capable—both from my State

and outside of my State, decided that the record was so clean that they would not appeal the case. That is unusual in a case of that size and of that degree of controversy.

I do not want the record to stand upon the mere statement that we simply gave a rubberstamp approval to Judge Carswell when he was named to the district court, not as my nominee, and when he was named to the circuit court of appeals, not as my nominee, because quite the contrary is true.

On both occasions, I had strong recommendations regarding him, aside from what I knew from my own observation. I had strong nominations from members of the Circuit Court of Florida and of the district court of appeals, which is next to the circuit court, and from circuit court judges as well as some officers of the bar association and numerous other outstanding lawyers.

I would not want the record to appear as some of these columnists and television speakers like to put it, that here is a man who is unqualified, who has not done good work, and who is not entitled to be considered as a candidate for a judgeship on a sound basis.

I thank the Senator for yielding.

Mr. CHURCH. Mr. President, I appreciate the comments of the Senator from Florida. I would be the last to suggest or even intimate that he would support the nomination of Judge Carswell simply because he comes from Florida.

If the Senator from Florida were persuaded that Judge Carswell were not fit to sit on the Supreme Court, the fact that he is a Floridian would have no effect upon him.

Mr. HOLLAND. Mr. President, I thank the Senator for that statement, which I hope is true, and I believe it to be true.

Mr. CHURCH. Mr. President, in conclusion, I ask unanimous consent that the article to which I referred, by Charles L. Black, Jr., Luce professor of law, Yale University Law School, entitled "A Note on Senatorial Consideration of Supreme Court Nominees," which will appear in the April issue of the Yale University Law Journal, be printed here in the RECORD.

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

A NOTE ON SENATORIAL CONSIDERATION OF SUPREME COURT NOMINEES

(By Charles L. Black, Jr.)

If a President should desire, and if chance should give him the opportunity, to change entirely the character of the Supreme Court, shaping it after his own political image, nothing would stand in his way except the United States Senate. Few constitutional questions are then of more moment than the question whether a Senator properly may, or even at some times in duty must, vote against a nominee to that Court, on the ground that the nominee holds views which, when transposed into judicial judgments, are likely, in the Senator's judgment, to be very bad for the country. It is the purpose of this piece to open discussion of this question; I shall make no pretense of exhausting that discussion, for my own researches have not proceeded for enough to enable me to make that pretense [1] I shall, however, open the discussion by taking, strongly, the position that a Senator, voting on a presidential nomination to the Court, not only may but generally ought to vote in the negative, if he firmly believes, on reasonable grounds, that the nominee's views on the large issues of the day will make it harmful to the country for him to sit and vote on the Court, and that, on the other hand, no Senator is obligated simply to follow the President's lead in this regard, or can rightly discharge his own duty by so doing.

I will open with two prefatory observations.

First, it has been a very long time since anybody who thought about the subject to any effect has been possessed by the illusion that a judge's judicial work is not influenced and formed by his whole lifeview, by his economic and political comprehensions, and by his sense, sharp or vague, or where justice lies in respect of the great questions of his time. The *loci classici* for this insight, now a platitude, are in such writers as Oliver Wendell Holmes, Jr., Felix Frankfurter, and Learned Hand. It would be hard to find a well-regarded modern thinker who asserted the contrary. The things which I contend are both proper and indispensable for a Senator's consideration, if he would fully discharge his duty, are things that have definitely to do with the performance of the judicial function. The factors I contend are for the Senator's weighing are factors that go into composing the quality of a judge. The contention that they may not properly be considered therefore amounts to the contention that some things which make a good or bad judge may be considered—unless the Senator is to consider nothing—while others may not.

Secondly, a certain paradox would be involved in a negative answer to the question I have put. For those considerations which I contend are proper for the Senator are considerations which certainly, notoriously, play (and always have played) a large, often a crucial, role in the President's choice of his nominee; the assertion, therefore, that they should play no part in the Senator's decision amounts to an assertion that the authority that must "advise and consent" to a nomination ought not to be guided by considerations which are hugely important in the making of the nomination. One has to ask, "Why?" I am not suggesting now that there can be no answer; I only say that an answer must be given. In the normal case, he who lies under the obligation of making up his mind whether to advise and consent to a step considers the same things that go into the decision whether to take that step. In the normal case, if he does not do this, he is derelict in his duty.

I have called this a constitutional question, and it is that (though it could never reach a court), for it is a question about the allocation of power and responsibility in government. It is natural, then, for American lawyers to look first at the applicable text, for what light it may cast. What expectation seems to be projected by the words, "The President . . . shall nominate, and by and with the Advice and Consent of the Senate shall appoint . . . Judges of the Supreme Court . . ."? [2] Do these words suggest a rubber-stamp function, confined to screening out proven malefactors? I submit that they do not. I submit that the word "advice," unless its meaning has radically changed since 1787, makes next to impossible that conclusion.

Procedurally, the stage of "advice" has been short-circuited.[3] Nobody could keep the President from doing that, for obvious practical reasons. But why should this procedural short-circuiting have any effect on the *substance* so strongly suggested by the word "advice"? He who merely *consents* might do so perfunctorily, though that is not a necessary but merely a possible gloss. He who *advises* gives or withholds his advice on the basis of *all* the relevant considerations bearing on decision. Am I wrong about this usage? Can you conceive of sound "advice" which is given by an advisor who has deliberately barred himself from considering some of the things that the person he is advising ought to consider, and does consider? If not, then can the Presidents, by their unreviewable short-circuiting of the "advice" stage, magically have caused to vanish the Senate's responsibility to consider what it must surely consider in "advising"? Or is it not more reasonable to say that, in deciding upon his vote at the single point now left him, every Senator ought to consider everything he would have considered if, procedurally, he were "advising"? Does not the word "advice" permanently and inescapably define the *scope* of Senatorial consideration?

It is characteristic of our legal culture both to insist upon the textual reference-point, and to be impatient when much is made of it, so I will leave what I have said about this to the reader's consideration, and pass on to ask whether there is anything else in the Constitution itself which compels or suggests a restriction of Senatorial consideration to a few rather than to all of the factors which go to making a good judge. I say there is not; I do not know what it would be. The President has to concur in legislation, unless his veto be overridden. The Senate has to concur in judicial nominations. That is the simple plan. Nothing anywhere suggests that some duty rests on the Senator to vote for a nomination he thinks unwise, any more than a duty rests on the President to sign bills he thinks unwise.

Is there something, then, in the whole structure of the situation, something unwritten, that makes it the duty of a Senator to vote for a man whose views on great questions the Senator believes to make him dangerous as a judge? I think there is not, and I believe I can best make my point by a contrast. The Senate has to confirm—advise and consent to—nominations to posts in the executive department, including cabinet posts. Here, I think, there is a clear structural reason for a Senator's letting the President have pretty much anybody he wants, and certainly for letting him have people of any political views that appeal to him. These are his people; they are to work with him. Wisdom and fairness would give him great latitude, if strict constitutional obligation would not.

Just the reverse, just exactly the reverse, is true of the judiciary. The judges are *not* the President's people. God forbid! They are not to work with him or for him. They are to be as independent of him as they are of the Senate, neither more nor less. Insofar as their policy-orientations are material—and, as I have said above, these can no longer be regarded as immaterial by anybody who wants to be taken seriously, and are certainly not regarded as immaterial by the President—it is just as important that the Senate think them not harmful as that the President think them not harmful. If this is not true, why is it not? I confess here I cannot so much as anticipate a rational argument to which to address a rebuttal.

I can, however, offer one further argument tending in the same direction. The Supreme Court is a body of great power. Once on the Court, a Justice wields that power without democratic check. This is as it should be. But is it not wise, before that power is put in his hands for life, that a nominee be screened by the democracy in the fullest manner possible, rather than in the narrowest manner possible, under the Constitution? He is appointed by the President (when the President is acting at his best) because the President believes his worldview will be good for the country, as reflected in his judicial performance. The Constitution certainly permits, if it does not compel, the taking of a second opinion on this crucial question, from

Footnotes at end of article.

a body just as responsible to the electorate, and just as close to the electorate, as is the President. Is it not wisdom to take that second opinion in all fullness of scope? If not, again, why not? If so, on the other hand, then the Senator's duty is to vote on his whole estimate of the nominee, for that is what constitutes the taking of the second opinion.

Textual considerations, then, and high-political considerations, seem to me strongly to thrust toward the conclusion that a Senator both may and ought to consider the life-view and philosophy of a nominee, before casting his vote. Is there anything definite in history tending in the contrary direction?

In the Constitutional Convention, there was much support for appointment of judges *by the Senate alone*—a mode which was approved on July 21, 1787,[4] and was carried through into the draft of the Committee of Detail.[5] The change to the present mode came on September 4th, in the report of the Committee of Eleven[6] and was agreed to *nem. con.* on September 7th.[7] This last vote must have meant that those who wanted appointment by the Senate alone—and in some cases by the whole Congress—were satisfied that a compromise had been reached, and did not think the legislative part in the process had been reduced to the minimum. The whole process, to me, suggests the very reverse of the idea that the Senate is to have a confined role.

I have not reread every word of *The Federalist* for this opening-gun piece, but I quote here what seem to be the most apposite passages, from Numbers 76 and 77:

"But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

"To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

"It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure."

If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The *power* which can *originate* the disposition of honors and emoluments, is more likely to attract than to be attracted by the *power* which can merely obstruct their course. *If my influencing the President be meant restraining him, this is precisely what must have been intended.* [emphasis supplied] And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that Magistrate. The right of nomination would produce all the good of that of appointment, and would in a great measure avoid as evils.[9]

I cannot see, in these passages, any hint that the Senators may not or ought not, in voting on a nominee, take into account anything that they, as serious and public-spirited men, think to bear on the wisdom of the appointment. It is predicted, as a mere *probability*, that Presidential nominations will not often be "overruled." But "special and strong reasons," thus generally characterized, are to suffice. Is a Senator's belief that a nominee holds skewed and purblind views on social justice not a "special and strong reason"? Is it not as "special and strong" as a Senator's belief that an appointment has been made "from a view to popularity"—a reason which by clear implication *is* to suffice as support for a negative vote? If there is anything in *The Federalist Papers* neutralizing this inference, I should be glad to see it.

When we turn to history, the record is, as always, confusing and multifarious. One can say with confidence, however, that a good many nominations have been rejected by the Senate for repugnancy of the nominee's views on great issues, or for mediocrity, or for other reasons no more involving moral turpitude than these. Jeremiah Sullivan Black, an eminent lawyer and judge, seems to have been rejected in 1861 because of his views on slavery and secession.[10] John J. Crittenden was refused confirmation in 1829 on strictly partisan grounds.[11] Wolcott was rejected partly on political grounds, and partly on grounds of competence, in 1811.[12] There is the celebrated Parker case of this century.[13] The perusal of Warren[14] will multiply instances.

I am very far from undertaking any defense of each of these actions severally. I am not writing about the wisdom, on the merits, of particular votes, but of the claim to historical authenticity of the supposed "tradition" of the Senators' refraining from taking into account a very wide range of factors, from which the nominees' views on great public questions cannot, excepted arbitrarily, be excluded. Such a "tradition," if it exists, exists somewhere else than in recorded history. Of course, all these instances may be dismissed as improprieties, but then one must go on and say why it *is* improper for the Senate, and each Senator, to ask himself, before he votes, *every* question which heavily bears on the issue whether the nominee's sitting on the Court will be good for the country.

I submit that this "tradition" is just a part of the twentieth-century mystique about the Presidency. That mystique, having led us into disastrous undeclared war, is surely due for reexamination. I do not suggest that it can be or should be totally rejected. I am writing here only about a little part of its consequences.

To me, there is just no reason at all for a Senator's not voting, in regard to confirmation of a Supreme Court nominee, on the basis of a full and unrestricted review, not embarrassed by any presumption, of the nominee's fitness for the office. In a world that knows that a man's social philosophy shapes his judicial behavior, that philosophy is a factor in his fitness. If it is a philosophy the Senator thinks will make a judge whose service on the Bench will hurt the country, then the Senator can do right only by treating this judgment of his, unencumbered by deference to the President's, as a satisfactory basis in itself for a negative vote. I have as yet seen nothing textual, nothing structural, nothing prudential, nothing historical, that tells against this view. Will someone please enlighten me?

FOOTNOTES

[1] I shall not provide this discussion with an elaborate footnote apparatus. I am sorry to say that I cannot acknowledge debt, for I am writing from my mind; experience teaches that, when one does this, one unconsciously draws on much reading consciously forgotten; for all such obligations unwittingly incurred I give thanks. I have had the benefit of discussion of many of the points made herein with students at the Yale Law School, of whom I specifically recollect Donald Paulding Irwin; I have also had the benefit of talking to him about the piece after it was written. A specific addendum in proof: Harris, "The Advice and Consent of the Senate" (1963) came to my attention and hands, after the present piece had gone to the printer. This excellent and full account of the whole function would doubtless have fleshed out my own thoughts, but I see nothing in the book that would make me alter the position taken here, and I hope a single-shot thesis like the present may be useful.

[2] U.S. Const. art. II. § 2. cl. 2.

[3] Even this short-circuiting is not complete. First, the President's "appointment," *after* the Senate's action, is still voluntary (Marbury v. Madison, 5 U.S. (1 Cranch) 137, 155 (1803)), so that in a sense the action of the Senate even under settled practice may be looked on as only "advisory" with respect to a step from which the President may still withdraw. Secondly, nominations are occasionally withdrawn after public indications of Senate sentiment (and probable action) which may be thought to amount to "advice."

[4] "2 Records of the Federal Convention of 1787" at 83 (M. Farrand ed. 1911).

[5] *Id.* at 132, 146, 155, 169. 183.

[6] *Id.* at 498.

[7] *Id.* at 539.

[8] "The Federalist No. 76," at 494–495 (Modern Library 1937) (Alexander Hamilton).

[9] *Id.* No. 77, at 498 (Alexander Hamilton).

[10] 2 C. Warren, "The Supreme Court in United States History" 364 (rev. ed. 1926).

[11] 1 *Id.* at 704.

[12] *Id.* at 413.

[13] L. Pfeffer, "This Honorable Court, a History of the United States Supreme Court" 288 (1965).

[14] C. Warren, "The Supreme Court in United States History" (rev. ed. 1926).

Mr. RIBICOFF. Mr. President, under our Constitution the Senate is assigned responsibility for confirming or rejecting the Supreme Court nominations of the President. This is one of our most important duties, for Justices of the Su-

preme Court occupy a unique position in the judicial system. They sit over more than 300 district judges and nearly 100 appellate judges. The cases which come before them involve more than technical questions of law. Inevitably they involve sensitive questions of constitutional law, economic and social policy. In deciding them a Justice cannot always rigidly apply past precedents. Life does not stand still, neither can the law. The legal rules which were adequate for an earlier day may be inappropriate today or tomorrow. The Supreme Court, at the pinnacle of the judicial system, often must lead the way.

Nearly 170 years ago Marbury against Madison established the position of the Supreme Court under our Constitution. Since that time, the Court has played a major role in developing the rules by which our society lives.

It would be very difficult to overestimate the importance of the Supreme Court in our system of government. It is the final authority on all questions of Federal law—antitrust, labor, and taxation—to name just a few. It is also the arbiter of relations between the States and the Federal Government, defining and adjusting their respective roles to keep them in tune with the times.

However, the heart of the Court's work is interpretation of the Constitution. This is a demanding task. As Judge Learned Hand aptly said:

> The words (a Justice) must construe are empty vessels into which he can pour nearly anything he will.

Accordingly, we must be sure that the men appointed to the Court meet the highest intellectual and moral standards. They must have more than knowledge. They must possess wisdom, which is knowledge tempered with judgment. They must demonstrate a sensitive understanding of the major issues confronting society. And they must show by sustained superior performance that they are worthy of elevation to a seat of great trust and responsibility.

In examining Judge Carswell's credentials, one should properly begin with the objective record he compiled on the bench. The Ripon Society has made a comprehensive study of his 11 years as a district judge. Using five relevant criteria—reversals on appeal, reversals in general, citation by other courts, elaboration of opinions and use of authority—the Ripon Society concluded that "they form a most impressive indictment of Judge Carswell's judicial competence."

Let me quote from the Ripon Society paper:

> 1. Reversals on Appeal: During the eleven years (1958–1969) in which Judge Carswell sat on the federal district court in Tallahassee, 58.8% of all of those cases where he wrote printed opinions (as reported by West) and which were appealed resulted ultimately in reversals by higher courts. By contrast in a random sample of 400 district court opinions the average rate of reversals among all federal district judges during the same time period was 20.2% of all printed opinions on appeal. In a random sample of 100 district court cases from the Fifth Circuit during the 1958–1969 time period the average rate of reversals was 24.0% of all printed opinions on appeal.
>
> 2. Reversals in General: Carswell's rate of reversals for all of his printed cases was 11.9% as compared to a rate of 5.3% for all federal district cases and 6% for all district cases within the Fifth Circuit during the same time period.
>
> The majority of cases 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 Carswell's overall reversal record for his printed cases is more than twice the average for federal district judges. When additional unprinted opinions are included, Carswell is found to have an overall reversal rate of 21.6%.
>
> 3. Citation by Others: Carswell's 84 printed opinions while he was serving as a district court judge were cited significantly less often by all other U.S. judges than is the average for the opinions of federal district judges. Carswell's first 42 opinions during his first five years on the federal judiciary (1958–1963) have been cited an average of 1.8 times per opinion. Two hundred opinions of other district judges randomly chosen from district court cases spanning this same time period have been cited an average of 3.75 times per opinion. The 42 most recent of Carswell's printed district court opinions have been cited an average of 0.77 times per opinion.
>
> Two hundred opinions of other district judges randomly chosen from cases spanning the same 1964–1969 time period have been cited an average of 1.57 times per opinion.
>
> 4. Elaboration of opinions: Carswell's printed district court opinions average 2.0 pages. The average length of printed opinions for all federal district judges during the time period in which Carswell sat on the district bench was 4.2 pages.
>
> 5. Use of authority: In the 84 abovementioned Carswell opinions the average number of citations of cases is 4.07 per opinion, and the average number of citations of secondary source material is 0.49 per opinion. The average for all district judges during the 1958–1968 time period was 9.93 case citations per opinion and 1.56 citations of secondary source material per opinion.

At the Senate hearing on Judge Carswell's nomination several noted authorities on constitutional law reviewed Judge Carswell's opinions and found that he lacks the necessary qualifications for appointment to the Court. Louis Pollak, dean of Yale Law School, said:

> I am forced to conclude that the nominee has not demonstrated the professional skills and the larger Constitutional wisdom which fits a lawyer for elevation to our highest Court.

Prof. William Van Alystyne, who had testified in favor of Judge Haynsworth's nomination, told the committee:

> There is, in candor, nothing in the quality of the nominee's work to warrant any expectation that he could serve with distinction on the Supreme Court.

Later, after considering the full printed hearings, Professor Van Alystyne wrote me a letter expanding his views. He said:

> A particular President can serve for no more than eight years, but one whom the Senate confirms to serve on the Supreme Court may influence the quality of American life for more than thirty years. The Constitution provides that the Senate shall advise the President on the appropriateness of such an appointment, rather than that it simply defer or acquiesce. In this instance, the need for advice rather than consent is surely compelling.
>
> No one appearing in behalf of Mr. Carswell was able to identify or commend any piece of work whatever during his eleven years on the federal bench as reflecting evidence of judicial stature. Nothing at all could be cited to contrast with Dean Pollak's observation 'that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century,' and that 'as my mind ran and my eye ran back through all of the men who have sat on the Court in this past 70 years, it did seem to me striking the paucity of this nominee's qualifications as compared with all of the others.' Nothing was offered in derogation of my own reluctant conclusion, in contrast to what I was able to say of Judge Haynsworth, that:
>
> "More disturbing in the cases generally, and by generally I mean not to restrict myself to the area of race relations at all, although intrinsically far more difficult to illustrate in the nature of the shortcoming, there is simply a lack of reasoning, care, or judicial sensitivity overall, in the nominee's opinions."
>
> The testimony by Mr. (Thomas E.) Harris, moreover, closely reviewed the comparison of this appointment which the President had sought to make with previous judicial figures including Holmes, Hughes, Brandeis, and Frankfurter, adequately underscoring the near ludicrousness of such comparisons. It was repeatedly observed as well that these are not partisan concerns—that there are a number of judges including many in the South of Republican affiliation whom the President might nominate and of whom no similar criticism would have been made.

Judge Carswell's proposed appointment has evoked criticism from lawyers throughout the country. A statement signed by 457 prominent lawyers concluded:

> He does not have the legal or mental qualifications essential for service on the Supreme Court.

Never in history has there been such an outpouring of disapproval of a nominee from the most notable and respected members of the bar.

I can find nothing in Judge Carswell's record to convince me that he is qualified for the Supreme Court.

One searches his entire career, as a lawyer, U.S. attorney, and Federal judge for a significant contribution to the law, but there is none. His record is barren of accomplishment.

He was not highly regarded as a lawyer or a scholar before his appointment to public office. He introduced no innovations in law enforcement when U.S. attorney. As a judge his record has been unimpressive. His opinions have not been notably enlightening or clear sighted, nor has he shown particular moral courage. Overall, Judge Carswell's performance can be rated no better than mediocre, hardly qualifying him for the Supreme Court.

Mr. President, so far, I have discussed only Judge Carswell's general qualifications for appointment to the Supreme Court. I want to turn now to his civil rights record.

Inscribed across the facade of the Supreme Court building are the words, "Equal Justice Under Law." In the past 16 years the Supreme Court has led the way in transforming them from cold stone into a living reality for millions of Negroes across the land. By any standard, race relations is a major issue of our time. Any judge qualified for the Su-

preme Court must, at a minimum, show that he has followed the law in this area. Even more, he must demonstrate a commitment to the principle of a single society, with equal opportunity open to all.

But Judge Carswell's civil rights opinions remind one of King Canute, who tried to hold back the tide. For like him, Judge Carswell has tried to forestall and delay compliance with the law.

At the hearings, Prof. Gary Orfield said:

The record of Carswell's stewardship during the ordeal of school desegregation was one of magnificent inaction. While other judges were exploring ways to dismantle the system of separate schools, Carswell granted time for local delays. The results were clear. Two of the three districts under his supervision were among the only four reported Florida districts maintaining totally segregated faculties into 1967. More than 90 percent of the black children in the Tallahassee schools were still in separate and completely segregated schools that same year . . . Judge Carswell had put local values above his responsibility to uphold the Constitution.

And on this point Prof. Van Alystyne wrote me:

Finally, then, with the failure of any affirmative reason to confirm this appointment, must you not agree that the evidence otherwise brought forward makes this appointment singularly inappropriate and impossible to accept? Not until his very appearance twenty-two years later before the Committee did Mr. Carswell express a single word of regret for his avowal of white supremacy as an adult, lawyer, businessman, World War II veteran, and candidate for national office. Nothing in the course of the hearings furnished evidence of more reassuring events to keep the Court hereafter from reasonable suspicion of bias. To the contrary, first hand testimony from several attorneys, including one still with the Justice Department, attested to a conscious or unconscious hostility to Negro plaintiffs, volunteer attorneys in race cases, and Northern lawyers willing to furnish representation in a community described even by a long time resident as hostile and somewhat to the right of Louis XIV. The pattern of reversals by the court of appeals in the many cases where civil rights complaints were dismissed out of hand without a hearing must surely trouble you . . .

Mr. President, the nomination of Judge Carswell has impelled many individuals and organizations to speak out in opposition who are not normally heard on such matters. One of these is the National Education Association.

The NEA has furnished me with a penetrating analysis of Judge Carswell's school desegregation opinions.

I should like to read from it:

1. On June 24, 1960, Judge Carswell summarily struck portions of a school desegregation complain involving Pensacola, Florida seeking desegregation of teachers and principals, without even holding a hearing to determine the effects of faculty segregation on the rights of black students to an integrated education. *Augustus* v. *Board of Public Instruction of Escambia County, Fla.*, 185 F. Supp. 450 (N.D. Fla. 1960)

The black children claimed that "assignment of school personnel on the basis of race and color is . . . predicated on the theory that Negro teachers, Negro principals and other Negro school personnel are inferior . . . and, therefore, may not teach white children." 185 F. Supp. at 451. The intent of the 1954 decision, they argued, was the creation of a non-racial school system which they contended was impossible so long as completely segregated faculties signalled to the community and the children that one set of schools was "Negro" and another "White."

Judge Carswell not only dealt with this serious issue in an arbitarary manner, but treated it mockingly, stating: "Students herein can no more complain of injury to themselves of (sic) the selection or assignment of teachers than they can bring action to enjoin the assignment to the school of teachers who were too strict or too lenient." 185 F. Supp. at 43.

The Fifth Circuit unanimously reversed this decision, stating ". . . we do not think that a matter of such importance should be decided on motion to strike" and that Judge Carswell had erred in using a "drastic remedy" appropriate only where the question "has no possible relation to the controversy." 306 F.2d 862, 868 (5th Cir. 1962)

2. Judge Carswell did not obtain a desegregation plan from the defendants in the Pensacola suit until a year and a half had elapsed from the filing of the complaint. Then, in 1961, he entered a desegregation order which required only that the school board continue assigning students under the Florida Pupil Assignment Law. Under that law, every black student desiring to attend a white school had to pass a battery of tests that no white child wishing to remain in his segregated white school had to undergo. Judge Carswell's plan allowed the school board to assign every pupil to a segregated school at the start of each school year, and placed the burden of integration on the shoulders of black students asking for reassignment and willing to undertake the tests. Up to the time of Judge Carswell's order, the Florida Pupil Assignment Law had resulted in the perpetuation of a fully segregated school system. 6 Race Rel. L. Rep. 689.

This action of Judge Carswell in 1961 was taken in the face of an explicit decision of the Fifth Circuit in 1959, reaffirmed in 1960, that a school board's adoption of the Florida Pupil Assignment Law did not meet the requirements of a plan of school desegregation or constitute a "reasonable start toward full compliance" with the *Brown* decision. *Gibson* v. *Board of Public Instruction of Dade County, Fla.*, 272 F. 2d 763, 766 (5th Cir. 1959); *Mannings* v. *Board of Public Instruction of Hillsborough County, Fla.*, 277 F. 2d 370, 372, (5th Cir. 1960).

The 1961 order of Judge Carswell, being in clear conflict with prior decisions of the Fifth Circuit, was unanimously reversed by that court, which required that additional steps be taken. 306 F. 2d 862, 869. Yet Judge Carswell—notwithstanding the clearly enunciated contrary position of the Fifth Circuit—subsequently approved other desegregation plans under which pupils were assigned to the segregated schools they were then attending and black pupils seeking to attend an integrated school were required to go through the procedures of the Florida Pupil Assignment Law, *Steele* v. *Board of Public Instruction of Leon County, Fla.*, 8 Race Rel. L. Rep. 932, 933–34; 8 Race Rel L. Rep. 934; *Youngblood* v. *Board of Public Instruction of Bay County, Fla.*, 9 Race Rel. L. Rep. 1206, 1208–09.

It is instructive to compare Judge Carswell's treatment of the pupil assignment issue with that of Judge Skelly Wright, then sitting in the Eastern District of Louisiana. In *Bush* v. *Orleans Parish School Board*, 204 F. Supp. 568, 570–71 (E.D.La. 1962), Judge Wright concluded that: "To assign children to a segregated school system and then require them to pass muster under a pupil placement laws *is* discrimination in its rawest form." (emphasis added). This language was quoted with approval by Judge Wisdom of the Fifth Circuit in affirming this part of Judge Wright's decision. 308 F. 2d 491, 495.

3. In addition to flouting controlling precedents by approving plans based on the Florida Pupil Assignment Law, Judge Carswell continued to order grade-a-year desegregation and to refuse to modify such orders in the teeth of Fifth Circuit decisions expressly holding this rate of school desegregation inadequate.

After the Fifth Circuit had reversed his earlier order in *Augustus* v. *Board of Public Instruction of Escambia County*, Judge Carswell ordered elimination of dual attendance zones at the rate of a grade a year. 8 Race Rel. L. Rep. 58. On April 20, 1965, Judge Carswell denied plaintiffs' motion for changes in the plan, and entered a further order denying plaintiffs relief in October 1965. 11 Race Rel. L. Rep. 148.

On April 22, 1963, Judge Carswell ordered grade-a-year elimination of such dual attendance zones in *Steele* v. *Board of Public Instruction of Leon County*, 8 Race Rel. L. Rep. 934. On three separate occasions in 1965, he denied plaintiffs' motions for changes in this plan. 10 Race Rel. L. Rep. 607.

On July 20, 1964, Judge Carswell ordered grade-a-year elimination of such dual attendance zones in *Youngblood* v. *Board of Public Instruction of Bay County*, 9 Race Rel. L. Rep. 1206.

At the desegregation rate decreed by Judge Carswell, dual attendance zones based on race would not have been completely eliminated in Escambia County until the 1973–74 school year; in Leon County until the 1974–75 school year, and in Bay County until the 1975–76 school year—twenty-one years after the *Brown* decision.

On June 18, 1964—a month *before* Judge Carswell ordered grade-a-desegregation in the Bay County case—the Fifth Circuit held that a grade-a-year plan was impermissible even though, in the case pending before it, a large metropolitan school system was involved. Rejecting the view that the size of the system justified such a slow rate of desegregation, the court said:

"Plans providing for the integration of only one grade a year are now rare; and the possibility of judicial approval of such a grade-a-year plan has become increasingly remote due to the passage of time since the Brown decisions." *Armstrong* v. *Board of Education of the City of Birmingham, Alabama*, 333 F. 2d 47, 51 (5th Cir. 1964).

This was clear enough, but the Fifth Circuit made its position even clearer on February 24, 1965, months before Judge Carswell denied motions to change the grade-a-year plans in Escambia County and Leon County. On that date the Fifth Circuit handed down its decision in *Lockett* v. *Board of Education of Muscogee County School District, Ga.*, 342 F. 2d 225 (5th Cir. 1965), which outlawed any use of grade-a-year plans in the circuit. The court specifically traced the judicial decisions putting grade-a-year plans to rest, concluding that it had become clear "beyond peradventure that a shortening of the transition period was mandatory." 342 F. 2d at 227. The court noted that in five cases it had decided the previous summer, it had ruled that all grades in the school system had to be desegregated by September 1969," . . . or earlier, as we pointed out, if the school boards are unable to justify the delay on a future complaint." 342 F. 2d at 228. The court expressly noted that these decisions had laid out "minimal standards" to be applied in other cases. Id. at 229. Accord, *Bivins* v. *Board of Public Education and Orphanage for Bibb County, Georgia*, 342 F. 2d 229 (5th Cir. 1965).

4. Examination of the Carswell record in handling school desegregation cases also indicates that Judge Carswell engaged in protracted delays in processing cases.

An analysis by the Washington Research Project Action Council notes that in the Pensacola case, Judge Carswell, after striking the portions of the complaint seeking desegregation of faculties, denied plaintiff's

motion for summary judgment. 5 Race Rel. L. Rep. 645. On October 26, 1960, he set a date three months later for a factual hearing 6 Race Rel L. Rep. 73. The hearing was held on January 16, 1961. He waited until March 16, 1961—two months after the hearing—to write a two-paragraph order requiring the school board to develop a plan of desegregation. Id. The order gave the school board 90 days to develop its plan. Taking the full time allotted, the board, on June 14, 1961, submitted a two-paragraph plan with an accompanying letter to be sent to parents informing them that students could transfer to other schools under the Pupil Placement Law, and that the school administration would consider such applications without regard to race, 6 Race Rel. L. Rep. 689.

Judge Carswell waited two months before holding a hearing on this "plan." The hearing eventually was held on August 17, 1961. On September 8, 1961, shortly after the start of the 1961–62 school year, he accepted the plan with minor modifications. Since it was so late, the effective date of the plan was postponed until the 1962–63 school year.

The Fifth Circuit reversed Judge Carswell's September 8 decision on July 24, 1962, before it was to become effective. In its opinion, the Court of Appeals noted that it was too late to order changes in the plan for the 1962–63 school year, but indicated that the district court should examine the problem of time and implement the changes for that year if possible. 306 F. 2d at 869.

Judge Carswell, however, made no attempt to determine whether time permitted implementation of the changes for the 1962–63 school year. He waited until November 29, 1962—more than four months after the Fifth Circuit had cautioned him on the time problem—to order implementation of the Fifth Circuit's mandate. He then postponed its effective date until the 1963–64 school year. 8 Race Rel. L. Rep. 58.

5. Judge Carswell's attitude towards school desegregation is reflected in his actions when sitting by designation on a school desegregation case as a member of a three-judge panel on the Fifth Circuit. In *Gaines v. Dougherty County Board of Education*, 334 F. 2d 983 (5th Cir. 1964)—decided ten years after *Brown*—the court of appeals ruled that a minimum requirement was desegregation of the first two grades of school plus desegregation of the twelfth grade, "in order that every Negro child in the . . . school system have at least an opportunity to enjoy a desegregated education during his school career." 334 F. 2d at 984. The majority was concerned that a decade of children would otherwise have gone to school since Brown in completely segregated schools.

Judge Carswell found it impossible to go along with this not very radical doctrine. In an angry dissent, he used the following odd terminology in characterizing the action of the court of appeals: "In my view, this simply violates the long-standing, and wise, view that no court should *rain down* injunctions unless there be some demonstrated factual necessity to insure compliance with the law" (emphasis added). Judge Carswell apparently could see no basis for the limited injunction ordered by the court of appeals notwithstanding ten years of total segregation in the system following the *Brown* decision. On the contrary, he thought the local officials were "entitled to a presumption of good faith when they represent, as here, an intention to effectuate the law." 334 F. 2d at 986.

6. In assessing Judge Carswell's posture in these school desegregation cases, it is significant that the counties with which he was dealing were not black belt counties with large black majorities. The problems in these countries were manageable. Judge Carswell sat in a state which at the time was under relatively responsible political leadership. Florida, moreover, was the first state in the South to have all school districts not under court order in compliance with HEW's school desegregation guidelines. Most Florida school districts, in fact, opened all grades to freedom of choice desegregation in September 1965.

It is also significant that other Federal district judges in Florida were rendering contemporaneous decisions in marked contrast with those of Judge Carswell. For example, Judge Simpson, in the adjoining district, ordered two school districts, on August 21, 1962, to submit plans for the complete desegregation of teachers and other school personnel. *Braxton v. Board of Public Instruction of Duval County, Florida*, 7 Race Rel. L. Rep. 675; *Tillman v. Board of Public Instruction of Duval County, Fla.*, 7 Race Rel. L. Rep. 687. The Fifth Circuit affirmed Judge Simpson in an appeal from this portion of the Duval County order. 326 F. 2d 616 (1964) cert, den., 377 U.S. 924 (1964). Another Florida district judge ordered Indian River County to complete free choice desegregation by 1967. *Sharpton v. Board of Public Instruction of Indiana River County*, 11 Race Rel. L. Rep. 702.

Judge Carswell's actions in these cases throw light on his underlying attitude toward racial questions. Taken together, they show that he did everything possible to evade and resist the mandate of higher courts.

His behavior outside the courtroom shows a similar pattern of consistent hostility toward Negroes. To begin with, there was his 1948 statement in support of white supremacy. Some have said this should be dismised as a youthful indiscretion. I might be inclined to accept his repudiation of these words now if his conduct in the intervening years had not confirmed his original statement. But on three separate occasions he was involved in discriminatory acts against Negroes.

In 1953, he drafted a charter for a Florida State University Boosters Club that limited membership to white people.

In 1956, while U.S. attorney for the northern district of Florida, he joined in a scheme to subvert the law by leasing Tallahassee's public municipal golf course to a private group, so that it could remain segregated. Though the racist purpose of the plan was commonly known in the community, Judge Carswell claims he was unaware of it.

And in 1966, Judge Carswell sold land with a restrictive covenant for whites only.

Mr. President, this is the case against Judge Carswell. In my view it establishes that he is unqualified for a seat on the high court.

His nomination is regrettable. But it would be tragic to confirm him. For his elevation would decrease the Court's stature across the land.

Many years ago, Paul Freund, a noted authority on the Supreme Court, warned us:

> The quality of the institution depends not alone on its traditions but on the character of the individuals who man it.

Inferior men make a second-rate institution.

That is why this is a bad nomination. It is depleting the Court's prestige.

Ultimately, compliance with the law cannot be secured by force. It must be freely given as a result of moral suasion.

Under our system the majority agrees to redress the legitimate grievances of the minority, and the minority pledges to work through the established processes. In this way we have been able to reform our society again and again.

Judge Carswell's nomination is divisive.

Finally, Mr. President, I want to point out that last year at a news conference President Nixon listed the justices of the Supreme Court he particularly admired. They were Brandeis, Holmes, Cardozo, and Frankfurter. These are men of superior caliber and unquestioned merit. They set a high standard for Supreme Court nominees.

Judge Carswell does not measure up either to their standards or to those so well recognized by the President. Accordingly, I shall vote against his confirmation.

MOUNTING OPPOSITION TO CARSWELL NOMINATION

Mr. BROOKE. Mr. President, the tide of opinion against confirmation of Judge G. Harrold Carswell to be a member of the Supreme Court has mounted steadily. Thoughtful Members of the Senate of widely varying persuasions have felt growing doubts about this nomination.

Illustrative of this trend is the report by Roscoe and Geoffrey Drummond in Friday's Philadelphia Inquirer. As the Drummonds make clear, there is a grave apprehension on the part of many Senators that confirmation of this nomination would impair the Supreme Court and weaken its stature in our national life. The extraordinary frequency of reversals of Judge Carswell's opinions is one distressinig measure of the degree to which he has been out of step with modern constitutional practice. I believe that all Members of the Senate will be interested in the perceptive commentary of the Drummonds and I ask unanimous consent that be printed at this point in the RECORD.

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

[From the Philadelphia Inquirer, Mar. 20, 1970]

DOUBTS INCREASING IN CARSWELL CASE

(By Roscoe and Geoffrey Drummond)

Liberal Republican senators—enough to determine if Judge G. Harrold Carswell will be confirmed or rejected for the Supreme Court—are having a painful time deciding how to vote.

Most of them are publicly uncommitted. They prefer to support their President. They recognize that his is the primary responsibility.

But some of them are becoming very uneasy. As facts have come out which were apparently not known to President Nixon at the time of the nomination, as testimony against Judge Carswell from impressive sources has grown, their doubts are mounting.

Some of them are beginning to lean against confirming Judge Carswell. They wonder if the appointment of a man of below-quality stature would not only impair the Supreme Court but would also signal to the aggrieved, the disadvantaged, the racially injured that the Establishment—President, Congress and court—is turning against them.

These uncommitted Republicans are not against naming a Southerner to the Supreme

Court. They are not against naming a conservative to the Supreme Court. They are not against naming a strict constructionist to the Supreme Court.

They are concerned with larger issues. They are concerned that now when the nation is finally coming to grips with racial justice, school integration and equal rights for all, Judge Carswell has so long been facing mostly in the opposite direction, that he is out of step with the times and that his elevation to the highest court could only be evidence that government is turning its back on the social and political reforms which are still only half achieved.

Those who are still pondering how to vote are asking themselves how out of step with the needs of the times is Judge Carswell? What levels of judicial competence would he bring to the Supreme Court?

One disturbing answer they find is that in all the cases which came before Judge Carswell on the Federal bench and were appealed to higher courts, 59 percent of his decisions were reversed.

Undoubtedly he called them as he saw them and rendered his decisions to the best of his ability.

Is this 59 percent reveral unusual? It is 300 percent higher than the national average of all Federal judges.

The Republicans who are now beginning to lean away from Carswell are aware that a committee of the American Bar Association indorsed his appointment.

It was their judgment that he lacks distinction and isn't even qualified for his present seat on the 5th Circuit Court of Appeals.

Those who are earnestly trying to weigh the evidence find their doubts increased by the kind of reply which Carswell supporters make to this point. Sen. Roman Hruska (R., Neb.) says the President has the right to name a "mediocre" judge. He actually said it. His words:

"Even if he (Carswell) were mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance?"

One uncommitted liberal Republican senator put his central thinking on Carswell this way:

"Nothing is more crucial today than to do everything we can to keep the justly discontented working within the political system and reasonably confident that our system is capable and intent upon dealing with just grievances. We must not give them any signal that their government is turning against them. I wonder if all the circumstances of the Carswell nomination won't do just that."

So do many others.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the bill (H.R. 3786) to authorize the appropriation of additional funds necessary for acquisition of land at the Point Reyes National Seashore in California.

The message also announced that the House had agreed to the concurrent resolution (H. Con. Res. 554) authorizing certain corrections to be made in the enrollment of H.R. 11959, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H.R. 3786) to authorize the appropriation of additional funds necessary for acquisition of land at the Point Reyes National Seashore in California.

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. HARRIS. Mr. President, Mark Twain reminded us:

> It is easy to find fault if one has that disposition. There was once a man who, not being able to find any other fault with the coal delivered for his furnace, complained that there were too many prehistoric toads in it.

Supporters of the nomination of Judge G. Harrold Carswell to be Associate Justice of the Supreme Court would like to cast the opposition in such a role, and they have endeavored to center the debate on such supposed issues as partisan politics, geography, and the conservative label.

If, indeed, these were the issues, this nomination would, by now, have already been confirmed. In fact, I think we all expected that the President would nominate a Republican, a southerner, and a strict constitutional constructionist, whatever that is interpreted to be.

Democrats do not think they have an exclusive claim on excellence and high qualification for office. We freely admit that the President had available to him many excellent choices for this position from within his own party.

The confirmation process should be free of partisan interests, and I am not aware of anyone attempting to make a partisan issue of the confirmation of this nominee. In fact, every effort has been made to keep the process free of partisanship. Indeed, it may well be easier for Democrats to shed their partisanship, since the President is not a member of their party, than for Republicans to do so, but it is important that it be done. The recent, mixed vote rejecting the nomination of Judge Clement F. Haynsworth, Jr., attests to the fact that, because of the importance of the Supreme Court, the Senate has not chosen to make the confirmation process a partisan one.

Likewise, the apparent desire of the President to appoint a southerner, is not in issue. I am content that the President should nominate a southerner, although I can think of no position where geography is less important. Justice is neither partisan nor sectional.

The final question concerning the label of constitutional conservative or strict constructionist is difficult to meet squarely. The thesis of conservative or strict interpretation of the Constitution is well within the framework of acceptability.

But there are matters concerning which this often artificial dichotomy between conservative and liberal ceases to exist. There is no conservative judicial error, no conservative concept of human equality—and certainly no conservative justice. Error is error. The only alternative to justice is injustice—there is nothing in between.

What is then the real issue? To answer this question one must first, I think, understand the power of the Senate to advise and consent as provided in article II, section 2 of the Constitution.

The advise and consent of this body was never intended to be an act of acquiescence. The Federalist Papers clearly set forth the arguments which were made during the Constitutional Convention in support of various methods of appointing judges and other Federal officers.

At one point during the Convention, it was agreed that the President should appoint all officials. At another point, it was agreed that judges should be appointed by the second branch of the legislature, and that other officials should be appointed by the President. And, from time to time, during the Convention, an effort was made to vest the full appointing power in the upper branch of the legislature by those who feared that to give the President alone such power would surely lead to a monarchy.

Out of controversy and dispute a compromise provision was finally agreed to, giving the President the power to nominate and the Senate the power to advise and consent.

Those who favored appointment by the upper branch alone would never have agreed to this compromise, to give the Senate only the power of "advise and consent" if they had not assumed the Senate would assert itself fully in this role. Particularly do we know this is true because we also know that they feared the giving of absolute power of appointment to the President would lead to a monarchy.

Alexander Hamilton, in the Federalist Papers confirmed this when he stated:

> To what purpose then required the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favortism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

The fact that the Senate, over the years has rejected 22 nominees indicates that the Senate has considered these responsibilities under the Constitution to be very serious and important ones; it has not permitted the power to nominate to become the power of automatic appointment. We have done better than the Englishman in the poem "Lord Tomnoddy" who, when asked what qualification Lord Tomnoddy had to rule, replied:

> One!
> He's the Earl of Fitzdotterel's eldest son.

Nomination and appointment are not, and should never be, synonymous—especially when applied to the process of confirming Justices of the Supreme Court.

Our duty, individually and collectively as a body, is to give careful consideration to the qualifications of nominees.

We must determine, on the basis of the hearings of the Senate Judiciary Committee and all other facts that have been

brought to light, whether the nominee before us today possesses the intellectual and philosophical qualifications demanded for service on the highest court in the Nation, a Court which must serve as an example for every court in our country, and which should deserve the full faith and confidence of every man in the justness of its decisions.

Perhaps our role would not be so burdensome if a member of the Court served for a limited period of time only. Most Federal executives serve at the President's pleasure, and can be removed if they prove unfit for the job. Even commissioners of independent agencies, although appointed for specific terms of several years, can be denied reappointment if they become unsuitable in the judgment of the President or the Congress. But, a Justice of the Supreme Court serves for life, and, for life, hears final appeals for human justice. This is as it should be, if the Court is to retain the independence envisaged for it by the makers of our Constitution.

The Supreme Court should be coequal with the legislative and executive branches in our system of checks and balances, which has generally served us so well, and it has a distinct and vital role to play. That role, since the days of John Marshall, has been to decide the great controversies of the day on the basis of the fundamental principles of the Constitution. One reason our Constitution has survived for 18 decades is that its authors in their wisdom realized that changing times would weaken such a charter if the charter were to deal in too great specificity. They relied on succeeding generations to match guiding principles with specific details of important current cases.

This can only be accomplished if the men who are to do the matching, the Justices of the Supreme Court, have a sophisticated and subtle understanding of the Constitution and previous interpretations, of the Nation's history, and of the social trends and problems out of which both current laws and current litigation arise. Whether conservative or liberal in approach, these men must have a breadth of vision and a genuine feeling for the rights so clearly stated by the Constitution. They must also be innovators and groundbreakers, not merely the passive followers of interpretations laid down by others.

The landmark cases decided by the Court through the years have been important, precisely because these decisions provided what had been lacking until each such Court opinion had been given—the meshing of constitutional principle, precedent, current law, and individual dispute.

Think back across the rich panoply of American constitutional history. From *Marbury* v. *Madison*, 1 Cr. 137 (1803), in which Chief Justice John Marshall made explicit the review powers implicit in the Constitution, to *Reitman* v. *Mulkey*, 387 U.S. 369 (1967), in which the Court mandated equal protection of the laws with respect to housing, and all the landmark decisions in between, one continuing element persists. That is the need for high intelligence and compassion in the way the Court approaches its job of melding all the elements together.

Whether the Court found itself defining the relationship between the three branches as it has in cases such as *Youngstown Co.* v. *Sawyer*, 343 U.S. 579 (1952), explicating the requirements of our federal system as it did in *Chisholm* v. *Georgia*, 2 Dall. 419 (1793), or developing the commerce powers of Congress, as in *NLRB* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937), the task has demanded judicial excellence.

However, intelligence enough to deal with the complex issues is not enough, when the matter under consideration falls within the category of human rights, in consideration of which the compassion necessary to fairly weigh the impartiality of the law with the dignity of the individual is vital. Without compassion, the compelling arguments of Brandeis in his brief on the condition of women employees in *Muller* v. *Oregon*, 208 U.S. 412 (1908), would have gone for naught and those engaged in unfair labor practices would not have been placed on notice that henceforth their activities would have to meet the due process tests of the courts. Without social conscience, *Plessy* v. *Ferguson*, 163 U.S. 537 (1896) would not have been reversed by *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

Thus, we see that demands on Justices of the Supreme Court are extremely heavy. We do the country a grave disservice when we give "advice and consent" to nominees who do not meet the high standards required of them if they are to function effectively. As Justice Frankfurter has written:

> Such functions surely call for capacious minds and reliable powers for disinterested and fair-minded judgment. It demands the habit of curbing any tendency to reach results agreeable to desire or to embrace the solution of a problem before exhausting its comprehensive analysis. One in whose keeping may be the decision of the Court must have a disposition to be detached and withdrawn. To be sure, these moral qualities, for such they are, are desirable in all judges, but they are indispensable for the Supreme Court. Its task is to seize the permanent, more or less, from the feelings and fluctuations of the transient.

Thus, when it is determined that a nominee does not meet the high standards test for membership on the Supreme Court, it is the duty of the Senate to reject the nominee, rejection not of any one man, but an expression of intention to demand the highest standards of excellence for all future nominations to the Court.

Does Judge G. Harrold Carswell possess the qualifications the Senate should demand of any nominee? I think that the record reveals otherwise.

The hearings of the Judiciary Committee are replete with statements to the effect that there is nothing "in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States." Prof. William Van Alystyne, professor of law, Duke University Law School, who supported the confirmation of Judge Clement F. Haynsworth, Jr., but now opposes confirmation of Judge Carswell, said of the nominee's opinions:

> There is simply a lack of reasoning, care, or judicial sensitivity overall, in the nominee's opinions.

Two of the nominee's own judicial colleagues, Judge Elbert P. Tuttle, retired chief judge of the U.S. Fifth Circuit and Judge John Minor Wisdom of the same court, have withheld their support of the confirmation of Judge Carswell to serve on the Supreme Court.

Nine of the 15 faculty members of Florida State University Law School, which the nominee helped to establish, have written the President requesting that this nomination be withdrawn.

Recently, a group of 457 prominent law professors and lawyers, of diverse political affiliations and from different areas of the Nation, urged rejection of the nominee, or "at the very least," a reopening of the hearings so that an official investigation could be made by independent counsel for the Senate Judiciary Committee.

More and more concerned citizens have begun to question the qualifications of Judge Carswell since a survey has revealed that, as a Federal district court judge, he was reversed on 58.8 percent of all those cases in which he wrote a printed opinion. This rate of reversal was three times the average rate among all Federal district judges. The same survey revealed that Judge Carswell's rate of reversals for all of his printed cases was 11.9 percent, in contrast to a rate of 5.3 percent for all Federal district cases, and 6 percent for all district cases from the fifth circuit.

In an editorial which appeared in the February 27 edition of the Tallahassee Transaction, concern was expressed about the growing opposition to the nomination. The editorial writer stated:

> The extraordinary anguish among law school faculty members and leading lawyers over the nomination of Judge G. Harrold Carswell to the Supreme Court should alert every Senator to consider his responsibility to country and constitution.

The fact that such distinguished men and an increasing number of citizens are questioning whether the nominee has the requisite high competence and superior ability is disturbing enough, but the context in which this questioning is taking place is even more disturbing. The 1948 public words of the nominee, "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," permeates the entire process of considering his qualifications.

President Nixon, in a news conference on January 30, 1970, defended the nominee's statement on the basis that it was made 22 years ago and stated that we should not "question his integrity in his late years because in his early years in the South he took the position that other southerners were taking." To prove his point, the President referred to a statement made by the late and distinguished Ralph McGill, editor of the Atlanta Constitution, in 1940 when he wrote a column, "in which he came out unalterably against integration of education of southern schools," to use President Nixon words. However, rather than proving the point the President hoped to make, the

reference to Ralph McGill and his career in the field of human rights disprove the point. We all know that Ralph McGill's long record on civil rights was outstanding. No one doubts that, through the influence of his column, carried not only in the Atlanta Constitution, but also in other southern newspapers, much was done to "bridge the river of misunderstanding."

Does the judicial record of Judge Carswell indicate that he has changed his mind concerning segregation of the races as a way of life? Has he adopted a different philosophy?

In the case of *Due* v. *Tallahassee Theatres, Inc.*, 333 F. 2d 630 (Fifth Circuit, 1964), attempts were made by theater corporations and local officials in Tallahassee to keep black people out of the theaters. Judge Carswell granted summary judgment in favor of the local officials. The granting of summary relief under circumstances where facts had been alleged showing a violation of certain civil rights, and which facts were disputed, was strongly criticized by the circuit court in reversing Judge Carswell.

In the case of *Singleton* v. *Board of Commissions of State Institutions*, 356 F. 2d 771 (Fifth Circuit, 1966), the issue was desegregation of the Florida State reform schools. Suit was brought by Negro children, who were convicted but out on probation for participation in a sitin at one of the institutions, to enjoin the segregation, and to have declared unconstitutional a State statute requiring the segregation. Judge Carswell dismissed the suit on the ground that the plaintiffs lacked standing to sue even though the probation could be revoked at any time. Again the circuit court reversed Judge Carswell.

In *Dawkins* v. *Green*, 285 F. Supp. 772, reversed in 412 F. 2d 644 (1969), Negro civil rights workers sought to enjoin certain county officials from enforcing statutes on a discriminatory basis for the purpose of preventing the workers from carrying out their civil rights movement. Again Judge Carswell granted summary judgment and again was reversed by the circuit court for granting summary judgment.

I think it should be remembered that Judge Carswell's persistent granting of summary judgments took place at a time when the Supreme Court and the circuit courts were admonishing district judges to grant such relief only in cases where clearly there was no issue of fact, and no reason to secure any additional facts.

In the case of *Augustus* v. *Board of Public Education of Escambia County*, 185 F. Supp. 450 (1960), reversed 306 F. 2d 862 (Fifth Circuit, 1962), the issue was faculty segregation. The relief sought in the complaint, filed on behalf of Negro students, was for an injunction of segregation in the schools and racial assignment of the teachers. Without holding a hearing on the issue of faculty segregation, Judge Carswell on a motion to strike ruled that the matter should be stricken from the complaint. Reversal by the circuit court followed.

In numerous desegregation cases Judge Carswell approved grade-a-year desegregation plans even though the third, fourth, fifth, and eighth circuits had previously held such a slow rate to be constitutionally unacceptable. This was true in the cases of: *Augustus* v. *Board of Public Education of Escambia County*, supra; *Steele* v. *Board of Public Instruction of Leon County*, 371 F. 2d 395 (Fifth Circuit, 1967); and *Youngblood* v. *Board of Public Instruction of Bay County*, 230 F. Supp. 74 (1964).

Professor Van Alstyne considered the cases just discussed in the context of the statement made by Judge Carswell in 1948. In this regard he said:

> I would agree with those who believe that unless that statement can be significantly discounted by clear and reassuring events since that time, 20 years ago, it would be uniquely inappropriate for the Senate to consent to his nomination as an Associate Justice of the Supreme Court. But an examination of his decisions and opinions as a district judge since that time, even laying his earlier statement entirely aside, provides no feeling for a basis of reassurance whatever.

Nor are we reassured by the conduct of Judge Carswell on the bench, that he has changed his views since 1948. Proof has been furnished to the committee that on numerous occasions civil rights lawyers were subjected to improper judicial treatment, particularly if they were volunteers or from out of the State.

Prof. LeRoy Clark of New York University, who ran the NAACP legal defense fund litigation in Florida between 1962 and 1968, called Judge Carswell:

> The most hostile federal district court judge I have ever appeared before with respect to civil rights matters.

Professor Clark recited incidents wherein the nominee attempted to disrupt the argument of civil rights lawyers, even shouting at them at times, while according every courtesy to opposing counsel. Professor Clark stated:

> 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.

In one case, another witness before the Judiciary Committee reported that Judge Carswell had not only acted in a hostile manner toward civil rights lawyers, lecturing them at length about northern lawyers coming to Florida and arousing the local populace, but had also made it clear that he was going to deny all relief the lawyers had requested for their clients. This he proceeded to do, exhibiting resentment toward the clients, who had been arrested for trespass while attempting to aid sharecroppers in registering to vote.

He made unnecessarily complicated the filing of a habeas corpus petition in behalf of the clients, who were being held in a county jail because a local judge refused to recognize the removal jurisdiction of Judge Carswell's court.

When the lawyers finally convinced Judge Carswell that he had no choice under the law except to grant habeas corpus, his actions still kept the civil rights workers in jail by granting the petition, and, then immediately remanding the cases right back to the county court. This was done on his own motion, without being requested by any of the involved parties and without a hearing or opportunity to present testimony or argument.

In an earlier case, Judge Carswell's actions resulted in nine clergymen freedom riders having permanent criminal records after they had been arrested in the Tallahassee airport restaurant. When appeals in the State court were terminated on a technicality, Judge Carswell, sitting as a Federal district judge, denied habeas corpus without allowing a hearing. This ruling was modified by order of the fifth circuit which provided that an immediate hearing should be held before Judge Carswell if the State court did not grant such a hearing. In a meeting with the clergymen's lawyer and the city attorney, Judge Carswell suggested that the whole case could be concluded by reducing the sentences of the clergymen to the time already served, in spite of the fact that they had not requested such a reduction and, in fact, wished to have their case decided on the merits so that their records would thereby be cleared. Mr. Ernst Rosenberger, who participated in this meeting with Judge Carswell, told the Judiciary Committee that his advice "could have no other effect except to moot the entire question" which would leave the clergymen "with no way for vindication," insuring them a permanent criminal record.

In short, Judge Carswell advised the city attorney in a State court proceeding how to circumvent an order of the circuit court. His advice was followed, despite the efforts of Mr. Rosenberger, and this action totally preempted the legitimate efforts of the clergymen to obtain a judicial ruling. If Judge Carswell had in fact moderated his early segregationist views by the time these incidents took place, his conduct on the bench failed clearly to show such a change.

At the time of his 1948 speech, Judge Carswell was a private citizen, while in the 1960's, when these events occurred, he was a Federal judge, sworn to uphold the Constitution and to provide equal protection under the law to all citizens.

Nor was Judge Carswell a private citizen when he participated in the well-known Tallahassee golf course matter—he was at that time the U.S. attorney.

The record clearly shows that in 1956 Judge Carswell and other citizens of Tallahassee undertook a course of action that would result in denying to the black community of Tallahassee the use of the municipal golf course. This was done by forming a private corporation to which the city transferred the golf course.

Judge Carswell has disputed that it was his intent to deny the use of this public facility to blacks and to circumvent a ruling of the Supreme Court making it unconstitutional for city or State to segregate any of its public recreational facilities. Judge Carswell does admit having knowledge of similar practices occurring in other cities in the South.

A group of distinguished professors and members of the bar commented on Judge Carswell's explanation of his involvement in the incident stating:

If true, (the explanation) shows him to be lacking the intelligence of a reasonable man and to be utterly callous to the implications of the scheme to which he was lending himself.

I think the obvious conclusion to be reached, based on the facts and the matters discussed, is that while America has come a long way since 1948, when it might have been acceptable in certain parts of the South to campaign as a white supremacist, it cannot be demonstrated from the record that Judge Carswell, personally, has come an equal distance.

Judge Carswell has said that he regrets having made the notorious white supremacy speech in 1948. But his record does not prove such a change of heart. Indeed, it raises serious questions as to whether such a change has taken place.

We are not the same nation we were in 1954. The Supreme Court has become the symbol of our awakening to the curse of racism, our growing commitment to eradicate it, and our renewed dedication to the dream of full freedom and complete equality of opportunity for all men.

We need no one to tell us that we are still far from our goal, however great our progress. But in the midst of our failures and disappointments, our frustrations and small victories, the Supreme Court has been like a lighthouse in a storm—an unfailing symbol of our highest ideals. It has been a beacon of hope to people who have regarded other institutions as their enemies.

It is hard for most of us to understand how one could feel so far outside the concern or benefit of laws or courts as to view them as enemies. Serving on the National Advisory Commission on Civil Disorders—Kerner Commission—enabled me to understand this better.

We traveled throughout America, listening to the voice of her people, seeing how they lived, and we said:

Our Nation is moving toward two societies, one black, one white—separate and unequal.

It has been said that there should be a balance on the Court, but I maintain that there should not be a dilution of basic and fundamental constitutional principles which uphold the inherent worth and value of every human being.

So far as I know, it is unprecedented that a judge's own colleagues, the men who know him best, would indicate their lack of support for him and for his appointment to a higher court. Yet, that is the situation in regard to Judge Carswell. Only lately has it become known that former Chief Judge Elbert P. Tuttle and Judge John Minor Wisdom declined to join in support for Judge Carswell, and there is even some question that this fact in regard to Judge Tuttle was not presented to the Judiciary Committee with full candor.

This newly developed circumstance causes me to believe strongly that this nomination should be referred back to the Senate Judiciary Committee for further consideration. Particularly appropriate, I believe, would be discussions by the committee, even privately, with Judge Tuttle and Judge Wisdom to obtain their views concerning this nomination and the reasons therefor.

I would hope that the President of the United States and Members of the Senate who support this nomination would gracefully agree to refer it back to the committee. It would be my hope that the committee might then decide to postpone further consideration of the nomination indefinitely.

In any event, I hope that the general public will have the time to become more fully aware of the serious objections to the confirmation of Judge Carswell. Fully informed, the people and the Senate will decide against confirmation.

Mr. President, I urge that the Senate do not advise and consent to the nomination of Judge G. Harrold Carswell to be Associate Justice of the U.S. Supreme Court.

Mr. President, the New York Times on March 23, 1970, published an editorial in regard to this matter, in which it was said that a group of distinguished lawyers, including Francis T. P. Plimpton, president of the New York Bar Association, as well as the deans of leading law schools, have charged that the qualified rating given Judge Carswell by the Federal Judiciary Committee of the American Bar Association is seriously misleading.

Mr. President, the Washington Post for Sunday, March 22, 1970, published a lengthy editorial on this same subject in which it says in part:

Judge Carswell is a bad choice, and the Senate should reject him out of its obligation to safeguard the paramount interests of our highest court. In the process of refusing his confirmation, the Senate has an opportunity, not just to say *No*, but also to say *Enough*—of insensitivity and indifference, of legislative retrogression and of catering to racist tendencies for political gain, of talking about blacks as if there were no blacks in the room. The Senate, in this fashion, could broadcast from at least one seat of government a signal to all races—a signal which at this stage can no longer be broadcast, in a way that would be believable, by anybody else.

Mr. President, I ask unanimous consent that the New York Times and the Washington Post editorials to which I just referred, be printed in full at this point in the RECORD.

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

[From the New York Times, Mar. 23, 1970]

RATING JUDGE CARSWELL

The Senate, in its desultory debate over whether to confirm the nomination of Judge G. Harrold Carswell to the Supreme Court, is giving an uninspiring demonstration of its sense of responsibility on an issue of grave national concern.

President Nixon, in his weekend press conference, urged Senators to weigh, not the mail, but the evidence. It is precisely on the evidence that Judge Carswell emerges with a mediocre judicial record and with questionable attitudes toward social justice.

Senator Roman L. Hruska, Republican of Nebraska, in apparent contempt for excellence in American institutions, championed the right of all who are mediocre to be represented by mediocrity on the Supreme Court. Application of this view to the Senate is bad enough; to extend it to the highest court is intolerable. Yet, this appears to be the intent of those who deliberately spurn all honest assessment of evidence unfavorable to Judge Carswell.

For example, it has now become known that Elbert P. Tuttle, the retired Chief Judge of the United States Court of Appeals for the Fifth Circuit in the South, who originally backed the nomination, subsequently decided to withdraw his endorsement. But Judge Carswell's supporters let the impression of Judge Tuttle's approval be used as continuing support for him.

A group of distinguished lawyers, including Francis T. P. Plimpton, president of the New York Bar Association, as well as the deans of leading law schools, have charged that the "qualified" rating, given Judge Carswell by the Federal Judiciary Committee of the American Bar Association, is seriously misleading. They consider the issue sufficiently grave to demand that the committee reopen the case and provide a more explicit rating, as it does in the case of other Federal judges.

Judge Carswell's supporters have used the A.B.A. rating as a judgment of high merit, when it is little more than an evasive rubber stamp. Attorney General Mitchell, who undoubtedly knows the real meaning of the A.B.A.'s faint praise, has stated publicly that his nominee comes "highly recommended" by the association.

These misleading tactics amply justify the demand for a more enlightening reappraisal. An explicit rating would do much to help the Senators when they ultimately cast their vote on the dictates of both fact and conscience. The legal profession surely has a responsibility to offer credible guidance and, at the very least, make sure that its testimony cannot be abused in ways that might demean the Supreme Court.

[From the Washington Post, Mar. 22, 1970]

JUDGE CARSWELL: THE WRONG SIGNAL . . .

It is a longish leap from the fun and games at the Gridiron Club last weekend to the Senate debate on Judge Carswell. But bear with us because there is a logical connection here between the appointment of a decidedly second-rate judge to the Supreme Court and the ease with which President Nixon and Vice President Agnew stole the Gridiron show. As you may have read, the two men joined in a piano duet, with the President playing a medley of the favorite tunes of his predecessors and the Vice President interrupting him by playing "Dixie." Doubtless you had to be there to get it into the right context, to hear the rough but good-natured jibes at the Administration on race issues that preceded the surprise finale, and thus to appreciate the joke. Almost everybody agreed it was a *tour de force* gracefully done and quite in keeping with the spirit of an affair at which the tensions and antagonisms of the real world are supposed to be set aside.

So it is with no intent to disparage the performance of the President and the Vice President that we take note of this event. Still, at the risk of sounding stuffy, it strikes us as a small piece of a bad scene, and a significant measure of how great is the power of the Presidency to influence a public attitude. All of a sudden, it is all right to joke about something that responsible people in high places once used to handle with care and compassion and deadly seriousness.

In theory, a sense of humor is supposed to be a saving grace. So why not make sport of a Southern Strategy? The answer, of course, is that Southern Strategy is a euphemism for something that isn't funny. On its face it is no more than a cynical political tactic designed to innoculate the South against George Wallace for the sake of winning it for the Republicans, the better to secure a second term for President Nixon in 1972. As a political objective, this is fair enough—some people even see in it an admirable toughmindedness. But there is nothing admirable about the logical consequences of this strategy, for to bring it off it becomes necessary for the Administration to cultivate indifference, not to say hostility, toward the

fundamental principle of human rights in general, and the equality of education available to black children in particular. Putting it another way, and bluntly, Southern Strategy means a form of racism, tacit or explicit, by people in high places, because there can be no successful effort to undercut George Wallace in the South that does not play the segregation game.

It is important to be clear in our minds about the issue here. We are well aware that the White House will be publishing next week what has been billed as the most complete, the most comprehensive, the most closely argued legal brief ever composed on school desegregation and it is not our purpose here to judge it in advance. For that is not what this is all about. We are not talking just about schools, or doubts held by responsible people about busing or other methods for dealing with the de facto segregation which occurs as a result of natural, geographic imbalance. We are talking about what a President or an Administration can do, or not do, to create an atmosphere that is conducive, not to miracles, but to continuing progress, against racial discrimination all along the line. And this, in turn, is what is so troubling about the ease with which we now laugh at jokes about a Southern Strategy. It is what links the hijinks at the Gridiron with the nomination of Judge Carswell and a lot of other things—the abrupt removal of a Leon Panneta from HEW because he tried too hard; the effort to subvert Negro voting rights; the insensitivity, in tone and phrase, to black pride; the country club mentality.

Mr. Harry Dent, a presidential assistant, receives a written offer of campaign funds from a Georgia Republican leader in exchange for the restoration of Federal school aid in a Georgia school district. He casually passes it along to HEW—and nobody seems to mind. The Vice President brushes off the idea of quotas for black students by asking the crude question, "Do you wish to be attended by a physician who entered medical school to fill a quota . . .?" Mr. Jerris Leonard, the Justice Department's civil rights enforcer, thinks it clever, or something, to say that one reason blacks just out of law school are not attracted to Justice Department jobs is that they haven't yet bought their first cashmere topcoat. Confronted with a question about Judge Carswell's involvement with segregated clubs, the President thinks it an adequate defense to say, in effect, that everybody's doing it: ". . . if everybody in government service who has belonged or does belong to restricted golf clubs were to leave the service, this city would have the highest rate of unemployment of any city in the country."

And so it goes, right down to the vote on Judge Carswell, with the Administration's men telling Republicans who opposed Judge Haynsworth—in almost every respect a much superior choice—that they can't rebuff their President twice running. They can, of course, and they should, because this is nothing so narrow as a test of party loyalty. It is a test of policy and principle—a kind of Tonkin Resolution on race, if you accept the theory recently advanced in Life Magazine by Hugh Sidey that the race issue could be for President Nixon the disaster that Vietnam was for President Johnson.

The Tonkin Resolution on Vietnam was a fraud, and while that became clearer later, it might have been clearer at the time if the right questions had been pressed, if Congress had not closed its eyes out of misplaced deference to the President and waved him down a wrong road. Therein lies the analogy. Judge Carswell is a bad choice, and the Senate should reject him out of its obligation to safeguard the paramount interests of our highest court. In the process of refusing his confirmation, the Senate has an opportunity, not just to say *No*, but also to say *Enough*—of insensitivity and indifference, of legislative retrogression and of catering to racist tendencies for political gain, of talking about blacks as if there were no blacks in the room. The Senate, in this fashion, could broadcast from at least one seat of government a signal to all races—a signal which at this stage can no longer be broadcast, in a way that would be believable, by anybody else.

Mr. BAYH. Mr. President, will the Senator from Oklahoma yield?

Mr. HARRIS. I yield.

Mr. BAYH. I hesitate to interrupt the eloquent remarks of my friend and colleague from Oklahoma, but he appears to be headed into the area of the judge's qualifications, and I wanted to commend him for discussing at the outset of his remarks the broader question of whether Members of the Senate really do, in fact, have the authority to advise and consent.

As the Senator from Oklahoma knows, we have in this nomination the second distasteful disagreement with the President. During the first one, the Senator from Indiana had the opportunity to do some significant research in this area of qualification and some questions were brought to light by the Senator from Oklahoma. I suppose the Senator from Oklahoma is of the opinion that if, indeed, our constitutional fathers meant anything, when they gave us the authority to advise and consent they did in fact intend for us to speak out when we differed with the President on the matter of Supreme Court nominees.

Mr. HARRIS. I certainly do agree. The Senator from Indiana is chairman of the Subcommittee on Constitutional Amendments of the Committee on the Judiciary and is, therefore, especially well qualified on the meaning of the provisions written into the Constitution by the Founding Fathers, particularly because of his interest in the high quality of the judiciary in this country which is a basic and fundamental need if our system is to continue. The Senator from Indiana is well qualified to discuss the "advice and consent" powers of the Senate. I think that their importance, which he has indicated, is quite correct.

Mr. BAYH. The Senator has been helpful in pointing out the number of nominees who have not been confirmed to the Supreme Court. Can the Senator recall the study we conducted earlier, that 25 percent of all nominees who have been recommended have either been turned down by the Senate or withdrawn by the President? I wonder whether the Senator is familiar with that rather significant percentage, as we look back over the nearly 200 years of history, in which Members of this body have taken as their personal responsibility, and rightly so, to speak out when they differ with the President.

The Senator from Indiana feels that there is inconsistency in some Members of the Senate who stand upon the floor of the Senate and bemoan the fact there seems to be a creeping executivism, so far as spreading of the powers of the executive is concerned, yet they are timid in exerting themselves in the area where their responsibility is most clear.

Mr. HARRIS. The Senator from Indiana makes a very important point. My own research, aided by two able legislative assistants in my office, Fred Gipson and Frank Cowan, has revealed to me a number of judicial appointments which had been rejected by the Senate. I had not realized that amounted to a percentage which was as high as the Senator from Indiana has indicated. That is an important point. I know that the Senator from Indiana would agree with me, and with the comments that have been previously made in the Senate about the extra responsibility which the Constitution places upon the Senate and Members of the Senate in regard to judicial appointments, as opposed to appointments of the President to his Cabinet and so forth.

I think that the percentage of rejections by the Senate points up that over the years the Senate has considered this to be a very important duty which it has under the Constitution.

Mr. BAYH. One further point, and then I will let the Senator proceed. He has been very kind to yield. The reason I brought this other figure up was the fact that the Senator from Oklahoma had suggested over the weekend on a nationwide news program, and has suggested here today on the floor of the Senate, that the Judiciary Committee have the opportunity to look at this nomination again in view of everything that has come to the fore. It is interesting to note that if the President were to withdraw this nomination, it would not be the first time in history that that course of action had been followed.

Mr. HARRIS. I agree with the Senator from Indiana that that is the course which should be followed here. If we are not ready to reject this nomination when we come back here after the Easter recess—and I do not think that we should vote on it before the Easter recess, because I think the general public has not had a full opportunity to know all the serious objections to the nomination—it might be well worthwhile to consider referring the nomination back to the committee. If I were the nominee, I would want that.

Serious questions have been raised about it which have only now come to light. It seems that former Judge Tuttle has declined actively to support the nomination. There has been some implication that that fact was not presented to the Judiciary Committee with full candor. Very serious questions have been raised about the effect of the American Bar Association's position with regard to this or any other nomination, which I think could well be gone into further now, since they have been raised. Thus, I think it might be well to do that.

If I were the nominee, this kind of nomination being so serious, I would not—if the man is to be confirmed—I would not, if I were he, want to embark upon my duties with these kinds of serious objections raised. If I were the President who had nominated him, I would not want that to be true.

Mr. BAYH. I appreciate the Senator's replies to my questions.

Mr. LONG. Mr. President, will the Senator from Oklahoma yield?

Mr. HARRIS. I yield.

Mr. LONG. Mr. President, may I say to the Senator that I personally have undertaken to find out, as best I could, all

about Judge Carswell, from people who know him and have worked and served with him. So far as I can determine, everyone I know of, including those who represent the State of Louisiana on the district court bench, who have served with the man, all urge that I vote to confirm him.

There are two or three who would like not to be quoted because they feel it is not appropriate for a judge to engage in saying whether a man should be confirmed or not.

One went to some pains to explain to me that he felt that there were political considerations involved in the appointment of a judge and that he had very grave doubts as to whether a judge ought to be telling the Senate whether a man should be a judge or not. The overwhelming majority of judges to whom I talked were willing to express their views.

And they were unanimous in the opinion that this man should be confirmed. Can the Senator say that I should not be willing to vote to confirm a man if everything is as I have related?

Mr. HARRIS. Mr. President, if the distinguished Senator from Louisiana is convinced that Judge Carswell is qualified and meets the high standards of a Cardozo or a Holmes or the kind of men that he and I would want to consider and act upon the law and the facts in a case regarding ourselves; if the Senator thinks this nominee is of the quality and caliber that he ought to be in order to serve as one of only nine men who sits for the rest of his life to hear last and final appeals for human justice—then I think he ought to speak in favor of the nomination.

If, on the other hand, the distinguished Senator from Louisiana is in the position that a growing number of members of the general public, as well as a growing number of the Members of the Senate, are, and upon reflection on the qualifications of this nominee and the full facts concerning the matter, the Senator is beginning to doubt that this appointment should be confimred, I think he ought to listen carefully to the statements made in the Senate and elsewhere and either join with me in suggesting that we refer the nomination back to the Judiciary Committee or that we go ahead and reject it.

I would call the attention of the distinguished Senator to an editorial which appeared in the Norman Transcript, of Norman, Okla., on Tuesday, March 17, 1970, because it bears upon the Senator's own position perhaps.

The Norman Transcript started out, as did the Senator from Louisiana, feeling that it probably ought to support the nomination.

The Norman Transcript is not known as a "liberal" newspaper. As a matter of fact, the editorial starts out saying that the identities of those opposing Judge Carswell made them want to support him.

They point out that among those opposing Judge Carswell are, as they say, "extreme civil rights advocates and organized labor," and "social activists." So, this is not a particularly liberal newspaper.

The Norman Transcript at first, then, determined, as maybe the distinguished Senator from Louisiana did, that perhaps it was a nomination which should be rather summarily approved.

Then the Norman Transcript said:

In the light of later information, however, and specifically on grounds of the nominee's evidenced racism and inadequate legal qualifications—the large number of his decisions in the field of civil rights that have been reversed on appeal—many people are having second thoughts.

While Judge Carswell is conceded to be honest, there is no question his record is one of unsurpassed mediocrity. The highest court in the land needs more than that, especially in view of the lowered esteem it enjoys in the eyes of much of the public and after the soul-wrenching crises of the past. It needs someone to add not only moral integrity, but also wisdom and judicial resourcefulness that will give the court more understanding of the practical effect of its decisions and make it less stubbornly doctrinaire.

About all that recommends Judge Carswell is that he is a southerner and thus, Nixon can meet his campaign promises to the South. But, if he cannot bring judicial talent to the bench, he probably should not be confirmed.

In that event, the President should look elsewhere than in Dixie for a man who would strengthen the Supreme Court—not only for now, when strengthening is so desperately needed, but for the years to come.

Mr. President, I ask unanimous consent that the editorial from the Norman Transcript from which I have read briefly be printed in full at this point in the RECORD.

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

DOUBTS CAST ON CARSWELL BY RECORD OF MEDIOCRITY

To examine the identies of those who are opposing Senate confirmation of President Nixon's nomination of Judge G. Harrold Carswell to the Supreme Court is to understand the reason for their stand.

Invariably they are associated with groups holding a vested interest in a continuation of the social-activist type of court carried to the extreme during the tenure of former Chief Justice Earl Warren. The more extreme civil rights advocates and organized labor have not retreated in their battle to prevent a turning of the court into a more constructionist mold, the avowed aim of the President. A large share of the American public apparently agrees with him that the Supreme Court should be interpreting the Constitution rather than breaking new social ground.

With this principle in mind and with such substantial backing, it is unfortunate that the President and his advisers chose a nominee with an undistinguished judicial record. Precisely because of the critical conversion he was seeking to impose on the court's makeup and precisely because of the bitter opposition the liberals could be expected to mount, the administration should have been extra careful to pick a man whose credentials—moral, judicial and philosophical—were as much beyond question as possible.

While the nomination of Judge Carswell did not seem too inspiring when it was made, many, including this newspaper, felt the country should be spared another bitter fight over confirmation such as occurred with Judge Clement F. Haynsworth Jr. Even the senators opposed to Haynsworth seemed to lack enthusiasm for another all-out battle.

We derived some solace, too, from the absence of any evidence of financial conflict of interest or wrong-doing on the part of Judge Carswell. His disavowal of the views expressed in a segregationist speech he made years ago in a Deep South community, when the temper of the country was far different from what it is now, appeared to satisfy most people. It just didn't seem that the lack of an outstanding record was worth another divisive fight.

In the light of later information, however, and specifically on grounds of the nominee's evidenced racism and inadequate legal qualifications—the large number of his decisions in the field of civil rights that have been reversed on appeal—many people are having second thoughts.

While Judge Carswell is conceded to be honest, there is no question his record is one of unsurpassed mediocrity. The highest court in the land needs more than that, especially in view of the lowered esteem it enjoys in the eyes of much of the public and after the soul-wrenching crises of the past. It needs someone to add, not only moral integrity, but also wisdom and judicial resourcefulness that will give the court more understanding of the practical effect of its decisions and make it less stubbornly doctrinaire.

About all that recommends Judge Carswell is that he is a southerner and, thus, Nixon can meet his campaign promises to the South. But, if he cannot bring judicial talent to the bench, he probably should not be confirmed.

In that event, the President should look elsewhere than in Dixie for a man who would strengthen the Supreme Court—not only for now, when strengthening is so desperately needed, but for the years to come.

Mr. HARRIS. Mr. President, I read that editorial not to confirm or approve all of the statements in the editorial, but simply to say to the distinguished Senator from Louisiana that I hope what has happened to this editorial writer might also happen to the distinguished Senator from Louisiana and to other Members of the Senate generally who have tended to favor the nomination, and upon reflection the Senator will see that the nomination ought not to be confirmed.

Mr. LONG. Mr. President, the Senator started out by saying or suggesting that we ought to have someone of the caliber of Judge Cardozo or Judge Holmes on the Court. Then he said something about Judge Carswell having been overruled by the fifth circuit.

My impression was that Judge Holmes was known in his day as the Great Dissenter. He dissented more than did anyone else on the Court. And in that respect, one can consider that he was overruled by the Supreme Court more than anyone else on the Court during that period of time. Yet, he was regarded as one of the great judges of all times.

I would think the fact that Judge Carswell might have been overruled a number of times by the court of appeals might reflect in about the same way.

I have tried to determine something about the point that the Senator raised. And on the basis of my information basically, I believe that if one is writing cases to be reviewed by the fifth circuit and he wants to be affirmed by the Supreme Court, the safe thing for him to do is to always go to the liberal side, because one can err to a very considerable extent on the liberal side and still be confirmed.

However, if one errs on the conservative side, he will be overruled by that court.

That is a circuit which, above all, prides itself on the extent to which it has overruled district judges. And if that be a source of pride, they can certainly claim it.

Some people may not agree. But I see nothing upon the basis of which one should not vote to confirm Judge Carswell.

Someone brought up the country club episode. I point out that the Senate voted unanimously in 1964 for an amendment that provided that if one had a private club which was, in fact, a private club, he could discriminate in the matter of membership of that club in any way he wanted. I know, because I offered the amendment.

That is how it was in 1964. I recall that former Senator Hubert Humphrey, later Vice President of the United States, was managing the bill at the time. And the Justice Department attorneys thought it was all right. They helped to draft the amendment. They agreed with it

It is very difficult for me to see how we could have voted at that time unanimously to provide that it is perfectly all right to discriminate in any way one wants with respect to the activities of a private club, and now say that Judge Carswell should not be confirmed.

It seems to me that if we follow the same logic, it would mean that every Senator who participated in that action is not qualified to be a Senator today on the same basis, because he voted to legalize the very thing that he is accusing Judge Carswell of doing in 1956.

Mr. HARRIS. Mr. President, I would not have so voted had I been a Member of the Senate at the time. However, that is not the same situation.

Judge Carswell was not a private citizen. He was a U.S. attorney at the time of the so-called Tallahassee matter in 1956. He at that time joined with other citizens in a course of action, the result of which was to exclude black people from the use of a golf course which, up until the time of their action, had been a public municipal golf course.

That result was achieved by forming a private corporation to which that previously public facility was then transferred.

Judge Carswell, I understand, has disputed it was his intent by taking part in that course of action to deny black people the use of what had been up to that time a public facility; to deny them the use of it in direct contravention of and to circumvent the ruling of the Supreme Court which had held it unconstitutional for a city or State to segregate any of its public recreational faciilties. But Judge Carswell does admit having knowledge of similar practices occurring in other cities in the South for that purpose.

I would simply call the attention of the distinguished Senator from Louisiana to the fact that if Judge Carswell was ignorant that such was the intent or would be the result of the course of action in which he participated, I think that alone raises a very serious question about his qualification and his basic intelligence to serve in this kind of very important position. But I would go further and state on that same point, and say to the distinguished Senator from Louisiana, that it seems to me that questions in regard to that very incident have been raised, since Judge Carswell's appearance before the Committee on the Judiciary, with such seriousness that Judge Carswell himself should ask to come again before the Committee on the Judiciary and, if he can, clear up those objections.

If I were he, I would not want to begin upon my duties as a member of the Supreme Court with that and other serious objections still unanswered, and, as far as we know, never to be answered by the man who can answer them best.

I take it Judge Carswell is not just looking for a job. He has a job. I take it he would like to serve on the Supreme Court because he thinks that would be a place of honor and service to the general public. If that is so, which I assume it is, because there is no other reason he would want to serve, I would want to clear up these matters were I he.

Mr. LONG. Do I understand the Senator was not a Member of this body in 1964?

Mr. HARRIS. I came to the Senate, I remind the Senator from Louisiana, in the latter part of 1964, taking office too late to take part in the session of Congress that year.

Mr. LONG. May I say to the Senator that when we voted on that Civil Rights Act of 1964, the Senate—and it was by unanimous vote; there was no objection to it—accepted the amendment I offered to make clear that a private club was not subject to that act and that that private club, so far as the law was concerned, could discriminate in any fashion it chose. That has been the law since then. The amendment I offered made clear that the test would be not whether the club was organized in good faith; the words "bona fide" were used originally but there were substituted the words "in fact." The private club could discriminate in any way it wanted to discriminate. That could be Negroes organizing a private club for their own; it could mean Students for a Democratic Society if they wanted to organize a private club for their own. Any truly private group could do whatever they wanted with regard to whom they might accept as members and with whom they wanted to participate.

That action was taken by the Senate 8 years after the time the Senate was talking about. The House concurred. The President signed that bill into law, which stated that with regard to private clubs those people could do whatever they wanted to do.

I find it most difficult to understand how a Senator would object to a man being confirmed because he did something in 1956, just about 14 years ago, which not only was legal, but also there was nothing to censure that conduct at that moment; and with regard to which Congress placed its explicit stamp of approval at a date 8 years later.

So I say to the Senator that while he may say he was not a Member of this body at the time, the same thing would not be true of a great number of Senators. I think a majority of Senators now serving sat in this Chamber and made legal what they now would condemn Judge Carswell for having done. That being the case, those Senators should either go and tell their constituents they do not know what they are doing in this body and that they are not qualified, or in the alternative that Judge Carswell is qualified to be a Justice of the Supreme Court.

Mr. HARRIS. The Senator from Louisiana persists, it seems to me, in arguing the wrong kind of conclusion from a set of facts he sets forth. The situation which the distinguished Senator from Louisiana relates is not the situation here. The situation here is of an officer of the court, a U.S. district attorney, who entered upon a course of action, the result of which was to take what had previously been a publicly owned and operated municipal golf club and transfer it into the hands of a private corporation for the purpose of keeping black people—they being members of the taxpaying general public—from using what up to that time had been a public facility.

If that was not the intent, then the circumstances are very suspect. I would think someone would come forward, and, what would be better, as I said a moment ago, would be that Judge Carswell himself ask for the opportunity to come back before the Committee on the Judiciary and relate what his intent was at that time; and better than that, respond to questions from members of the Committee on the Judiciary in relation to it.

The Senator from Louisiana said that was a long time ago. It was in 1956. The President used an argument something like that, and I think erroneously, in referring to the late Ralph McGill, who was a friend of mine and, I think, one of the most distinguished and useful men in the history of this country. The President said that Ralph McGill changed his views during his lifetime in regard to segregation. But I point out to the Senator from Louisiana that, while I will not hold a man responsible forever for the follies of his youth, and while I would not automatically condemn Judge Carswell for the white supremacy speech he made in 1948, nevertheless, I would think that a rebuttable presumption arises because of those facts and that kind of speech, which Judge Carswell's record thereafter does not show has been changed. If one looks at Judge Carswell's opinions and at his actions, all of which are spread upon the plain record of the Committee on the Judiciary, I think he will find that the record certainly fails to demonstrate that he ever changed his mind on these issues.

If he did, it seems to me we ought to have stronger proof. I do not say that he did not. I believe every man has a right to change his views. As a matter of fact, if he had been in error, as I think Judge Carswell was, he was under a moral duty to change his views. But I do not think we ought to just come in here and say, "Well, it has been 14 or 16 years ago, and we will not still hold him responsible for that." I might agree if there was anything in the record to the contrary, but where is it?

Mr. LONG. Mr. President, if the Sen-

ator will yield further, when President Kennedy became President—perhaps the Senator from Oklahoma was not aware of this, but I was—President Kennedy refused to belong to some of the better men's clubs because no Negro members were allowed in them. He used his leverage to try to see that they were admitted. One could say that all those who were members in those clubs should not be permitted to be on the Supreme Court or in some other high positions in Government. The same argument could be applied to Judge Warren. He was a member of a club here that had no Negro members for a long period of time. I believed that is the case even now. Yet, we all recognize Judge Warren as being one of the great leaders of the liberal movement, and I would think one of the great heroes of the civil rights groups.

From the best information I have obtained with regard to Judge Carswell's record regarding the opinions the Senator mentions, I find that he has made a record of one who is not an extremist on one side or the other. He is not an extremist on the civil rights side. He is not an extremist on the other side.

I am sure the Senator would be willing to admit that, insofar as it serves the interests of civil rights, to appoint one who is an extremist on the civil rights side or civil rights advocates, about all that could be done in that direction has been done. After all, Thurgood Marshall was appointed to the Supreme Court, and there was no determined effort to defeat the confirmation of that nomination by those who thought he had extremist views on that issue.

Mr. HARRIS. Does the Senator think that that was the appointment of an extremist on that issue?

Mr. LONG. Was he not the attorney for the NAACP?

Mr. HARRIS. And the Senator thinks that proves he was an extremist on that issue?

Mr. LONG. I think he went about as far as he could go on behalf of integration. Could the Senator tell me of someone who could have gone further?

Mr. HARRIS. I think the decisions of the Supreme Court in favor of the innate worth and dignity of every human being and equality of opportunity for every child in America of every color, is not extremism. In a way, that is conservatism. It carries out what has been the intent of the Constitution of the United States to guarantee the dignity, value, and worth of every human being. I do not know of any religion or philosophy worthy of the name, if I may say to the Senator, which would allow us to distinguish between people on the basis of their color and still have any moral regard for our own rightness.

I do see it as a matter of "balance." Some persons have talked about balance. I certainly would not want to have even one person on the court who did not believe in the Constitution of the United States and the innate value and equality of every person, regardless of color. I think the possible dilution of constitutional principle is involved. It is not a matter of extremism to uphold the value of every person.

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

Mr. HARRIS. I yield.

Mr. LONG. I think when the Senator talks about little white children and little black children, we should bear in mind that it involves busing a white child 30 miles away from his home to get him into a school so that we will have there what someone has determined is a proper quota of white children. It involves taking a little black child and busing him 30 miles away from his home to put him into a school which, by someone's judgment, has the proper quota of children of the opposite color in it. It also involves the parents of both children violently protesting this action. Thus, the Negroes oppose it and the whites oppose it. Anybody who imposes that system on them, in my judgment, is an extremist, and is denying both the Negro child and his parents and the white child and his parents their rights as they see them. I think a person who would impose that condition on our citizens is an extremist.

It is these same people who say, "No, no, that is not extremism at all. That is upholding the Constitution." Nowhere in the Constitution does it say that. Therefore, when some functionary in the Department of Health, Education, and Welfare says that that is a constitutional delegation of authority, I would call that extremism.

If the Senator feels that way, more power to him. I think a man should be true to his convictions. But it seems to me that the court has gone about as far as one would want to go to say the Constitution means just about everything the liberals on the civil rights issues would like to have it say. I think that Judge Carswell's views since he has been on the court have been very moderate, and I think impartial persons looking at that record would tend to think that. But it is not going to satisfy those of the view that we must appoint on the court someone who is going to vote the way Judge Marshall is going to vote all the time, for example.

Mr. HARRIS. I reply to the Senator from Louisiana: Who would have stood up for that little black child who did not have equal education in 1954 if it had not been for the Supreme Court of the United States? Nobody else did. Nobody else had, and nobody else would.

Just consider my home county, for example. I point these matters out to the Senator so that it may be noted that I do not come here with any assertion of special insight. If I can come to see these things, anyone can.

In my home county of Cotton County, the county seat is Walters, a town of about 2,000 population. No black people lived in that town, because in earlier days they had what was called a "sundown ordinance," the effect of which was that black people could not live there. Just south is the town of Temple, Okla., population 1,500. There were a few black people who lived in that town, but there were not sufficient black students to have a black high school. Prior to 1954, we had in Oklahoma, as was true in the Senator's State, and throughout America, particularly in the South, a dual school system by law.

By law, we had a black school system and a white school system. The white people in Temple went to a white high school, but there were not very many black students, so there was no black high school. Those black children who lived in Temple, Okla., did not go to the white school, although they could have walked a few blocks from the black section and could have gone to that school. Instead, by law, on taxpayer's money, including those taxes that black people themselves paid on their earnings from rather menial jobs, those eight or nine black students were bused out of Temple, were bused past Walters, Okla., and bused some 30 miles to Lawton, Okla., on a bus which was known as the tin can.

Who would have stopped that kind of inhumane, unconstitutional, degrading treatment of so many children in this country, if it had not been the Supreme Court in 1954? The Supreme Court said in effect, "You cannot have a dual school system under the Constitution. It is inherently unconstitutional to do so."

In my home county at that time, Comanche County, at Lawton, we had a superintendent of schools who stood up and said that the law was the law and that we in our town were law-abiding people, and that the Court had said that there cannot be dual school systems, and that there were not going to be dual school systems. The Court said that affirmative action had to be taken. In Lawton, we did that. We abolished the dual school system.

Now, in some areas of the country, people are saying, "Give us a little more time, and let us not have this extremist business of doing away with our dual school system." But I say to the Senator that objection comes 16 years following the case of Brown against Board of Education. Now is the time.

I tell the Senator that what we need in this country are people who are going to stand up and say, "The law is the law. Let us join together and see if we cannot work this matter out," instead of continuing an unconscionable delay which only makes matters worse and often results in harsher orders.

Mr. LONG. Let us just assume that the same child the Senator is talking about wants to go to that school right across the street from him, but he is still being put on that tin can and bused 30 miles to go to school somewhere else. Who is standing up for him now? Certainly not the Senator from Oklahoma. That is the kind of problem we are complaining about now in Louisiana.

I thought that the 1954 decision meant that every child was entitled to go to the school nearest his home. But some people, perhaps the Senator is one of them, I do not know——

Mr. HARRIS. Does the Senator feel that, black or white, a child should be able to go to the school that is closest to him and that that should have been allowed all along for black children?

Mr. LONG. That is what the 1954 decision meant to me. Apparently, however, some people were disappointed to find that some of the Negro children

were proud to be like the people who made them, proud of their fathers and proud of their mothers, and wanted to be like them and go to school with people like them. Because some people seemed to feel that even though that little Negro child wants to go to that school next door, we are not going to let him go there, we are going to bus him 30 miles away, on that old tin can the Senator is talking about, where somebody in the Department of Health, Education, and Welfare thinks his presence would make for better racial balance.

Furthermore, in the school where I went to school, Louisiana State University, any Negro who wants to go there can show his high school diploma and go there, that is all there is to it.

But over on the north side of the same city where I live, is Southern University. It is the pride of all the Negroes of Louisiana. I am proud to say that the band from Southern University performed at the Super Bowl game—I hope the Senator was watching; 80 million other Americans were watching. They did a magnificent job, and I heard a Heisman Trophy winner sitting right behind me in the stadium say, "That is the best half-time show I have ever seen."

But those people are now being told that Southern University has to become a part of LSU, whether they want to or not. They are saying, "Please, won't you let us continue being Southern University, rather than being a part of Louisiana State University?"

They very well know that every last one of them is eligible for admission to LSU next semester. Why should they be discriminated against in that fashion? I say we are discriminating against both the white and the Negro, and I say that anyone who tries to do that is an extremist on the subject.

Mr. HARRIS. Mr. President, if the Senator from Louisiana feels that the black people in the South have not had equal opportunity for jobs, or equal opportunity for education, or an equal chance for a good house in a decent neighborhood, only because they chose not to, I say that the Senator from Louisiana has not been looking at the same country I have been looking at.

Mr. LONG. I asked the Senator a question. He can only yield for a question, and I am trying to ask him this question: Why should not those Negroes in Southern University be entitled to have and be proud of their own university, if the whites are willing to let them have it?

Mr. HARRIS. Mr. President, they are proud, and I am proud for them that they are proud of being black. I think the very fact that the term "black" is being used today is a good innovation.

But I would just say to the Senator from Louisiana that he knows and I know, as every person in America knows, that we have not done right by black people. We came along, after the Civil War, and there were Members of this body and distinguished people generally throughout the country who said that it is not enough to give the black man, at long last, his freedom, but we have got to help him toward the fullness of the meaning of freedom; and some of our wisest men advocated, among other things, that Congress enact a system of Federal aid to education, and that that money be divided up among the States on some ratio which involved the number and percentage of students whose families were poor.

The intent was particularly to give some compensatory attention to the education of black people, who until that time had been overtly held down and kept from education.

That was a measure of particular importance to the South, because the South at that time, as the Senator knows, did not have, by and large, in many of the States, the kind of strong system of education that it should have had.

Moreover, it was of vital importance to the country. There were people who said, "However Louisiana runs its school system is Louisiana's business. If Louisiana wants to discriminate against little black children, that is its business. If Oklahoma decides that it wants to give an inferior education to its students, black or white, that is Oklahoma's business."

Mr. President, as the distinguished Senator from Louisiana will, I am sure, admit, that was never true. It was always America's business how its young people were reared, what sort of chance they had, and what kind of education our system afforded them. We have now found out, much to our regret, Mr. President, how untrue it was. Because we have found that people do not stay in the same place. From Louisiana they move up to New York, or from Oklahoma, they move to Detroit; and we have found that if people were discriminated against anywhere, not only was that immoral, as we should always have known, but it was also going to be felt by all of us, to our detriment, in this country, and our country would be generally weakened by it.

So, the shams and dodges began to put into effect, after the Civil War, though not for a good while thereafter, when America made that awful mistake, and finally began, in the late 1800's, to pass all those Jim Crow laws, so that by the early 1900's even Washington itself, the Federal City, which most of all symbolized the American dream, became a segregated city. When that happened, Mr. President, America did something that was not only shameful, but something that has cost it dearly in blood and treasure and trouble with its conscience.

Now, Mr. President, it is time for us to move ahead. It is not, I submit, a time for "benign neglect." These problems will get worse if neglected. They are problems which demand the highest qualities in every one of us. The problems are difficult; the solutions are not easy. But what we need to insure in America, Mr. President, is that if a black person wants to live among black people alone, he ought to have that right, but if he wants to live in the previously all-white suburbs which, up to now, in most of the cities of America, has been the only place he could be near a good job and have a good house, he ought to have that right of individual self-determination.

Mr. President, that right has not been real. If a black person wants to go to an integrated school, he ought to have that right, Mr. President, and that has not been true. We have, in many of the States of this country, my own and the Senator's included, restricted some young people from doing what the rest of us in this country were allowed to do.

I say, Mr. President, that was unconscionable to do, and I agree with the Supreme Court of the United States, who has said and said repeatedly that affirmative steps are necessary to correct that terrible blot on the history of this country.

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

Mr. HARRIS. I am happy to yield.

Mr. LONG. The Senator said we have done it by law. So far as I know, I have not voted for any law to do that, and so far as I know the Senator has not.

Mr. HARRIS. No, but I think, Mr. President, that our saying that the Senator and I have not, by our own voting on some law, held down little black children in this country, or black people generally, does not absolve us from the active responsibility to correct that kind of injustice.

Mr. LONG. Mr. President, may I say to the Senator, I know some things that we have done. I know a few things I have tried to do by law in the direction of trying to see to it that the Negro schools in my State and my community had that which was coming to them. I helped raise money in my State to provide facilities to see to it that Negro schoolteachers were paid every bit as well as white schoolteachers, even though, in many instances, they could not present the same credentials, that they were provided with all the wherewithal they needed to go to school, and that their schools were every bit as good as the white ones.

The Senator said one thing that interested me, because I did not know it reflected his views. He said that if a Negro citizen wanted to live among Negro citizens, he ought to have that privilege. Would the Senator be willing to say that if the Negro citizen wanted his children to go to school at the same school with other Negro children, and the white community had no objection to that, they should be permitted to do so?

Mr. HARRIS. Mr. President, I do not intend to answer that kind of theoretical question, which the Senator from Louisiana surely knows is exactly the kind of question which has so long been used as a subterfuge to keep people from realizing their constitutional rights.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. HARRIS. I yield.

Mr. LONG. Is the Senator aware of the fact that that is a problem we have, right in my hometown, with two universities?

A considerable number of Negroes are going to Louisiana State University. But there are several thousand Negroes in Southern University who prefer to go there. That is a concrete fact and is not theoretical.

Incidentally, when they started the law school at Southern, they started by

borrowing LSU faculty. That faculty would teach by morning at Louisiana State and by afternoon at Southern. Those people had enough pride in their own rights that they wanted their own law professors, and they brought in some very fine Negro professors to teach there.

If that is how those people want it and prefer it, is the Senator here to tell them they should not be permitted to do so?

Mr. HARRIS. The distinguished Senator from Louisiana well knows that the "happy darky" syndrome was one that southerners used and people in my own State used for years. They said, "Leave them alone. They like it." I do not think the black people of America did like having menial jobs. I do not think they did like having indecent housing. I do not think they did like having inferior schools and colleges. I never did think that those people were correct who said, "If you will just leave our black people alone, if we will just not have some outside agitators stirring them up, they will be all right."

I believe that black people knew that the promise of the Constitution was not being delivered to them; and I, therefore, have been one of those who, at every opportunity, has tried to actively strike down those awful barriers which have tortured young people and helped to destroy children in this country for far too long.

Mr. President, I think we have an active responsibility here. If we want to see this become one country, where people have a chance to live together as citizens of one country, then all of us have the responsibility, in the way our conscience moves us to do so, to take active steps within the democratic system to see that opportunity is equal in America. And it has not been.

As the distinguished Senator from Louisiana knows, I served as a member of the National Advisory Commission on Civil Disorders, the Kerner commission. I walked the ghettos of this country; I walked the rural poverty areas of America; and what I saw made me awfully sick at heart. The facts were not that much new to me, because, like most Americans, I knew the basic facts. But when I finished the study on the Kerner commission, it was not just a matter of knowing it in my head. I felt it in the pit of my stomach.

We said, on the Kerner commission, quite as truthfully as we knew how that America was becoming two societies, separate and unequal. We said that not only is that unacceptable, not only is that morally indefensible, but, also, it is costing us in untold treasure and lives and has done so throughout the foot-dragging history of this Nation's compromising actions in regard to the central issue of race.

One year later, I served with Mayor John Lindsay and others on a committee sponsored by the Urban Coalition and by Urban America, Inc. We took another look at this country, and we said, 1 year later, following the Kerner commission, that the problems were just 1 year worse. I venture to say that the situation is not sufficiently improved since that time.

Now, Mr. President, here we consider the appointment of a man to be one of nine to serve for the rest of his life as a member of the U.S. Supreme Court, which is the last bastion of the safeguarding of what the Constitution promises to each of us; and if we would take a nominee whose qualifications fall far, far short of what they ought to be, and whose own record raises terrible suspicions about his feelings on the central issue of race, then it seems to me that we will commit grave error. This nomination surely ought not be confirmed; and with my vote, it will not be confirmed.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. HARRIS. I yield.

Mr. LONG. The Senator has said he was not going to answer the question, so I assume that he is going to make another speech and decline to answer the question again.

Mr. HARRIS. Mr. President, I have all the time in the world, and the Senator from Louisiana is quite within his right—at my indulgence—to ask me whatever questions he wants. But it also is quite within my right to answer however I may please or as fully as I may please, since I have the floor, and since this is one of the matters of greatest importance which the Senate will consider in our lifetime.

Mr. LONG. May I ask the same question of the Senator, hoping to get an answer? What I am asking is this: There is a black community and at some distance a white community, and the black citizens want their children in the school located in the black community and the white citizens want their children in the school located in the white community. Does the Senator favor, against the will of those black parents, busing their children to the school in the white community and, against the will of the white parents, busing their children to the school in the black community?

Mr. HARRIS. If the distinguished Senator from Louisiana would like to be sworn in and testify in regard to a particular case he wants me to decide, I will do it. But I think what we are dealing with here is not the decision of some particular case. I dare say the Senator does not have a particular case in mind. If he does have a particular case in mind, surely he would present it in more detail, if he wanted a judge or jury to decide it.

Mr. LONG. Shall I detail it?

Mr. HARRIS. The distinguished Senator from Louisiana knows that principle is what is involved here. Are we going to take the tragic step we took after Reconstruction? Are we going to say, "Don't bother me any more with these basic human questions that are involved in the black-white crisis which still afflicts America?" Are we going to sort of put those questions out of our minds and get on to something a little more popular or a little easier to decide or a little less inflammatory and explosive? That is the question, Mr. President.

The question involved in the nomination of Judge Carswell is that one, and another. The first question is, Will we require the highest qualifications for those who would serve on the highest court of this land or not? The second question is equally basic, perhaps more so: Are we going to require that a man appointed to the Supreme Court of the United States believe in the promise and ideal of the Constitution to which each of us pledges our support?

Those are the questions, as I see it. Senators may differ on how they see it, but that is the way I see it.

This nominee has given black people throughout the country, and a great many others, every reason to be fearful about what he holds in his heart in regard to them and in regard to full equality in this country. I do not know what is in his heart. All I know is what is in the record. The record, it seems to me, is one which does not clearly demonstrate that the white supremacy views which he voiced in 1948 have been changed.

Ralph McGill, whom the President alluded to—a great man—spent a lifetime trying to bind up the country's wounds, trying to help see that black people in America have an equal chance, trying to change this awful kind of immoral white supremacy that the Senator from Louisiana and I know has been a rampant and ugly ghost in our country.

We have not seen proved a change of heart since this nominee made that horrible speech in 1948. That is why it is necessary that we be awfully careful in our decision.

Mr. LONG. Mr. President, will the Senator from Oklahoma yield?

Mr. HARRIS. Yes; I yield.

Mr. LONG. I do not think our Negro citizens are ever going to achieve the full equality that they are entitled to, and that I want them to have, until they are willing to stand up and recognize themselves as being equal. A part of that has to do with pride in one's self, in one's mother and in one's father; with confidence, just as I am confident the case is, in his father and his mother, and his grandfather and his grandmother; until Negroes believe that they are just as good and worthy as anyone else and can take pride in themselves.

Unless we encourage them to have such confidence, we are discriminating against them, just as we discriminate against anyone else when he is made to believe that he is not worthy of having pride in his own mother and his own father, and of being proud to live in his own community, and proud to have a school that he can go to and have a teacher whom he likes, a teacher who comes from the same kind of people from whom he comes.

The Senator from Oklahoma may find something evil about that. I do not. The Senator has not answered my question. Is it not fine to see outstanding Negro citizens put on a plane that they can be proud of? Proud of wanting to learn? Proud of wanting to do their best? Proud of their fine performance in a band? Proud of wanting their own university, so that they can assert their racial identity?

If the Senator wants to see the pride of the Negro race, he can go to Southern University, where he will find Negroes who are proud of what they have achieved in the past and hope to achieve in the future.

Mr. HARRIS. Mr. President, I want to help see that black people can be as fully proud of this country as they are of themselves.

That is the issue here.

Pride in America. I want them to be able to be proud that America's promise is as real for them as it is for the distinguished Senator from Louisiana and myself.

That is the issue here.

The Senator says, "until they have pride in themselves, until they have pride in their mothers, until they have pride in each other."

I do not think that is the question at issue here.

I do not believe it was lack of black pride that built two school systems in America.

I do not believe it was lack of black pride which forced black people to endure that.

I do not believe it was lack of black pride which confined black people to the worst sections of the cities, towns, and rural areas of America to live in substandard, indecent housing, as the law and our actions did for so long, until this Senate, at long last—far too late—last year, with my active support—decided that we were going to say that a country which taxes everyone on an equal basis, and which drafts young men equally to fight for their country, will finally write into the law that a person in this country has a right to live wherever he wants to.

I do not blame black people for saying, "I am not going to say thank you, Senator HARRIS, for giving me the right to vote in 1965. I thought I already had the right in this country."

I do not think it was a matter of black pride which for so long excluded black people from the basic American right of voting in America.

I do not think it was lack of black pride that caused the awful discrimination and racism in this country from which, as I say, all of us have suffered so terribly.

Racism is the No. 1 mental health problem in America today. It cripples far more little children than does schizophrenia or mental retardation. I am not just talking about the victims of it. I am talking about the people who are taught it, as well.

There is a crippling kind of illogic in people who can stand up and profess to believe in the tenets of the Christian religion and, at the same time, somehow believe that black people are not as good as white people, or that Mexican Americans, or Indians, or any other minority in this country are not the same kind of full-fledged citizens.

Now, Mr. President (Mr. DOLE), there is no reason, at long last, at this late date, for any of us to say that we did not know any of that existed, or that we did not know any of that now exists, that suddenly the States which had a dual school system and those who upheld them have changed their minds, 16 years later, after Brown against Board of Education.

Mr. President, we are all grown men. We all know what the facts are. We can all read the Constitution and the cases. We can also, I trust, see how far short of that constitutional ideal this country has fallen in the past.

Mr. President, I see no other way. If one wants this country to continue to move ahead, if one wants to see the black-white crisis compromised again, or wants to see this country move on toward the things it says it believes in, then this is a terribly important decision facing the Senate today as to whether it will confirm the nomination of Judge G. Harrold Carswell.

It may be politically popular, for the short run, to say that what the issues need and what the black-white crisis needs is to be left alone.

If the "ideological eunuchs" or the "liberal intellectuals" of America manufactured the problems of the cities, why, then, we should leave them alone.

If we do not have a health crisis in this country, if it is not true that America is the richest and most medically knowledgeable country in the world but still stands 14th in infant mortality—a euphemism which means that your child is dead—then we should, indeed, ignore the problem.

If it is not a fact that the black-white crisis continues to worsen in America, if it is not true that 95 percent of black children continue to go to all black schools and that 95 percent of all white children continue to go to all white schools, and that that presents serious obstacles to binding up the Nation's wounds and allowing us to come together as one people in one country, and not as separate and unequal people living one country—if that is not a real problem, then we should, indeed, forget it.

If it is not a real problem that hunger continues in America, that 25 million Americans still live in poverty—if those are not real problems, then a little "benign neglect" is, indeed, the indicated treatment.

But, I say those problems are real, Mr. President.

And, since they are real, if they are not acted upon, if they are not moved against actively and vigorously, they will get worse. Leaving alone the black-white crisis in America, which is the central issue of our day, as it has been, for much, much too long, will make the problem worse.

I would say that those in charge, ourselves included, while those problems get worse during inaction, will be held accountable by the people of this country—and should be held accountable.

Mr. President, were we now considering the appointment of an Attorney General, we would have a chance to go to the people of the country in 1972 and say, as President Nixon did in his remarks to the Republican convention regarding Ramsey Clark, "Elect our candidate President, and we will have a new Attorney General."

Mr. President, what will we say in 1972 in regard to Judge Carswell? Should the Senate confirm him, he will not go out of office, as President Nixon goes out of office in 1972 or in 1976, but he will continue in office for life.

I want Members of the Senate to put themselves in the place of any black person in America who has read that supremacy speech of 1948. And I venture to say that a great many black people have had more cause to read it than do many of us who are white.

I would like to have Senators put themselves in the place of black people and look at that white supremacy speech and at the Tallahassee Golf Course matter in 1956, and then look at these decisions that the nominee has rendered as a judge, and particularly as a member of the Fifth Circuit Court of Appeals, and then ask, "Is that the kind of Supreme Court Justice America promises me? Is that the kind of man that the President should appoint and the Senate confirm to sit in judgment on basic constitutional questions involving human rights? Is that the kind of Supreme Court Justice that I am entitled to and that America should have?" I think the answer of the Senate would be "No."

EXCLUSION OF CERTAIN PERSONS FROM THE NUMERICAL LIMITATION OF WESTERN HEMISPHERE IMMIGRATION

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2593.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2593) to exclude executive officers and managerial personnel of Western Hemisphere businesses from the numerical limitation of Western Hemisphere immigration, which were to strike out all after the enacting clause and insert:

That (a) section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)), is amended to read as follows:

"(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform temporary services of labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as a trainee; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him."

(b) Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended by adding at the end thereof the following new subparagraphs:

"(K) an alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry, and the minor children of such fiancée or fiancé accompanying him or following to join him.

"(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corpora-

tion or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him."

SEC. 2. Section 212(e) of the Immigration and Nationality Act ((8 U.S.C. 1182(e)) is amended to read as follows:

"(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission whose (i) participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, or (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Secretary of State, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further*, That the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien."

SEC. 3. (a) Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by inserting after "101(a)(15)(H)" the language "or (L)".

(b) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end thereof the following new subsection:

"(d) A visa shall not be issued under the provisions of section 101(a)(15)(K) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have a bona fide intention to marry and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. In the event the marriage with the petitioner does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 242 and 243. In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees."

And amend the title so as to read: "An Act to amend the Immigration and Nationality Act to facilitate the entry of certain nonimmigrants into the United States, and for other purposes."

Mr. ERVIN. Mr. President, as passed by the Senate on August 13, 1969, S. 2593 provided for the facilitation of the entry into the United States of executive officers and managerial personnel of Western Hemisphere businesses having branch offices, affiliates, or subsidiary corporations in the United States. Such aliens would have been admitted as immigrants and excluded from the 120,000 annual limitation on quotas applicable to Western Hemisphere immigration.

The bill, as amended and passed by the House, is in the nature of a substitute for the Senate bill and while it would accomplish the original purpose of S. 2593, its coverage is broader and includes provisions relating to other categories of nonimmigrants. The principal provisions of the bill, as amended by the House, are as follows:

First. As a substitute for the Senate provision admitting Western Hemisphere managerial employees as immigrants, a new nonimmigrant classification is established for any alien who has been employed abroad for at least 1 year by a corporation or other legal entity in the capacity that was executive, managerial, or required specialized knowledge and who is seeking to enter the United States to continue employment with the same employer. This proposal would provide relief for the problems of businesses in both Eastern and Western Hemispheres in transferring key personnel to the United States for temporary tours of duty.

Second. The bill modifies the classification of nonimmigrant aliens of distinguished merit and ability who are coming temporarily to the United States to perform temporary services needed in the United States and will facilitate their temporary admission regardless of whether the nature of the position is permanent or temporary.

Third. The bill establishes a new nonimmigrant classification for aliens coming to the United States for the purpose of marrying a U.S. citizen. The visas would only be available upon approval of a visa petition filed by the prospective citizen spouse. The fiance who marries a U.S. citizen within 90 days after temporary admission would be granted permanent residence through regular immigration procedure, if found otherwise admissible. A petition would have been filed by the American citizen in behalf of the intended spouse to authorize temporary admission to the United States. Their marriage within the specified time would exempt the alien spouse, as an "immediate relative," from the annual numerical limitation on visa issuance. The alien spouse, regardless of place of birth, if admissible, would be eligible for permanent resident status under a procedure similar to that provided in section 245. The required fee paid in connection with the change to permanent resident status would be considered as payment of the visa fee when the record of permanent residence is created. In the event the marriage fails to occur, provision is made for the alien's deportation.

Fourth. The bill also would effect some changes in the present provisions of section 212(e) of the Immigration Act requiring exchange visitors to reside for a period of 2 years in their country of nationality or last residence before being eligible to apply for a visa or permanent residence in the United States. As amended that provision would impose the 2-year foreign residence requirement only where the exchange visitor's participation was financed by the United States or his own government or, regardless of financing, the alien was a national of a country which the Secretary of State had designated as requiring his talents and skills. The amended section would retain the provision for waiver of the foreign residence requirement in cases of hardship to the alien's citizen or permanent resident spouse or child, and the waiver based upon the request of an interested government agency, and would add provisions for a waiver if the alien cannot return to his home country because he would be subject to persecution and a waiver upon the recommendation of the Secretary of State in cases where a statement in writing is obtained from the alien's home country that there is no objection to a waiver in the alien's case.

Mr. President, my interest in this legislation stems from conversations which I had with members of the Canadian Parliament during a visit to Canada in 1969 for participation in the 12th Canada-United States interparliamentary meeting. After I returned from the meeting, I received several letters from two members of the Canadian Parliament, Hon. Marcel Lambert, and Hon. J. Judd Buchanan, which outlined in detail the unfair restrictions which our new Immigration Act had imposed upon Canadian businessmen. Because of their importance to the legislative history of S. 2593, I ask unanimous consent that these letters be printed at this point in the RECORD.

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

HOUSE OF COMMONS,
Ottawa, Canada, June 19, 1969.

Hon. SAM J. ERVIN,
The Senate,
Washington, D.C.

DEAR SENATOR: My wife and I were sorry to part company with you and your charming wife in Calgary but were so pleased that Jasper and Banff were so pleasant and the trip West had been such a success. We hope that your return to Washington was both pleasant and uneventful.

At various times during the conference in Ottawa and out West, I spoke to you about a

problem that has arisen out of United States quota restrictions affecting Canadians who wish to enter the United States as landed immigrants. The detail of the quota regulations is immaterial, except that Canada for the first time is caught by these restrictions. However, our business, cultural and trading relations are of such a nature that these new regulations do work some rather peculiar hardships upon Canadians. It is about these that I am writing.

A large number of Canadian firms have subsidiaries or related companies in the United States. In the normal course of business operations, it is necessary to promote or transfer personnel. Now that the State Department has imposed a first-come first-serve method of dealing with applications for landed immigrant visas—and such a visa is required for any Canadian to work in the United States, even though it is for a Canadian company—the interpretation of the regulations and the volume of applications has caused excessive delays of many months. In fact, at the present time, I am told that applicants in the earlier part of this year were told that their applications might come up for consideration in mid 1970 or later. Many of our banks who operate in New York and other firms just cannot wait for this type of delay. American firms on the contrary are entitled to move their personnel back and forth at will within Canada and we feel that Canadian firms, who are in a similar position in the United States should also have the same privilege.

There is another feature, particularly in the oil industry, and I think it also may effect a good deal of the secondary manufacturing in Ontario, although I am not so familiar with this aspect of it. In western Canada most of the oil industry is either owned or controlled by American interests. These firms, either of the subsidiary or branch type operation, have been very good in employing Canadians as a great majority of their middle range executive and management personnel. These persons are part of the whole operation and many of them ultimately are promoted or transferred horizontally to either the parent company or to some related operation into the United States. This allows for a free hiring policy and, of course, makes the entry of these firms most welcome in the various industries in which they operate in Canada. However, now many of these firms cannot transfer Canadians back to the United States within the normal course of their operations unless they are prepared to put up with extensive delays. I have knowledge of a number of cases in which Canadian personnel were advised that they were being transferred to the U.S. and that they were being replaced by a U.S. resident in the normal course of affairs. The Canadian could not move and yet the American citizen was coming up to Canada. If these restrictions continue to apply with regard to Canadians, then I fear that American companies will abandon their very welcome and expected practice of hiring as many Canadians as they can for operations in Canada simply because they will not be able to move them without difficulty beyond Canada. Canadians will have a very limited future within these companies. I don't think that this can be considered as an acceptable state of affairs.

I have queried a number of State Department officers at the consular level and they tell me that their instructions are that these applications must be handled on a strict first-come first-serve basis, with certain minor exceptions. Whether their interpretation is correct or not, I do not know, but I am informed by them that their instructions are that any changes have to come through the legislative process. I am, therefore, drawing this matter to your attention so that it could be looked at. I would appreciate your comments.

Canada has always maintained a free immigration policy with the United States but I must say that I would regret any restrictions imposed upon Canadians to their prejudice and see a pressure build up here in Canada for reciprocal treatment or the institution of an exchange of one for one within the business community. It is my understanding that there has been some informal exchange of views between our respective governments on this subject but I have not been able to elicit any information as to the outcome of such discussions.

I have taken the liberty of writing in a similar vein to a number of your co-delegates both in the Senate and the House of Representatives.

With best personal regards, I remain,

Yours sincerely,

MARCEL LAMBERT.

P.S.—I do not know whether your regulations require landed immigrant status for Canadians who wish to join the American Armed Forces. I am informed at the present time there are some 20,000 Canadians in the U.S. Armed Forces with a great number of these serving in Vietnam or who have served there. It would be rather ironic that Canadians who wish to join the U.S. forces with a view to going to Vietnam or otherwise would have to wait on a first-come first-serve basis while their applications for landed immigrant status were caught up in the present red-tape.

HOUSE OF COMMONS,
Ottawa, Canada, July 2, 1969.

Senator SAMUEL J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: It was very kind of you to take the time to drop a note to my wife, Kay, and myself expressing your appreciation. It was a great pleasure for us to have the opportunity of meeting you and all of your colleagues and their wives.

I believe that such exchanges can't help but to greatly improve the close feeling between our countries.

Possibly you will recall my mentioning the problem we were having with immigration for employees of subsidiary companies in Canada and the United States. As you and Senator Mansfield suggested, I am gathering together the pertinent materials and will be in touch with Senator Mansfield to see if there is some way of overcoming our difficulties by means of a treaty between our two countries.

Again, thank you for the honour you did by visiting us and we look forward to seeing you again in the not too distant future.

Yours sincerely,

J. JUDD BUCHANAN,
Member of Parliament.

HOUSE OF COMMONS,
Ottawa, Canada, September 12, 1969.

Hon. SAM J. ERVIN, Jr.,
The Senate,
Washington, D. C.

DEAR SENATOR ERVIN: This will acknowledge the receipt during my absence, about two weeks ago, of the report with regard to Bill S. 2593 as it passed the Senate. I want to thank you very much for this and for your unflagging concern with the problems I had raised with you last June. I have noted that the bill was amended in the Senate to apply to "executive officers and managerial employees." I hope that administrative interpretation will not be too restrictive so as to seriously detract from the original intention of your bill which provided for "officer or employee."

I am unaware of the subsequent procedures that are required for this particular bill to have the force of law. I presume that ultimately the bill will require executive signature. I hope that whatever remains to be done will be done in the normal course of events and that we will have the benefit of the change in the law as proposed and enacted upon by the Senate.

We are presently enjoying an adjournment period which was very welcomed, but the time for resumption of our sessions in late October is just around the corner, and in the interval we have a great deal of work to do with policy conferences and committee meetings which are now being organized preparatory to the forthcoming session.

Mrs. Lambert joins me in wishing Mrs. Ervin and yourself the best of health and enjoyment, and continued success in your very busy political activities.

Yours sincerely,

MARCEL LAMBERT.

HOUSE OF COMMONS,
Ottawa, Canada, September 19, 1969.

Sen. SAMUEL J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: A belated thank you for the considerable effort which you have made on behalf of subsidiary and associated companies in the U.S. and Canada.

I have mentioned your efforts to several of my colleagues here in Ottawa and they asked me to express their appreciation to you. I believe that your efforts will remove an impediment which impaired the efficiency of the international companies operating in your country and mine.

Thank you again and kindest personal regards.

Yours sincerely,

J. JUDD BUCHANAN,
Member of Parliament.

Mr. ERVIN. Mr. President, after the House amended the Senate bill, I sent an explanation of the House amendments to the members of the Senate Committee on the Judiciary which had original jurisdiction of the Senate bill and advised them that if they had any objections to approving the House amendments, they should let me know. I have been advised of no objection by any member of the Senate Committee on the Judiciary. And, so far as I know there is no objection by the Senate to approving the House amendments.

Mr. JAVITS. Mr. President, I join in the request of the Senator from North Carolina.

The amendment to section 212(e) dealing with the visa for ultimate residence requirements for those who came as exchange visitors without in any way being the subject of the United States or their own country's financing is a reform for which my office has contended for the last 7 years.

Mr. President, I am extremely gratified that S. 2593, as amended, has been finally accepted by the Senate.

The passage of this bill signals the end of a long struggle beginning in April 1963 the first time I wrote a letter to Secretary of State Rusk and again in April 1964 when I wrote again pointing out how over the last few years my office had been flooded with hundreds of exchange-visitor cases where use of the "exchange-visitor visa" also known as the J visa had been extended to cover large numbers of foreign nationals teaching or otherwise employed here who were issued J visas but were not sponsored by the U.S. Government within the meaning of Public Law 87–256 or the predecessor laws. These people were not supported

in any way from public funds or funds provided for the purpose of the program by private organizations of either the United States or their own countries. All came to the United States without travel grants and in many cases without any type of grant, but because they were participants in a program designated by the Secretary of State and were issued a J visa; they were not eligible to apply for permanent residence until they had resided and been physically present in the country of their nationality for an aggregate of at least 2 years following departure from the United States.

I recommended that action be taken with all possible speed to amend all improperly issued J visas and that the holders of these visas be reclassified so that an alien of distinguished merit and ability coming temporarily to the United States would be eligible to apply for adjustment of status.

S. 2593, as amended, changes section 212(e) of the Immigration and Nationality Act, and imposes a foreign residence requirement only where the exchange visitor's participation was financed by the United States. Section 101(a)(15)(H)(1) is amended to permit entry of aliens for a temporary period to perform services which may be temporary in nature or permanent in nature. Before this amendment, aliens admitted on an (H)(1) petition could only come to the United States if the position were temporary in nature.

I would like to single out for special praise Mary McFerran of my staff who has labored long and hard over the past 7 years for the passage of this bill. I am very pleased her labors have finally borne fruit. I ask unanimous consent that my letters of April 10, 1963; April 14, 1964; and New York Times articles on this problem appearing on June 23, 1963, and August 22, 1964, be inserted in the RECORD as part of my remarks.

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

APRIL 10, 1963.

Hon. DEAN RUSK,
Secretary of State,
State Department,
Washington, D.C.

DEAR MR. SECRETARY: According to a "Memorandum For The General Counsel" on the "Study of the Defense Scientists Immigration Program" dated June 16, 1962 and signed by Dr. Harold Brown, Director of Defense Research And Engineering less than 10 percent of the exchange visitors now here have been sponsored by our Government within the meaning of PL 87–256.

Under this law, all visits and interchanges are financed for studies, research, instruction and other educational activities between the United States and other countries, of students, trainees, teachers, instructors, leaders, experts in fields of specialized knowledge or skill and other influential or distinguished persons.

In the revised edition of the Department of State Publication 7201, released June 1961 on page 14, it is noted that two types of grants are available. A limited number of all expense grants and the other type of grant which covers only travel expenses. Under law, a participant in a program designated by the Secretary of State is issued a (J) visa and is not eligible to apply for permanent residence until he has resided and been physically present in the country of his nationality for an aggregate of at least two years following departure from the United States.

Over the last few years my office has been flooded with hundreds of exchange-visitor cases and it has been found that in practice use of the "exchange-visitor visa" has been extended to cover large numbers of foreign nationals teaching or otherwise employed here who were issued (J) visas but were not sponsored by the U.S. Government within the meaning of PL 87–256 or the predecessor laws. These people were not supported in any way from public funds or funds provided for the purpose of the Program by private organizations of either the United States or their own countries. All came to the United States without travel grants and in many cases without any type of grant.

We have a critical shortage in our universities, research laboratories and hospitals, yet because these needed foreign nationals were improperly issued (J) visas, they were automatically brought under the two years residence abroad requirement. Even if first preference petitions are granted after their required two years of residence abroad, sixty percent come from oversubscribed quota areas so our country loses these needed established professional men and women, not for two years but for many years. I am bringing this to your attention because under Section 221(i) of the Immigration & Nationality Act, the Secretary of State is given discretion to revoke such improper documentation.

I recommend a complete revision of policy and regulations in the issuance of the (J) visa and in the granting of program numbers, to be sure that the exchange program number is a Q-program which means that the exchange visitor receives an all expense grant or a grant which does cover travel expenses. I recommend that all the schools of learning and institutions conducting the exchanges are within the meaning of PL 87–256 or the predecessor laws.

I believe that my recommendations are in full accord with the legislative history of PL 87–256 recorded in both reports accompanying this legislation, Senate Report No. 372 of the 87th Congress by Senator Fulbright and House Report No. 1094 by Representative Hays.

On Page 18 of Senate Report No. 372, Senator Fulbright defined one of the purposes of this legislation: . . . "(3) to permit more choice between visa categories so that foreign scholars and medical personnel not covered by a U.S. Government program would not necessarily have to enter this country as exchange visitors and be subject to the provisions of Public Law 555, 84th Congress . . ." ". . . Some of the problems in this field seem to be more administrative than legislative in character . . .".

On Page 16 of House Report No. 1094, the author of this legislation, Representative Hays stated: . . . "The main purpose of this new language as to reserve the (F) visa for students other than exchange students and make the new (J) type of nonimmigrant visa available *solely* to nonimmigrants *selected* under the exchange program. The placing of exchange aliens in a separate category (J) will also simplify the administration of the 2-year foreign residence requirement contained in the new subsection (b) . . .". (emphasis added)

In the many reports rendered on the Mutual Educational and Cultural Exchange Act by representatives of all Professional Groups and Foundations, it has been strongly recommended to the Congress that the Program should not be used for staffing purposes; yet, it is my understanding that upward of 1700 program members have been issued without any attempt to check out whether or not the hospitals, schools or institutions of learning are conducting exchanges and training courses within the meaning of the law.

In the appendix to this letter, you will find the outline of a few cases selected at random from my files. I am sure study of these case histories will serve to illustrate the situation outlined in this letter.

I feel it is imperative because of the critical shortage of certain skills that action be taken with all possible speed to amend all improperly issued (J) visas of these needed foreign nationals now here in the United States under the authority granted under Section 221(i) of the Immigration & Nationality Act.

The holders of these visas may properly be reclassified under Section 101(a)(15)(F)(i) of the Immigration & Nationality Act which gives a foreign national the right to come here as a bona fide student qualified to pursue a full course of study; or Section 101(a)(15)(H)(i) an alien who is of distinguished merit and ability coming temporarily to the United States to perform other temporary services of an exceptional nature requiring such merit and ability; or (ii) an alien who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) an alien who is coming temporarily to the United States as an industrial trainee. In this way, they would be eligible to apply for adjustment of status where such adjustment is found by the Attorney General to be in the public interest.

The policy and change of regulations I recommend should, of course, apply also to applicants for visas who have not yet entered the United States so as to insure their entry in the proper nonimmigrant status.

I would appreciate your early attention to these recommendations because of the urgency of the matter and a reply at your earliest convenience.

Sincerely,

JACOB K. JAVITS,
U.S. Senator.

APRIL 14, 1964.

Hon. DEAN RUSK,
Secretary of State,
State Department,
Washington, D.C.

DEAR MR. SECRETARY: You received a letter from me dated April 10, 1963 explaining in full detail why I recommended a complete revision of policy and regulations in the issuance of the (J) visas and in the granting of program numbers to be sure that the exchange program number is a G-program which means that the exchange-visitor receives an all expense grant or a grant which does cover travel expenses. I recommended that all the schools of learning and institutions conducting the exchanges be within the meaning of PL 87–256 or the predecessor laws. I pointed out that less than 10 percent of the exchange visitors now here have been sponsored by our Government within the meaning of PL 87–256. I brought this to your attention because under Section 221(i) of the Immigration & Nationality Act, the Secretary of State is given discretion to revoke such improper documentation.

Your reply of June 8, 1963 advised that you were awaiting a determination as to your authority under the Immigration and Nationality Act to substitute for a (J) visa another type of visa where the holder of the (J) visa at the time of his initial application appeared qualified for another type visa, and that your Legal Adviser was consulting on this question with the legal staff of the Department of Justice, since that Department has concurrent jurisdiction in this area.

I do not have to emphasize the critical shortage in the United States in all professional fields, yet many of those who were improperly issued (J) visas are highly skilled specialists needed desperately by our universities, research laboratories and hospitals.

These people were not supported in any way from public funds provided for the purpose of the Program. They came to this country without travel grants and in many cases without any tye of grant, but because of the improperly issued (J) visas, Government agencies cannot grant waivers to them except in exceptional cases.

One year after my initial letter to you, this situation is now, more than ever, in a state of chaotic confusion. The necessity for immediate action is not in the near future; it is now in the present.

I would, therefore, appreciate a prompt answer to the question I raised in my letter of April 10, 1963. I would like to know why immediate action cannot be taken to revoke such improperly issued (J) visas because under Section 221(i) of the Immigration & Nationality Act, the Secretary of State may at any time, in his discretion, revoke such visa or other documentation; and why the holders of these visas cannot be reclassified under Section 101(a)(15)(F)(i) or Section 101(a)(15)(H) (i) or (ii) or (iii).

Sincerely,

JACOB K. JAVITS,
U.S. Senator.

[From the New York Times, June 23, 1963]

U.S. VISA POLICY REVIEWED TO AVOID OUSTING STUDENTS

(By Warren Weaver, Jr.)

WASHINGTON, June 22.—The State Department is reviewing a particularly vexing application of the nation's immigration policy that is threatening with deportation hundreds, perhaps thousands, of persons who came to the United States as cultural exchange students.

Secretary of State Dean Rusk had promised critics in Congress that he would examine the problem. Because of it otherwise eligible skilled workers and professional people from abroad are being prevented from settling permanently in the United States.

The problem involves two groups of persons who entered the country under special exchange visas that require them to return to their own countries for two years before they can seek permanent residence here.

JAVITS AND LINDSAY PROTEST

The first group consists of foreigners who were given this restricted type of visa in error, in some cases apparently for reasons of speed, when they actually qualified for an entry permit easily convertible to United States citizenship.

The second group consists of persons who were given this type of visa properly, later married in this country and perhaps had children, and are now being forced to leave for a two-year waiting period abroad.

Complaints have been lodged with the State Department by Senator Jacob K. Javits and Representative John V. Lindsay, both New York Republicans, and others.

Mr. Rusk has informed the Senator that his legal aides and the Department of Justice are studying the possibility of substituting an unrestricted visa for the exchange visa in cases where the foreign visitor was originally eligible for the former.

If such a substitution could be made, the individual involved could apply at once for permanent residence, the first step toward United States citizenship, and avoid any possibility of deportation and a two-year wait.

In almost all cases, immigration quotas are open for persons here on exchange visas because of their specialized education or professional background.

Switching to another type of visa is not considered possible for the second group of visitors because the exchange visa is the only one they were ever eligible for.

However, the State Department and the Immigration and Naturalization Service of the Department of Justice are trying to work out an easing of the requirements for an "exceptional hardship" waiver of the two-year deportation.

MANY APPEALS RECEIVED

Many of the exchange students who married while in the United States have appealed to the Immigration Service for such waivers.

The standard reply has been that "the existence of a citizen or permanent-resident spouse or children and possible two-year separation incident to fulfilling the foreign residence requirement do not, in themselves, establish the exceptional hardship" required for a waiver.

A typical case is that of an English girl who came to the United States on a Fulbright grant in 1958 for graduate study at Cornell University. She married a graduate chemistry student there in 1959, and in 1960 they became the parents of a daughter.

Her exchange visa expired last August, and the Government is trying to deport her. She contends that it would involve "exceptional hardship" for her to take her daughter to England for a two-year wait or, alternatively, for her husband to postpone his career in the United States by spending two years in England.

PRIVATE BILLS SOUGHT

The Immigration Service decided two weeks ago that "exceptional hardship" was not involved, and is proceeding with deportation proceedings. She is now working to get a private immigration bill introduced in Congress on her behalf, which would stay the proceedings temporarily.

These cultural-exchange immigration problems have increased the number of private bills considerably. As long as an immigration bill remains alive in either house, its subject cannot be deported.

Cases where the foreign visitors are threatened with deportation because they were given a cultural exchange visa by mistake are equally perplexing.

A special bill is now pending, for instance, to clear for a citizenship application a 68-year-old Roman Catholic nun who is presently superintendent of a New York hospital.

Italian by birth and a member of a missionary order, she worked in the United States from 1914 to 1922 and had applied for citizenship when she was transferred to China, where she remained for 25 years. She returned to Italy in 1952 and was admitted to the United States in 1955 on a cultural exchange visa.

She should have received a returning resident-alien visa. Since she was not traveling to the United States to study under any public or private grant, she was probably not really eligible for the exchange visa.

But an exchange visa is what she was given, so that she is now barred from applying for permanent residence here until she returns to Italy for a two-year wait.

There are about 100 immigration bills involving cultural exchange visas now pending. No one knows how many other cases have not reached the legislation stage and perhaps never will.

[From the New York Times, Aug. 22, 1963]

THE UNITED STATES MAY REVISE STUDENT'S VISAS—HOUSE GROUP TOLD OF PLAN TO WAIVE RETURN CLAUSE

(By Warren Weaver, Jr.)

WASHINGTON, August 21.—The State Department proposed today to ease the threat of deportation that hangs over many foreign students who have married and raised families in the United States.

Students who come to this country now under the cultural exchange program receive visas that require them to return to their homelands for a minimum of two years before they can re-enter the United States.

Lucius D. Battle, Assistant Secretary of State for Educational and Cultural affairs, suggested that the two-year return requirement be waived where it would produce enforced separation of families and thus additional hardships.

Waivers of this requirement are theoretically available now, but the Immigration and Naturalization Service of the Justice Department has refused to grant them merely on the ground that the applicant has a husband, wife or children from whom he or she would be separated by deportation.

WANTS GROUP'S APPROVAL

Mr. Battle made his proposal at a hearing of the House Immigration subcommittee. He said it had the approval of the Defense and the Health, Education and Welfare departments and the Immigration Service, but would not be put into effect unless the subcommittee approved.

There was some question about subcommittee sentiment. Several members urged Mr. Battle to submit a set of specific standards that would be used in deciding whether or not a married exchange student should be deported.

The subcommittee chairman, Representative Michael A. Feighan, Democrat of Ohio, called Mr. Battle's description of what hardship would justify a deportation waiver as very unclear, nebulous, even innocuous.

Mr. Battle reported that the State Department and the other agencies were also prepared to grant visas with no two-year return provision to foreign doctors, nurses, scientists and teachers, many of whom now enter the exchange program and thus are forced to leave after a year or two.

OPPOSED BY AMA

The State Department official noted that this recommendation had been unanimously opposed by professional organizations in the health field, such as the American Medical Association, but endorsed by the Government agencies nonetheless.

Questioned by subcommittee members, Mr. Battle emphasized that doctors, interns or nurses now in this country on exchange visas would not be permitted to shift to visas without the return provision. Such a move would be of doubtful legality, he said.

There are a number of skilled foreign professionals threatened with deportation from the United States now because they were given exchange visas with the two-year-return provision by mistake, when they might have entered on a less restrictive authorization. They would not benefit from the State Department plan.

No one really knows how many exchange students could escape deportation if the new waiver policy is adopted, but there would be hundreds, perhaps even thousands. More than 25,000 such students have been coming to the United States a year.

One reason the subcommittee held the hearing was because it has been flooded with requests for special bills, each designed to hold up by statute the deportation of a single exchange student who faces the two-year return to his homeland.

Members of the subcommittee urged Mr. Battle to review the program under which private companies sponsor students abroad who then are able to come to the United States and work for them under the special exchange visa.

Some immigration authorities feel that this program could be improved by eliminating access to the easily obtained exchange visa and restricting participants to visas issued only to highly skilled specialists.

Mr. JAVITS. Mr. President, I am very pleased that this measure has now borne fruit. I express my appreciation to the Senator from North Carolina who has piloted this measure all the way through.

I assure the Senate that it will be a blessing to many people who have had to experience great difficulty in using their talents based upon the skills which they have learned for the benefit of the United States because of this very terrible and mistaken utilization of the so-called J visas which require 2 years of residence and a further period of study or training in the United States.

I thank the Senator for yielding.

Mr. ERVIN. Mr. President, I thank the Senator from New York, who has been one of the stanch supporters of the measure since its very inception.

I move that the Senate concur in the House amendments to S. 2593.

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

The motion was agreed to.

PRESIDENT DECLARES NATIONAL EMERGENCY IN POSTAL STRIKE

Mr. SCOTT. Mr. President, this afternoon President Nixon issued a declaration of national emergency in the form of a proclamation, which reads as follows:

DECLARING A NATIONAL EMERGENCY

(A proclamation by the President of the United States of America)

Whereas certain employees of the Postal Service are engaged in an unlawful work stoppage which has prevented the delivery of the mails and the discharge of other postal functions in various parts of the United States; and

Whereas, as a result of such unlawful work stoppage the performance of critical governmental and private functions, such as the processing of men into the Armed Forces of the United States, the transmission of tax refunds and the receipt of tax collections, the transmission of Social Security and welfare payments, and the conduct of numerous and important commercial transactions, has wholly ceased or is seriously impeded; and

Whereas the continuance of such work stoppage with its attendant consequences will impair the ability of this nation to carry out its obligations abroad, and will cripple or halt the official and commercial intercourse which is essential to the conduct of its domestic business:

Now, therefore, I, Richard Nixon, President of the United States of America, pursuant to the powers vested in me by the Constitution and laws of the United States and more particularly by the provisions of Section 673 of Title 10 of the United States Code, do hereby declare a state of national emergency, and direct the Secretary of Defense to take such action as he deems necessary to carry out the provisions of the said Section 673 in order that the laws of the United States pertaining to the Post Office Department may be executed in accordance with their terms.

In witness whereof, I have hereunto set my hand this 23d day of March in the year of our Lord nineteen hundred and seventy, and of the Independence of the United States of America the one hundred and ninety-fourth.

The President signed this declaration during a bipartisan meeting of Members of the two bodies of Congress. At the same time he signed an Executive order calling into service members and units of the National Guard.

Mr. President, I ask unanimous consent to have printed in the RECORD the Executive order.

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

EXECUTIVE ORDER CALLING INTO SERVICE MEMBERS AND UNITS OF THE NATIONAL GUARD

Whereas certain employees of the Postal Service are engaged in an unlawful work stoppage which has prevented the delivery of the mails and the discharge of other postal functions in various parts of the United States; and

Whereas the laws of the United States, including Sections 707, 5102, 6001, and 6101 of Title 39, United States Code require that the business of the Post Office Department, including the expeditious processing and delivery of the mail, be regularly carried on; and

Whereas the aforesaid unlawful work stoppage has prevented and is preventing the execution of the aforesaid laws relating to the Post Office Department; and

Whereas the breakdown of the postal service in the numerous areas affected by the said unlawful work stoppage is a matter of grave national concern; and

Whereas I am charged by the Constitution of the United States to take care that the laws be faithfully executed, and I have determined that I am unable solely with the regular forces to cause the aforesaid laws to be executed;

Now, therefore, I, Richard Nixon, by virtue of the authority vested in me by the Constitution and laws of the United States, including Sections 3500 and 8500 of Title 10 of the United States Code and Section 301 of Title 3 of the United States Code, do hereby order as follows:

Section 1. The Secretary of Defense is authorized and directed to take all appropriate steps to respond to requests of the Postmaster General for assistance in restoring and maintaining Postal service and to execute the Postal laws of the United States.

Section 2. In furtherance of the authorization and direction contained in section 1 hereof, the Secretary of Defense is authorized to use such of the Armed Forces of the United States as he may deem necessary.

Section 3. I hereby authorize and direct the Secretary of Defense to call into the active military service of the United States, as he may deem appropriate to carry out the purposes of this order, any or all of the units of the Army National Guard and of the Air National Guard that he deems appropriate to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders. In carrying out the provisions of this order, the Secretary of Defense is authorized to use the units, and members thereof, of the Army National Guard and of the Air National Guard called into the active military service of the United States pursuant to this section.

Section 4. The Secretary of Defense is authorized to delegate within the Department of Defense any of the authority conferred upon him by this Executive Order.

RICHARD NIXON.

THE WHITE HOUSE, *March 23, 1970.*

Mr. SCOTT. The President said this morning that his purpose is to use the greatest persuasion and the least compulsion possible, that what is necessary is firmness in the execution of his office, but it is his desire to leave open every possibility for early termination of the work stoppage.

Therefore, at this time the order will be applied in the New York City postal system only, in order to use military personnel, who will be unarmed and in military fatigues, and prepared to work directly and solely under the supervision of civilian postal employees in this area for the purpose of getting out that portion of the first-class mail which is of an emergency and essential character.

The President addressed the people of the United States pointing out that it is impossible for the executive department to negotiate with postal workers until the violations of the law cease.

The bipartisan leadership of Congress did not in any way dissent from the President's recommendation. I do not wish to quote individuals by name, but there was no indication there other than that Congress could not possibly act on legislative matters pertaining to postal pay increases until after the illegal work stoppages have ended. Neither Congress nor the Executive could hardly act with a gun at their heads.

We in Congress desire to act for the relief of postal employees. The President recognizes, as do Senators and Members of the House, that postal employees are underpaid, that they are entitled to certain comparability provisions, that they are entitled to relief; and that they have just and legitimate grievances, some of long standing. The sooner the work stoppage is ended, the sooner we can give them the kind of relief to which they are justly entitled.

Mr. President, at this point I yield to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I wish to join the Senator from Pennsylvania in pledging support to the action taken by the President today. The delivery of our mail is of paramount importance. When the delivery of the mail is stopped it affects all Americans. We have on the statute books laws prohibiting strikes against the Government. The President called this to the attention of postal workers, the overwhelming majority of whom are abiding by the law and continue to work. I hope it will be unnecessary to use military forces in New York or in any other area, but the President took the only step he could and that is to protect the interest of all the country.

Last week with that thought in mind I introduced a resolution pointing out that we do have laws on the books prohibiting strikes against the Government, and the penalties embraced therein, and called on the administration to enforce these laws. If necessary, Congress may want to consider that resolution and thereby pledge its support of the action that the President took today.

Congress does stand behind the President in this action and I believe the American people will also support his decision. While the postal workers do have some justifiable grievances, as the Senator pointed out, it is recognized that this is not the way to get them adjusted. The postal workers must return to work so that the matter may be worked out in negotiations and by the action of Congress.

Let us emphasize we are a government of laws and not men, nor any group of men have a right to violate these laws merely because they may disagree.

Neither the President nor Congress can work under the threat of blackmail. We cannot condone in this country a strike against the Federal Government.

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

Mr. SCOTT. I yield.

Mr. JAVITS. Mr President, as I said last week, the President is under a duty which he must perform to keep the Government going and not allow the functions of the United States, to grind to a halt, as they would if the mail does not move. Therefore, the President did what he had to do. I regret he had to do it and I regret he picked out New York City, but that is the penalty we pay for being the financial and commercial hub we are.

However, I have a practical suggestion I would like to lay before the President, the distinguished minority leader, and the people of the country. When the President said we will not negotiate until the men come back, I think that is being unrealistic and likely to harden attitudes on the part of the Government and the men, who are pretty angry. They have a right to be angry.

The Government has failed them. There is no question about that. Their pay raise is long overdue. It has been tied into a postal reorganization, which may be fine—indeed, I am for it—but it should not be the price of a pay raise, nor should postal workers have been made the "patsies" in the fight on inflation.

The presidents of the postal unions have not been parties to the work stoppage. They have done the best they could to get the men back to work. As is true in many conflicting situations, many things lean on each other.

I believe if the opportunity were afforded to work with the leaders, with the presidents of the postal unions, most of whom are in Washington—and who have done their utmost to bring the men back—and if Members of Congress and the President were tied into the effort, it would accelerate bringing the men back to work. I have no doubt about that.

The Senator from Delaware, the distinguished minority leader, and I could all agree that anything we can do without undue rigidity, which will bring this situation back to normal in the shortest possible period and curtail the use of armed forces to a bare minimum, would be highly desirable. I submit that suggestion, and I know the Senator will give it every consideration, as will the President. I ask unanimous consent that a statement I have just released concerning the President's address be made part of my remarks.

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

STATEMENT BY SENATOR JAVITS

It is most regrettable that the President has found it necessary to call out the troops to get the mails through. I cannot fault the President for having made this decision. He has a constitutional responsibility to see that the mails get through, and this is what he has done. I regret, too, that he felt he had to single out New York City, but I assume that is the price New York City must pay for being the nation's financial and commercial hub.

The one aspect of the President's announcement which I do deplore is the refusal to enter into negotiations until the postal workers return to their jobs. Now is the time for a little more flexibility, because I feel that rigidity can only serve to harden the attitudes of the U.S. government and of the striking workers. I hope that the President will modify his stand so that a spirit of greater reasonableness can prevail on both sides.

The strikers are very mad, and with real cause. They have been underpaid and taken for granted for too long. That does not mean, however, that they are free to flout the law. They must be urged to return to their jobs, but the best way to do that is for the Administration to sit down and begin negotiating with the postal union leaders, who have taken a most responsible stand against the walkout. I believe that if they come up with a package that has Administration and Congressional support, the postal workers will return to their jobs promptly.

Mr. SCOTT. I thank the Senator.

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

Mr. SCOTT. I yield to the Senator from Nebraska.

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

I want to pledge my support to the President and commend him for the action he has taken. It would be very unwise to permit the strike to go on and let the deliveries of the mails bog down.

It would be totally wrong to negotiate or concede the strikers any of their demands as long as they are in violation of law.

The basic issue is whether or not the citizens of the United States can violate those laws that they decide are unjust and that they have a right to. That has been preached from high places. It may lead to the downfall of our Government. But this is the first demonstration we have had of it in the Government itself.

The delivery of mail is a Government function. It is a violation of law to strike or assert the right to strike, and that law should be enforced.

I want to commend the vast army of postal workers who have had no part in this strike. I want to commend those leaders who have discouraged them. But I raise the question, Mr. President, Are we going to say to any segment of the American people that if they suffer an economic injustice, that gives them the right to violate the law?

I know many older people who, in spite of social security, are receiving too small an amount of money. I know many farmers whose income is not what it ought to be. I know many people who are working in the only job available to them, and it is not as much as they ought to have.

Are we going to say to all of those people that they have a right to flout the law and to disobey the law? That is the issue.

After the strike is settled, the time will come to discuss what kind of postal legislation we should have. All Americans should wholeheartedly support the President and condemn those people who, with knowledge and intent, openly violate the law of the United States.

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

Mr. SCOTT. I had promised to yield first to the Senator from Michigan (Mr. GRIFFIN), but before I do so, I ask unanimous consent to have printed at this point in the RECORD the remarks made by the President at 2:15 p.m. today.

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

REMARKS OF THE PRESIDENT IN A TELEVISION AND RADIO ADDRESS REGARDING THE POSTAL WORKERS' STRIKE

My fellow Americans: I want to report to you on developments in the postal work stoppage and on the actions I have decided to take.

First, the overwhelming majority of postal workers across the nation remain on their jobs—upholding their tradition, and their oath, to support the Constitution of the United States.

Second, in many communities where walkouts occurred last week, postal employees are returning to their jobs.

However, in several large cities, the post offices are shut down. In New York, for example, the mail system is wholly paralyzed by the illegal walkouts; and essential services have been halted.

Last Saturday, I pledged to the nation that, if the current situation existed on Monday—today—I would take action to fulfill my constitutional obligation to move the mails and I am taking that action now.

Injunctions have been sought, and in most cases already granted, forbidding striking postal workers from interfering with those who wish to return to work.

I directed the Attorney General to take whatever action he believes necessary to see that these court orders are obeyed, and working with local authorities, to see that no illegal picket lines interfere with workers returning to work.

Secondly, I have just now directed the activation of the men of the various military organizations to begin in New York the restoration of essential mail services. New York City is where the current illegal stoppages began; it is where the mail has been halted the longest; it is where the resultant problems have become most acute. If the Postmaster General deems it necessary to act in other affected major cities, I will not hesitate to do so.

These replacements are being sent in as supplemental work force to maintain essential services. Only as many workers as are necessary to accomplish that will be used and they will be withdrawn as the striking postal workers return to their jobs.

Let me now address my comments to both the postal workers who have stayed on the job—and those who are engaging in the work stoppage.

The United States Postal System is a vital element of our entire communications system. The poor depend heavily upon it for medical services and also for Government assistance. Veterans depend upon it for their compensation checks. The elderly depend upon it for their Social Security checks. The nation's businesses depend upon it as a way to stay in business so they can meet their payrolls and our men in Vietnam depend upon "mail call" as their only link with their loved ones at home.

From the time I came to Congress 23 years ago, I have recognized that the hundreds of thousands of fine Americans in the mail service—the Post Office Department—are underpaid and they have other legitimate grievances.

For the past year, almost since the day we took office, both the Postmaster General and I have been working to alleviate not only the legitimate grievances of postal workers but to move to eliminate the source of those grievances—that is, the obsolete postal system itself, a system that no longer serves its employees, its customers or the country as it should.

That was why that among our first legislative proposals was wholesale reform of the United States Post Office. Included have been requests for increased pay for postal workers, for increased benefits, for compression by 60 percent of the time it takes a worker to move from the bottom to the top of the pay scale.

I believe that if that postal reform had become law we wouldn't have the current crisis. But that crisis is here and it has brought additional grievances to the fore. The country has recognized these inequities in postal pay and benefits.

This Administration has always been willing to work them out. As the Secretary of Labor and postal union leaders indicated again Saturday, we stand ready to begin negotiations, discussions on all issues including pay immediately after postal workers are back on their jobs. But we cannot and we will not negotiate while thousands of postal workers are participating in an illegal work stoppage.

At this time, it is only those who have struck and are staying off the job who are preventing meaningful negotiations and resolution of their problems through those negotiations and the legislative process.

And so I urge you to return to your jobs so that these negotiations can begin with an urgent but reasonable climate.

Just as this issue goes beyond the question of mail service, so my remarks at this time are addressed to all Americans. What has occurred here is that some employees of the Federal Government are now not only going against the best interests and the best tradition of their service, but against the recommendations of their national union leader, against the oath of office that they took, against orders handed down by the Federal courts and they are cutting off service essential to thousands, millions of Americans.

What is at issue then is the survival of a government based upon law. Essential services must be maintained and, as President, I shall meet my Constitutional responsibility to see that those services are maintained.

And I am asking for the understanding and support of every American in this decision that I have made in behalf of our country.

Mr. SCOTT. I yield now to the Senator from Michigan (Mr. GRIFFIN).

Mr. GRIFFIN. Mr. President, I rise briefly to associate myself with the remarks of the distinguished minority leader and other Senators who are commending the President for the action he announced today.

I think it is particularly noteworthy that the President's message and his tone were conciliatory. He moved at a time of serious domestic crisis with a calm determination which has become his hallmark as President of the United States—no appeal to passion, but a quiet appeal to reason.

He has, I think, used the minimum of force which he could call upon under the circumstances, and has left the maximum amount of flexibility and room for negotiation and reason.

I, too, want to join the Senator from Nebraska in paying tribute to the many thousands of postal workers who have not left their job, and to remind ourselves and the Nation that the overwhelming majority of postal workers have continued to abide by the oath they took when they became employees of the Government. I also want to commend the national and local leaders of postal unions who have done their utmost to keep postal workers on the job.

I hope, as all the other Members of the Senate do, that it will not be necessary even to use troops in New York City; that before it becomes necessary, those few workers out of many will see the correctness of responding to the President's appeal.

I thank the minority leader for yielding to me.

Mr. SCOTT. I yield now to the distinguished Senator from South Carolina (Mr. THURMOND).

Mr. THURMOND. Mr. President, I wish to thank the distinguished minority leader. I made a statement on this matter last Friday. I wish now to be associated with the remarks of the distinguished Senator from Nebraska.

Mr. President, the President of the United States today has made an urgent but reasonable appeal to the postal workers to return to their jobs throughout the country. It was a firm speech but a moderate one. There were no polemics, no hysterics, no threats.

There was, however, every indication the administration would act—and act with conviction and with speed—to get the mail service of this country moving again.

The President said he would call on the military to help handle the crisis. But he mitigated this by saying he would use troops immediately only in New York City, and use only the number of troops needed to get the mail going again.

He also warned the postal workers who are still out on strike that there can be no negotiations with any of them until all of them are back on the job.

The President fully recognizes that the postal workers of the United States deserve more pay, better benefits, and more reasonable working conditions. But, he said, the Federal Government would not be blackjacked into action by an illegal strike; and I commend him for taking this position.

Altogether, Mr. President, his statement on the postal crisis was a logical, reasonable, and most rational one. If the postal workers accept what he said in the spirit in which it was said, the crisis will be over and we can get on about the business of resolving the issues involved.

KERNER COMMISSION RECOMMENDATIONS—SPECIAL IMPACT PROGRAM

Mr. JAVITS. Mr. President, the National Advisory Commission on Civil Disorders, in its report of over 2 years ago, recommended a war on poverty on four fronts. The first, and largest was employment; the second, economic development of poverty areas and encouragement of ghetto business ownership; the third, reform of the present welfare system; and the fourth, a national system of income supplementation. In the context of the consideration of the administration's proposals for a new comprehensive manpower system and for an historic reform in our welfare structure, this Congress has the opportunity to move substantially toward implementation of the Kerner Commission recommendations on three of these four fronts.

However, despite growing interest in the slogans of economic development and of minority enterprise and ambitious new initiatives by this and the previous administration, we have not developed an economic development or minority enterprise strategy. Businesses continue to leave the core cities at an alarming rate. Between 1954 and 1965, almost two-thirds of all new industrial buildings and a little over half of all new stores were constructed outside the central cities. The situation, in depressed rural areas, as measured in migration statistics is just as great. Between 1950 and 1960 some 11 million Americans migrated from rural to urban areas and there is every indication that the 1970 census will show a continued movement at equal or higher rates. The most recent reports indicate that minorities still own and operate less than 1 percent of the nearly 5 million private businesses in the country, and that fewer than 3 percent of the 1.5 million Americans who classify themselves as self-employed are of minorities. And present economic conditions make us aware that the unemployment rate in depressed urban and rural areas averages well above the national rate and that in those areas soaring rates of 12 percent are not uncommon.

We need a number of programs to overcome these realities, but I have long held that the principal need is for a new quasi-public institution to stimulate the influx of low-interest capital for economic development of our depressed urban and rural areas. In 1967, I proposed the establishment of a domestic development bank, a profitmaking corporation authorized to make and participate in long-term, low-interest loans and guarantees and to provide supportive technical assistance, in order to stimulate employment opportunities and minority entrepreneurship in such areas. The proposal envisions the use of governmental funds and resources essentially as levers to move the private forces into positions that can supplement current strictly governmental efforts to fight poverty. The bank would be authorized to make long-term, low-interest loans and guarantees, to participate in loans with public or private lenders to sell participations in its loans, and to provide supportive technical assistance. In essence, it is very much similar to the highly successful World Bank in its purpose, operations and structure.

Since my introduction of the Domestic Development Bank Act, there has been a growing recognition of the need for an additional institution to provide such capital. The domestic bank concept has received favorable recognition from such groups as the Kerner Commission and the Urban Coalition and was embodied in the Community Self-Determination Act introduced in October 1968 by a bipartisan group of more than 35 Senators and of which I was a primary sponsor.

Others in Congress have made great contributions in underscoring the need for an additional financial institution.

Senator PROXMIRE's Commodity Credit Expansion Act and hearings conducted by his subcommittee of the Banking and Currency Committee have provided important direction. Senator SPARKMAN's introduction of the Urban Development Bank Act has also called attention to this need.

The Office of Economic Opportunity now proposes to "test" these proposals through an economic development demonstration program funded in large part under the special impact program authorized in title ID of the Economic Opportunity Act which I coauthored with the late Senator Robert Kennedy and which has been implemented with such success in Bedford-Stuyvesant in my State.

Under the demonstration program, the Office of Economic Opportunity plans to fund an experimental Opportunity Funding Corp., a nonprofit corporation, to conduct activities in a large number of low-income communities throughout the country. The Opportunity Funding Corp., would be composed of three units, each of which would offer a different kind of financial incentive.

The first unit, the opportunity guarantee component, would demonstrate the feasibility of various guarantee techniques in attracting private resources to assist low income communities, by attempting to remove the risk aversion of private institutions to committing capital and credit to the needs of the poor.

The second unit, a community development discount component, will be a small discount facility intended to demonstrate the feasibility of a mechanism to purchase SBA and EDA-backed obligations and other commercial paper generated by enterprises in low-income communities.

The third unit, an incentive simulator component, is intended to field test various new financial inducements—including simulated tax incentives—to encourage privately undertaken projects and investment in low-income communities.

Mr. President, the Labor and Public Welfare Committee, of which I am the ranking member, in its October 1969 report on the economic opportunity amendments urged a full implementation of the special impact program in order to realize the full potential of community-based economic development both in terms of expanding the program to permit the funding of a number of proposals now pending from community groups and in terms of exploring the potential for further private involvement. On the latter point, the report stated:

> The committee hopes that as the program develops it will look into ways and means to involve the business community effectively in Special Impact programs as a source of both capital and technical assistance to developing community based corporations.

With this commendable initiative from the Office of Economic Opportunity, I think that it is an appropriate occasion for the Subcommittee on Employment, Manpower and Poverty, chaired by Senator GAYLORD NELSON, to hold a series of hearings to fully examine the potential of the special impact program, as well as the Office of Economic Opportunity's proposed demonstration programs and related programs and initiatives so that we can move thoughtfully with all possible speed toward a total economic development and minority enterprise strategy.

Accordingly, I hope that the chairman of the Labor and Public Welfare Committee, Senator YARBOROUGH, and the chairman of the Subcommittee on Employment, Manpower, and Poverty, Senator NELSEN—who have themselves made significant contributions in this area—will add such hearings to the committee's schedule.

FINANCE COMMITTEE REPORTS UNEMPLOYMENT COMPENSATION BILL

Mr. LONG. Mr. President, last week, the Committee on Finance met in executive session and concluded its work on H.R. 14705, the Employment Security Amendments of 1969. The bill was ordered reported to the Senate with a number of committee amendments. I plan to report it before the Easter recess begins. It is a bill which the Senator from Oklahoma favors and which I believe I also favor. We may differ on amendments, but we do favor the bill.

The committee bill extends unemployment compensation coverage to about 4.4 million workers who, up until now, have not been protected by this program. It also would enact a major program of extended benefits for workers who are unable to find jobs after their regular benefits have been exhausted in periods when unemployment rates are quite high.

So that all Senators might know of the details of the committee action on this important measure, I ask unanimous consent that the committee's announcement of its decisions on the bill be printed in the RECORD.

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

UNEMPLOYMENT COMPENSATION BILL REPORTED

Honorable Russell B. Long (D., La.), Chairman, Committee on Finance, announced today that the Committee had concluded its work on H.R. 14705, the Employment Security Amendments of 1969 and had ordered the bill reported favorably to the Senate. He noted that while most features of the House bill were approved without change, the Committee did modify several provisions in the House bill. The important actions taken by the Committee are generally described in the following paragraphs:

1. *Farm Workers.*—The Committee agreed to extend unemployment compensation coverage to employees of large farms. Under the Committee amendment, farm employers who have eight or more employees in each of 26 different weeks during the year would be brought under the program, and all their employees would become eligible for unemployment compensation benefits. However, agricultural crew leaders and their employees would not be included in this extension of coverage. The Committee felt that experience should be gained by both the Federal and State governments in administering this new farm coverage before extensions to additional agricultural groups is considered. Under the Committee amendment, about 22,000 new employers—2 percent of all farm employers—and about one quarter of a million farm employees—about one-fifth of all farm employees—are brought under the unemployment compensation program.

2. *Small Firms.*—The Committee agreed to delete the provision in the House bill which would have extended coverage to employees in small firms—those which employ one or more employees in each of 20 weeks, or which pay wages of $800 or more in a quarter. The present law test of four employees in 20 weeks is retained by this Committee amendment.

3. *Hospitals and Colleges of Higher Education.*—The Committee agreed to the provisions of the House bill which extend coverage to certain employees of non-profit organizations and State hospitals and institutions of higher learning.

However, the Committee also agreed to bring faculty, research and administrative employees of institutions of higher learning into the program, and to indicate in the statute that these additional employees are not to be considered unemployed if they have a contract to resume work after the summer vacation.

The Committee further agreed to permit employees of a county or municipal hospital or institution of higher education to be covered at the option of the governmental unit under an agreement to make payments in lieu of taxes.

4. *Clients of Sheltered Workshops.*—The Committee agreed to extend coverage under the non-profit provision of the House bill to include the "clients" of a sheltered workshop—the blind or other handicapped persons for whom employment is provided in the sheltered workshop. The amendment would affect an estimated 100,000 handicapped persons employed in about 1,500 sheltered workshops. Just as the House bill provided with respect to their regular employees, the sheltered workshop would be permitted to finance benefits for its "clients" either on a reimbursable basis or by electing to pay the regular unemployment compensation tax in the State.

5. *Taxable Wage Base.*—The Committee on Finance agreed to the provisions in the House bill which increase the taxable wage base for unemployment tax purposes from $3,000 per employee under existing law to $4,200. It also agreed to increase the net Federal tax from 0.4 percent to 0.5 percent. As under the House bill, the higher Federal tax rate would become effective with respect to wages paid in 1970. The higher wage base would become effective with respect to wages paid in 1972.

6. *Extended Benefit Program.*—The Committee agreed to the provisions in the House bill which provide for a period of extended unemployment compensation benefits (after regular benefits are exhausted) when unemployment reaches specified levels. Under this new program, the cost of the extended benefits would be shared equally between the Federal government and the State governments. The Committee rejected amendments which would have (a) financed the extended benefits wholly from Federal funds, and (b) provided for a temporary Federally financed program of extended benefits in the interim between the date of enactment of the bill and January, 1972, when the permanent Federal-State program becomes effective.

7. *Effective Date.*—The Committee generally agreed to the effective dates contained in the House bill, but it modified them so that a State which does not have a meeting of its legislature in 1971 would have an additional six months, until July 1, 1972, to approve the changes in State law necessary to implement these new requirements.

8. *Federal Benefit Standards.*—The Committee rejected amendments offered by Senator Abraham Ribicoff (D., Conn.) and Senator Eugene J. McCarthy (D., Minn.) to fix Federal standards on unemployment compensation benefits. The Ribicoff amendment in effect would have required States to pay a benefit equal to 50 percent of the unemployed individual's wage up to 50 percent of the average wage paid in the State. The McCarthy amendment would have imposed a similar requirement, and in addition, would have required the payment of benefits for at least 26 weeks and would have set standards on eligibility under State laws. These amendments were not agreed to.

TAX AMENDMENT—U.S.S. "PUEBLO"

The Chairman also announced that the Committee on Finance had approved H.R. 8654, which provides that enlisted men who were detained by North Korea when the U.S.S. *Pueblo* was seized by that nation in 1968 may exclude from gross income for Federal tax purposes amounts received as compensation during the period of their detention. Commissioned officers who were detained would be allowed to exclude the first $500 per month of compensation received for each month they were imprisoned.

AMERICAN POLICY ON ARMS SALES AND ECONOMIC ASSISTANCE TO ISRAEL

Mr. JAVITS. Mr. President, I wish to make a brief statement on the administration's announcement regarding the policy of arms sales to Israel.

The failure of the administration to specify the number of additional Phantoms to be provided for Israel's security is disappointing. But the reiteration of the President's policy to maintain an arms balance for Israel; his awareness of the threat of the Soviet SAM missiles, manned by Soviet technicians, now being deployed in Egypt; his understanding of Israel's need for replacement of downed planes, and his assurance of economic assistance for Israel—all are gratifying.

I firmly believe that considering the problem of attrition and of Israel's peril, the security situation would appear to require—now—our assurances to Israel of continued deliveries of Phantoms and Skyhawks. The administration's decision against such a specific commitment now must be considered more political than military.

Considering the pressures on Israel's economy, the administration's understanding of and response to Israel's request for economic assistance is certainly a vital factor in ameliorating the unfavorable effect of the decision on the Phantoms.

This is an occasion also for putting in proper perspective our relationship with Israel in the Middle East crisis in terms of the large number of Americans who so much admire Israel's courage and resourcefulness. The fact is that Israel is a real friend in the Eastern Mediterranean, a friend well able to see to its own security. All it asks is to be able to buy the weapons. In the longer term, the example of Israel should serve to encourage modernization and democracy in an area of the world overwhelmed by feudalism, dictatorship, poverty, and ill health.

To assume that the United States can win favor with the radical Arab States by denying Israel Phantoms now is grave self-deception. Their demand is for Israel's extinction—nothing less—and this obviously the American people cannot support or condone. Accordingly, it is in our national interest to assist in conserving the stimulative power to the whole area which Israel possesses, especially as it has already been made clear that Israel will negotiate for a permanent peace with no preconditions whatsoever on even the most sensitive subject.

The President's decision leaves us about where we were. We have a right to expect the administration to be vigilant, alert, and immediately responsive to the needs for the survival of Israel which are so closely connected to the prospects for peace and development in the area.

As the President himself said during his 1968 campaign:

> As long as the threat of Arab attack remains direct and imminent, sufficient power means the balance must be tipped in Israel's favor. . . . I support a policy that would give Israel a technological military margin to more than offset her hostile neighbors' numerical superiority.

ORDER OF BUSINESS

Mr. HARRIS. 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. SYMINGTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ASIAN DEVELOPMENT BANK MEETING—APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. DOLE). The Chair, on behalf of the Vice President, appoints the Senator from Rhode Island (Mr. PELL) and the Senator from Utah (Mr. BENNETT) to attend the Asian Development Bank Meeting in Seoul, Korea, on April 9–11, 1970.

THE DENIAL OF PLANES TO ISRAEL

Mr. SYMINGTON. Mr. President, I regret the decision not to sell to the State of Israel the planes their government says are essential to their future security.

For 20 years the Soviet Union has been steadily increasing its military strength in and around the Mediterranean. In addition, the U.S.S.R. has been loading up with modern military equipment, its now many satellites on the north littoral of Africa, including those on the Mediterranean itself. This has and does include both offensive and defensive weapons, land, sea, and air.

Israel is a small nation, one which, in some parts, is a bare 40 miles wide. That fact is a cause for serious apprehension on the part of its military experts. Obviously, this narrowness is a serious weakness from a security standpoint because of the heavy shortening of military time and space in this nuclear era.

We are justifying the policy of fighting with our own lives and treasure various Communist satellites in the Far East, on the grounds that such a policy, and the programs incident thereto, are essential to our security; and to that end we give arms to many nations in that far away area.

Although Israel is one of the few countries in the world today resisting successfully Communist arms and Communist satellite aggression without the support of American troops, apparently we are now refusing even to sell them the arms they believe necessary for their survival.

In the past, the United States has defended giving arms to some of the radical Arab States, as well as selling them to Israel, on the ground that we believed in preserving a military balance. If that balance was right in the past, however, how can it now be right, after the approval by France of 100 more planes to Libya, a government which recently demanded that this country get out of our large air base at Tripoli in their country; and has expressed openly its sympathy with, and support for, the Communist satellite countries in the area.

The only other countries capable of furnishing the type and character of sophisticated weaponry that Israel asserts are essential to its security are France and the Soviet Union. These are the only two countries in the world in addition to the United States, which make such weaponry; and both of these other countries are now heavily supplying said weaponry to the radical Arab States.

This decision could create more interest on the part of Israel to join the nuclear club. We do not see how, in turn, that could be anything but a negative contribution to the steadily and ever more important search for permanent world peace.

Mr. JAVITS. Mr. President, I think the statement just made by the distinguised senior Senator from Missouri regarding the denial of the sale of weaponry, especially aircraft to Israel, is very important. I hope very much that the administration and the Pentagon will give it very serious consideration.

The Senator from Missouri speaks from an enormous wealth of experience, especially as it concerns air armament. He raises critically important questions, especially about the balance of power. The Senator especially raises the problem of leadtime which is involved for these planes. If the leadtime is not taken into account, the planes will not be there when the time comes when they are needed.

This introduces an element of grave security doubt in a time which is likely to be an emergency for us, and as it would be really for Israel if things get hotter than they are now. If a grave emergency occurs and the Phantom aircraft or other military aircraft are not available because the leadtime has not been taken into account. The consequences could be irreparably damaging.

This is an open and not a closed door in terms of what policy should be pursued regarding these aircraft.

I think the Senator from Missouri has made a very significant contribution. And I am grateful to him.

Mr. SYMINGTON. Mr. President, I thank the able senior Senator from New York for his thoughtful and kind remarks.

What worries me about this decision is that possibly some of the same people who made it have had something to do with our policies in recent years as we waged war in other lands.

Everyone knows that the State of Israel, because of its size and its young economy, is hard pressed for money. But that state has never requested a single soldier or airman, nor has it ever asked to receive in the form of gifts some like those which in the past we have actually given to some of its Arab enemies.

If this country, therefore, despite its now serious economic situation, desires to buy those planes because of conviction that said planes are essential to its security, it is incredible to me why we refuse to sell.

As has been well said, the Arabs can lose 100 battles, but the Israelis cannot lose one.

Mr. JAVITS. Mr. President, I am very grateful to my colleague for his comments.

Again, I repeat that we had better listen to advice when it comes from so authoritative a source.

Mr. SYMINGTON. I thank my colleague for his observations.

Mr. JAVITS. 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. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

TRIBUTE TO PRESIDENT NIXON FOR HIS DECISION ON POST OFFICE SITUATION

Mr. GOLDWATER. Mr. President, throughout the 1960's we have heard proclaimed the doctrines of civil disobedience:

> If you don't like a law, disobey it; a man looks to his individual conscience to decide what law to obey.

Mr. President this self-serving disobedience has spread. And now, the U.S. mail itself has been disrupted. Mr. President, the time has come to reestablish the principle of government of laws, not of men.

Millions of Americans are applauding the courageous action of the President of the United States. He has ordered the mails to go through. The tactics of negotiation by duress will fail because the President will not stand for it.

The President sees the needs of the poor, the elderly, the veterans, businesses which must meet their payrolls. He insists that the mails must go through.

The President has also seen the needs of the postal workers and the postal system. But this Democratic Congress has dragged its feet and helped produce an illegal work stoppage.

The President's action is carefully, calmly tailored to the situation. It is orchestrated with the courts, and the many returning postal workers. The President's action is restrained, a reasonable one. All issues will be discussed when the postal workers return to work.

The statesmanlike and nonpolitical postal reform system proposed by the President will go through eventually. A just pay raise will also go through.

But most important, the President has squarely met the basic issue.

Survival of a government based upon law. Survival of the concept of obedience to the law.

FREE FLIGHTS FOR INFLUENTIAL CITIZENS AT TAXPAYERS' EXPENSE

Mr. PROXMIRE. Mr. President, I rise today to protest against the continuing practice of the Pentagon and the military services of providing free flights to influential citizens to military installations for public relations and propaganda purposes.

The practice is objectionable for at least two major reasons. First, it is an obvious attempt by the military to build up a group of influential citizens to back its huge budget and to lobby for its weapons systems. In fact, within the last year I have received a number of letters from those who have taken such trips calling on me to support the weapons systems which they have examined.

Second, the practice costs money which could be spent either for more important programs or returned to the overburdened and overwrought American taxpayer through a reduction in his taxes.

The practice is nefarious on all counts. It should be stopped and stopped now. At a time when the country faces rapidly rising prices and inflationary pressures, on the one hand, and rising unemployment and cutbacks in jobs and hours of work, on the other, it is impossible to justify the expenditures of hundreds of thousands of dollars by the Pentagon on propaganda flights which are not even specifically authorized by the Congress.

THE FACTS

What are the facts? Last December I wrote to the Secretaries of the Air Force, the Navy, and the Army asking them for specific information about the number and costs of flights during 1969 of community and business leaders to military installations for the purpose of briefing them on the mission of the service.

I asked how many flights had been flown, how many civilian passengers were flown, how many military passengers were flown, how many planes were used for this purpose, how many members of airplane crews were involved, how many flying hours were flown for such purposes, the cost per flying hour, and the total cost of the flights.

I have now received the answers which I shall share with the Senate.

AIR FORCE FLIGHTS

The Air Force replied that it had flown 216 different civic groups to and from major command installations for briefings and orientations during calendar year 1969.

The Air Force flights involved 4,923 civic and community leaders. They were accompanied by 461 military personnel.

Some 1,184 aircrew members were used as flight personnel for the aircraft during the flights.

The Air Force flew 1,672 flying hours at an average cost of $275 per hour, which included personnel per diem costs.

The Air Force said that the total operating costs of its flights was $459,800, or just short of half a million dollars.

NAVY FIGURES

The Navy also provided the information I requested. They flew 30 groups of influential business and community leaders to Navy installations. These flights involved some 1,075 civilians who were accompanied by 86 military passengers. Twenty-one different aircraft were involved with an average of 3.3 crew members per flight or 99 altogether.

The Navy planes flew 312.3 flying hours at an average cost of $275.32 per hour.

The total cost of the flights was given by the Navy at $35,982.30.

ARMY FLIGHTS

The Army sponsored some 51 groups of influential citizens on flights to Army installations for the purpose of promoting community relations.

These involved 812 civilians and 160 military passengers. Some 262 air crewmen were involved.

The Army-sponsored flights logged 853 flying hours at an average cost of $215 per hour, which included personnel per diem costs.

The total costs of the Army flights was given as $184,030.

TOTAL FIGURES

When the facts about the free flights of all three services are added together we find that the program is an extremely extensive one. It involves several thousand people and costs several hundreds of thousands of dollars.

Altogether some 297 influential business and community groups were airlifted by the Pentagon in 1969 to major military installations for briefings and orientation conferences.

The services flew 6,810 civilian community and civic leaders on the flights. They were accompanied by 707 military personnel. Some 1,545 members of air crews were needed to man the flights.

The planes flew a total of 2,837 flying hours at a cost which averaged between $215 and $275 per hour.

The total costs of these flights by all three services was $679,812.30, or over two-thirds of a million dollars.

I ask unanimous consent that a table giving the details for each of the three services be printed at this point in the RECORD.

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

DETAILS ON FLIGHTS IN 1969 BY THE MILITARY SERVICES OF REPRESENTATIVES OF CIVIC AND COMMUNITY ORGANIZATIONS TO MAJOR MILITARY INSTALLATIONS FOR PURPOSES OF BRIEFING AND ORIENTATION

	Flights by—			
	Air Force	Navy	Army	Total
Number of groups briefed	216	30	51	297
Number of civilians flown	4,923	1,075	812	6,810
Number of military personnel accompanying civilians	461	86	160	707
Air crew members	1,184	99	262	1,545
Number of flying hours	1,672	312	853	2,837
Cost per hour	$272	$275	$215	
Cost of flights	$459,800	$35,982.30	$184,030	$679,812.30

ALLEGED JUSTIFICATIONS

Mr. PROXMIRE. Over the years a number of justifications have been made for this program. Generally, it is argued that there is little or no expense to the military because the influential civilians are flown on training flights. It is argued that the flights would be made, the planes flown, and the crew would be in the air in any case.

In the letters just sent to me, this argument is made. Major General Murphy of the Air Force wrote:

No specific aircraft or aircrews are reserved solely for this program.

Hours flown in support of this program, are included in and justified to Congress as part of the overall Air Force allocation of aircrew proficiency flying and training time, and are not in addition thereto.

General Murphy claimed that "the aircraft operating costs reflected above are not, therefore, additive to aircrew proficiency training costs."

That may be said, but many of us find it very hard to believe that an Air Force training flight just happens to be going between Madison, Wis., and the SAC Headquarters at Omaha, Nebr., as one did recently. It strains our credulity when the Army arranges to fly influential Pennsylvania citizens, as it did on March 10 to 14 this year from Middletown, Pa., to Ft. Bliss, Tex., and thence to Ent Air Force Base in Colorado Springs, and back to Middletown and justifies the use of Air Force planes as a "part of authorized allocations for normal aircrew proficiency flying time." And argues they "are not an additional allocation."

OPERATION UNDERSTANDING

This trip, incidentally, was called Operation Understanding. The Army claimed that the "Operations Understanding program provides a means of enhancing community relations and fostering better public understanding of the mission, activities and accomplishments of the Army, Air Defense Command and, consequently the Army's role in the air defense of our country."

What it really was, in fact, was a thinly disguised attempt to sell influential citizens on the ABM. The program for this group from Pennsylvania included briefings on current and future air defense weapons systems, the firing of the Nike-Hercules missile, a look at the Chaparral-Vulcan and Redeye air defense weapons, and an orientation tour of the North American Air Defense Command combat operations in the Cheyenne Mountains. These briefings and firings were to take place at Fort Bliss, Tex., White Sands Missile Range, N. Mex., and the Army Air Defense Command Headquarters at Colorado Springs.

Incidentally, the program also included a voluntary sightseeing tour in Juarez, Mexico, and lunch as the guest of the commanding general, U.S. Army Air Defense Command.

COUNTY OFFICIAL OBJECTS TO "BRAIN WASHING"

One county official from Pennsylvania who was invited to take part wrote to me complaining about the trip in the following terms:

I object strenuously to programs of this type as they are put together for propaganda purposes.

I object further to this type of program because it is designed to brain wash public officials into thinking vast expenditures for such programs as the A.B.M. are justified and therefore it is my contention that this is another example of the military becoming involved in political decisions.

Various individuals and groups are invited. In this case, it was a county commissioner. In others it is the members of local civil organizations, leading businessmen and labor leaders, and college and university officials. In general, the military invites the members of the local establishment and power structure in the community to partake of its largess. In their letter to me, the Air Force refers to these as "public affairs airlift for distinguished civic leaders and community businessmen."

The free flights I am talking about today do not include those which the military offers for inspection trips to Members of Congress and the administrative agencies, or for educators to visit the military academies in advisory capacities.

JUSTIFIED BY MEANINGLESS EUPHEMISMS

Various reasons are given in support of these free flights. Meaningless euphemisms are concocted and substituted for the real purpose of the junkets. This year it was "enhancing community relations and fostering better public understanding." A few years back the military justified similar activities to the General Accounting Office on grounds that their purpose was "to acquaint the public through its influential citizens with the problems, workings, and accomplishments of the Defense Department and the disposition of their defense dollars."

I think almost all Americans are concerned about "the disposition of their defense dollars." One way to make them less concerned is to put a stop to these junkets—for that is what they are.

STOP THE LOBBYING

They are junkets at the expense of the American taxpayers to propaganize, to build support, and to lobby for highly questionable military weapons systems.

They are a waste of money. They should be stopped.

They are not paid for by direct appropriations. They are not a line item in the annual budget, authorization bill, or appropriation bill.

At a minimum such future flights should be justified in the budget and requested specifically. If that were required it is my judgment that these expenditures would be the first to be cut.

We should strike them from the defense budget. They are wasteful, unnecessary, and have the lowest priority.

I call on the Defense Department to reform itself. Cut out the free flights to influential citizens. Stop the propaganda. Live within your means.

I ask unanimous consent that a copy of one of the letters I addressed to the services, and the replies I received from the Air Force, Navy, and Army be printed at this point in the RECORD.

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

DECEMBER 15, 1969.

Hon. ROBERT C. SEAMANS, Jr.,
The Secretary of the Air Force,
Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: One of the practices of the Air Force and of other military Departments is to fly representatives of community businesses and organizations to Air Force, Navy, Army and other installations for the purpose of briefing them on the work of the service.

One such flight took place this past year from Madison, Wisconsin to the Headquarters Strategic Air Command, at Offutt Air Force Base in Omaha. Several dozen local citizens were flown there for an orientation briefing and conference.

I would like to get from your office the following information.

In calendar year 1969 how many such flights were flown by the Air Force?

How many civilian passengers were flown?

How many military passengers were flown?

How many planes were used for this purpose?

How many members of Air Force crews were involved?

How many flying hours were flown for such purposes?

What was the average cost per flying hour and the total cost of these flights?

I would like this information as soon as it is conveniently possible for you to furnish it.

With best wishes.

Sincerely,

WILLIAM PROXMIRE,
U.S. Senate.

DEPARTMENT OF THE AIR FORCE,
Washington, January 22, 1970.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: The Secretary of the Air Force has asked me to respond to your inquiry requesting information from the Air Force concerning public affairs airlift for distinguished civic leaders and community businessmen.

The Air Force flew 216 different civic groups to and from major command installations for briefings and orientations during calendar year 1969. Participating in these tours were 4,923 civic and community leaders, together with 461 accompanying military personnel. There were 1,184 aircrew members used to crew the aircraft for these flights. Nine different types of aircraft were used. The 1,672 hours for the trips cost an average of $275 per hour which includes personnel per diem cost. The total operating cost of these flights was $459,800.

No specific aircraft or aircrews are reserved solely for this program. Air Force regulations require that invitees pay for their own meals, incidental expenses and billets.

The hours flown in support of this program are included in and justified to Congress as part of the overall Air Force allocation of aircrew proficiency flying and training time, and are not in addition thereto. The aircraft operating costs reflected above are not, therefore, additive to aircrew proficiency training costs.

We trust that this information is responsive to your inquiry.

Sincerely,

JOHN R. MURPHY,
Major General, USAF, Director, Legislative Liaison.

THE SECRETARY OF THE NAVY,
Washington, D.C., February 10, 1970.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR BILL: This is in further reply to your recent letter in which you requested certain information concerning the Navy flights carrying representatives of community businesses and organization to Navy installations for the purpose of briefing them on the work of the Navy.

The following information is provided in response to your questions:

In calendar year 1969, how many such flights were flown by the Navy? Answer: 30.

How many civilian passengers were flown? Answer: 1,075.

How many military passengers were flown? Answer: 86.

How many planes were used for this purpose? Answer: 21 different aircraft of 3 different types.

How many members of air crews were involved? Answer: Average of 3.3 crew members per air lift.

How many flying hours were flown for such purposes? Answer: 312.3 flying hours.

What was the average cost per flying hour and the total cost of these flights? Answer: Average cost per flying hour is $275.32, and the total cost of the flights is $35,942.30.

In addition to the flights in which you are interested, certain specific groups of educators have been transported to the U.S. Naval Academy in advisory capacities.

I hope this information will be helpful to you.

Sincerely yours,

JOHN H. CHAFEE.

JANUARY 27, 1970.

Hon. WILLIAM PROXMIRE,
U.S. Senate.

DEAR SENATOR PROXMIRE: This is in reply to your inquiry concerning air transportation for community leaders to visit Army installations in conjunction with community relations projects.

During Calendar Year 1969, the Army world-wide sponsored 51 groups in which 812 civilian and 160 military passengers, including escorts were flown in 66 aircraft to various locations for the purpose of touring military installations. A total of 262 air crewmen logged 853 flying hours at an average cost of $215 per flying hour in support of these tours to include personnel per diem costs. The total cost of these flights was $184,030.

These tours are conducted by Army Commands to provide information on the Army's state of readiness and how it trains and takes care of its soldiers. This does not include the educator tour program of the U.S. Military Academy which provides information to civilian educators to permit them to counsel youths on opportunities at the academy.

Aircraft are provided primarily by the U.S. Air Force with no aircraft or air crews specifically allocated to these programs. The hours flown are part of authorized allocations for normal aircrew proficiency flying time and are not an additional allocation. Cost for meals, incidental expenses and billets are borne by the participants.

I trust the above information will be of assistance to you.

Sincerely,

RAYMOND T. REID,
Colonel, GS, Office, Chief of Legislative Liaison.

PRIDE OF THE NATION'S PRESS UNANIMOUSLY OPPOSES CARSWELL

Mr. PROXMIRE. Mr. President, yesterday and today three newspapers that I receive and read daily, and for which I have the greatest respect, editorialized in a telling fashion against the nomination of G. Harrold Carswell to the Supreme Court. Two of the papers probably are read by the vast majority of my Senate colleagues on a regular basis—the New York Times and the Washington Post. The third is the pride of the Midwest and at the top of the scale of national competence—the Milwaukee Journal.

Both the Journal and the Times make short shrift of some remarks made on this floor last week to the effect that those Americans of modest scholastic attainments should have their representative on the Court. The Journal states it this way:

> Since many Americans are mediocre, as the case is put, they should have one of themselves on the court! To state the premise is to demolish it.

The Times calls the application of such a principle to the Senate "bad enough; to extend it to the Highest Court is intolerable."

The Times goes on to cite certain misleading tactics used by Judge Carswell's supporters. For instance:

> It has now become known that Elbert F. Tuttle, the retired Chief Judge of the United States Court of Appeals for the Fifth Circuit in the South, who originally backed the nomination, subsequently decided to withdraw his endorsement. But Judge Carswell's supporters let the impression of Judge Tuttle's approval be used as continuing support for him.

In another instance Attorney General Mitchell transformed a lukewarm American Bar Association endorsement of Carswell as "qualified" into a misleading "highly recommended" label.

The Post and the Journal come down hard on Carswell's civil rights record—the Journal pointing to Carswell's 15 unanimous reversals in civil rights cases, and the Post calling for his rejection as a signal to all races that the Senate will not permit the executive branch to pursue a southern strategy that exacerbates relations between black and white for political gain.

The Times characterizes Carswell's record as "mediocre" and demonstrating "questionable attitudes toward social justice." The Journal terms him "lacking the professional competence demanded by the position." The Post calls him "a decidedly second rate judge."

These are the very reasons I am voting against the Carswell nomination—the reasons the dean's of the Nation's finest law schools are opposing the nomination and the reasons why the Senate should not hesitate to send the nomination back to the White House stamped "unacceptable."

I ask unanimous consent that the three editorials I have referred to be printed in the RECORD.

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

[From the Milwaukee Journal, Mar. 22, 1970]

SENATE SHOULDN'T CONSENT TO CARSWELL NOMINATION

Some supporters of the nomination of Judge Carswell for the U.S. Supreme Court, finding nothing else to extol in the man, are now driven to extol his mediocrity. Since many Americans are mediocre, as the case is put, they should have one of themselves on the court!

To state the premise is to demolish it. Resort to it depicts the poverty of any argument for Carswell's confirmation, and the desperation of his supporters as they contemplate the tide of conviction spreading across the land (outside the South) that he simply won't do.

Carswell's notorious white supremacy speech of 1948 has turned out to be inexcusable as a mere aberration of youth, conforming to the rules of southern white politics at the time. For he did not repudiate it by word or deed throughout his later career; in fact, he gave it life by many actions right down to the present. He now says himself that it was "a matter of convenience"—which only now has become convenient to repudiate.

Even if racial bias were deemed tolerable in a Supreme Court justice, however, lacking the professional competence demanded by the position cannot be. Neither can lack of "sensitivity to injustice"—a lack in Carswell to which many legal scholars have attested after studying his record as a U.S. prosecutor and trial judge.

Law Dean Louis Pollak of Yale has concluded that Carswell's credentials are "more slender than those of any other nominee for the Supreme Court in this century." His "level of competence," says Dean Derek Bok of Harvard, is "well below the high standards that one would presumably consider appropriate and necessary for service in the court."

Prof. Gary Oldfield of Princeton: ". . . an obscure judge who has made no visible contribution to the development of the law. His chief qualification appears to be an abiding unwillingness to protect constitutional rights of black Americans." ". . . A judge who would rather risk bad law and repeated reversals than offend the feelings of local segregationists."

Carswell's record of foot dragging in civil rights includes 15 unanimous reversals by courts of appeal, in which he had persistently gone opposite to the guidance of higher courts in parallel cases. This shows him not to be even a conscientious judicial workman.

Danger that such a man may be confirmed stems from an inclination by most of the Republican senators who had blocked President Nixon in the Haynsworth case to feel that they should let him win this one. That puts political etiquette above the country's need for great jurists on the Supreme Court, which Nixon once acknowledged but now denies in practice.

Making Nixon a winner with Carswell would make the court and the country losers. If the role of the Senate to "advise and consent" means anything, it means that a Senate filling the role will not permit this to happen.

[Fom the Washington Post, Mar. 22, 1970]

JUDGE CARSWELL: THE WRONG SIGNAL

It is a longish leap from the fun and games at the Gridiron Club last weekend to the Senate debate on Judge Carswell. But bear with us because there is a logical connection here between the appointment of a decidedly second-rate judge to the Supreme Court and the ease with which President Nixon and Vice President Agnew stole the Gridiron show. As you may have read, the two men joined in a piano duet, with the President playing a medley of the favorite tunes of his predecessors and the Vice President interrupting him by playing "Dixie." Doubtless you had to be there to get it into the right context, to hear the rough but good-natured jibes at the Administration on race issues that preceded the surprise finale, and thus to appreciate the joke. Almost everybody agreed it was a *tour de force* gracefully done and quite in keeping with the spirit of an affair at which the tensions and antagonisms of the real world are supposed to be set aside.

So it is with no intent to disparage the performance of the President and the Vice President that we take note of this event. Still, at the risk of sounding stuffy, it strikes us as a small piece of a bad scence, and a significant measure of how great is the power of the Presidency to influence a public attitude. All of a sudden, it is all right to joke about something that responsible people in high office used to handle with care and compassion and deadly seriousness.

In theory, a sense of humor is supposed to be a saving grace. So why not make sport of a Southern Strategy? The answer, of course, is that Southern Strategy is a euphemism for something that isn't funny. On its face it is no more than a cynical political tactic designed to innoculate the South against George Wallace for the sake of winning it for the Republicans, the better to secure a second term for President Nixon in 1972. As a political objective, this is fair enough—some people even see in it an admirable toughmindedness. But there is nothing admirable about the logical consequences of this strategy, for to bring it off it becomes necessary for the Administration to cultivate indifference, not to say hostility, toward the fundamental principle of human rights in general, and the equality of education available to black children in particular. Putting it another way, and bluntly, Southern Strategy means a form of racism, tacit or explicit, by people in high places, because there can be no successful effort to undercut George Wallace in the South that does not play the segregation game.

It is important to be clear in our minds about the issue here. We are well aware that the White House will be publishing next week what has been billed as the most complete, the most comprehensive, the most closely argued legal brief ever composed on school desegregation and it is not our purpose here to judge it in advance. For this is not what this is all about. We are not talking just about schools, or doubts held by responsible people about busing or other methods for dealing with the *de facto* segregation which occurs as a result of natural, geographic imbalances. We are talking about what a President or an Administration can do, or not do, to create an atmosphere that is conductive, not to miracles, but to continuing progress against racial discrimination all along the line. And this, in turn, is what is so troubling about the ease with which we now laugh at jokes about a Southern Strategy. It is what links the hijinks at the Gridiron with the nomination of Judge Carswell and a lot of other things—the abrupt removal of a Leon Panneta from HEW because he tried too hard; the effort to subvert Negro voting rights; the insensitivity, in tone and phrase, to black pride; the country club mentality.

Mr. Harry Dent, a presidential assistant, receives a written offer of campaign funds from a Georgia Republican leader in exchange for the restoration of Federal school aid in a Georgia school district. He casually passes it along to HEW—and nobody seems to mind. The Vice President brushes off the idea of quotas for black students by asking the crude question: "Do you wish to be attended by a physician who entered medical school to fill a quota . . .?" Mr. Jerris Leonard, the Justice Department's civil rights enforcer, thinks it clever, or something, to say that one reason blacks just out of law school are not attracted to Justice Department jobs is that they haven't yet bought their first cashmere coat. Confronted with a question about Judge Carswell's involvement with segregated clubs, the President thinks it an adequate defense to say, in effect, that everybody's doing it: ". . . if everybody in government service who has belonged or does belong to restricted golf clubs were to leave the service, this city would have the highest rate of unemployment of any city in the country."

And so it goes, right down to the vote on Judge Carswell, with the Administration's men telling Republicans who opposed Judge Haynsworth—in almost every respect a much superior choice—that they can't rebuff their President twice running. They can, of course, and they should, because this is nothing so narrow as a test of party loyalty. It is a test of policy and principle—a kind of Tonkin Resolution on race, if you accept the theory recently advanced in Life Magazine by Hugh Sidey that the race issue could be for President Nixon the disaster that Vietnam was for President Johnson.

The Tonkin Resolution on Vietnam was a fraud, and while that became clearer later, it might have been clearer at the time if the right questions had been pressed, if Congress had not closed its eyes out of misplaced deference to the President and waved him down a wrong road. Therein lies the analogy. Judge Carswell is a bad choice, and the Senate should reject him out of its obligation to safeguard the paramount interests of our highest court. In the process of refusing his confirmation, the Senate has an opportunity, not just to say *No*, but also to say *Enough*—of insensitivity and indifference, of legislative retrogression and of catering to racist tendencies for political gain, of talking about blacks as if there were no blacks in the room. The Senate, in this fashion, could broadcast from at least one seat of government a signal to all races—a signal which at this stage can no longer be broadcast, in a way that would be believable, by anybody else.

[From the New York Times, Mar. 23, 1970]

RATING JUDGE CARSWELL

The Senate, in its desultory debate over whether to confirm the nomination of Judge G. Harrold Carswell to the Supreme Court, is giving an uninspiring demonstration of its sense of responsibility on an issue of grave national concern.

President Nixon, in his weekend press conference, urged Senators to weigh, not the mail, but the evidence. It is precisely on the evidence that Judge Carswell emerges with a mediocre judicial record and with questionable attitudes toward social justice.

Senator Roman L. Hruska, Republican of Nebraska, in apparent contempt for excellence in American institutions, championed the right of all who are mediocre to be represented by mediocrity on the Supreme Court. Application of this view to the Senate is bad enough; to extend it to the highest court is intolerable. Yet, this appears to be the intent of those who deliberately spurn all honest assessment of evidence unfavorable to Judge Carswell.

For example, it has now become known that Elbert F. Tuttle, the retired Chief Judge of the United States Court of Appeals for the Fifth Circuit in the South, who originally backed the nomination, subsequently decided to withdraw his endorsement. But Judge Carswell's supporters let the impression of Judge Tuttle's approval be used as continuing support for him.

A group of distinguished lawyers, including Francis T. P. Plimpton, president of the New York Bar Association, as well as the deans of leading law schools, have charged that the "qualified" rating, given Judge Carswell by the Federal Judiciary Committee of the American Bar Association, is seriously misleading. They consider the issue sufficiently grave to demand that the committee reopen the case and provide a more explicit rating, as it does in the case of other Federal judges.

Judge Carswell's supporters have used the A.B.A. rating as a judgment of high merit, when it is little more than an evasive rubber stamp. Attorney General Mitchell, who undoubtedly knows the real meaning of the A.B.A.'s faint praise, has stated publicly that his nominee comes "highly recommended" by the association.

These misleading tactics amply justify the demand for a more enlightening reappraisal. An explicit rating would do much to help the Senators when they ultimately cast their vote on the dictates of both fact and conscience. The legal profession surely has a responsibility to offer credible guidance and, at the very least, make sure that its testimony cannot be abused in ways that might demean the Supreme Court.

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. GURNEY. Mr. President, I have had several communications over the last few days during the debate on the nomination of Judge Carswell, many of which I put in the RECORD, others of which I wish to put in the RECORD now.

One of them is of particular interest, and I wish to bring it to the attention of the Senate. It is written by a woman lawyer, a member of a large law firm in Tallahassee, Fla.

KEEN, O'KELLEY & SPITZ,
Tallahassee, Fla., March 20, 1970.

Hon. EDWARD J. GURNEY,
Senator for the State of Florida,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR: I hope that I am not being presumptious in feeling that you might be interested in my views concerning the nomination of Judge Carswell since my background is not that of the typical Tallahassee lawyer now practicing before him. I was born and educated in Minnesota and have been exposed to judges in such diverse places as Minnesota, the District of Columbia, Arkansas and Florida. I also have taught in a law school: the University of Arkansas Law School. And I am a woman lawyer.

I graduated from the Law School of the University of Minnesota, class of 1941 and was a member of the editorial board of the Law Review and elected to Order of the Coif. I present this background to convince you that I have some basis for evaluating a judge.

I have been engaged in practicing law in Tallahassee, Florida, for the past four years and have had a fairly extensive practice in the District Court before Judge Carswell. He has always been eminently fair and courteous to all parties, he has displayed a deep learning in the law and his opinions have a clarity that is sadly lacking in many that

I must wade through in the course of my daily work. Perhaps they lack a degree of literary grace, as is deplored by Max Lerner and others of his ilk, but I am sure that Judge Carswell's opinions will gain in style when they are no longer the product of the heaviest case load of any judge in the federal system.

It has also been my observation that whatever reversals Judge Carswell has sustained at the hands of the Fifth Circuit have been the result of his being willing to use the summary judgment rule, a rule to which the Fifth Circuit is avowedly opposed.

I have been unable to see any racial bias in Judge Carswell and I am sure that I would see it if it existed: I spent my formative years in Minnesota and living in the South has not changed my attitudes as is attested by the fact that I am currently representing a black plaintiff in a civil rights case against a municipality and its officers. I can also refute the silly "sexist" charge levied against Judge Carswell. I have been treated with exactly the same degree of courtesy and consideration as any other advocate, no more and no less. I also know, of my own knowledge, that when Judge Carswell was elevated to the Fifth Circuit he selected as his law clerk a woman law school graduate.

I have no personal interest in Judge Carswell's nomination for I am not a social friend and professionally I would be better served by his being retained in the Fifth Circuit where I do practice but this feeling is outweighed by the duty I owe my profession.

I am of the unswerving belief that Judge Carswell would make an excellent Supreme Court judge and I earnestly request you to give real, and fair, consideration to his nomination.

Sincerely yours,

HELEN CAREY ELLIS.

Of course, this is just another instance of what I have said on the Senate floor again and again during this debate; namely, that these are the endorsements that impress me, not what a law school professor in the North may say or what a Wall Street lawyer may say or what their opinions may be about Judge Carswell.

Another thing of interest is that some credence has been given to the argument that some law school faculty members of Florida State University are opposed to the nomination of Judge Carswell. That is true. One of my lawyer friends addressed a letter the other day to the Senator from Iowa (Mr. MILLER). I ask unanimous consent that the text of the letter be printed in the RECORD in the course of my remarks.

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

ERVIN, PENNINGTON,
VARN & JACOBS,
Tallahassee, Fla., March 20, 1970.

Hon. JACK MILLER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MILLER: I have read with a great deal of concern of the action of some nine members of the teaching staff at Florida State University College of Law. That teaching staff consists of eighteen; the nine who seem to have opposed Judge Carswell's nomination consisted of eight of the teaching faculty and one librarian. Of those who do not oppose Judge Carswell, most, including Dean Joshua Morse and former Dean Mason Ladd (now in a teaching position) have strongly endorsed Judge Carswell's nomination.

Because of that concern, I have tried to determine the basis for the action of the nine critics. I am, therefore, attaching a list of their names, their teaching positions, colleges attended and ages, and years on the teaching faculty at Florida State University, as well as their political affiliations if they are registered in Leon County, Florida.

It is quite significant that none of the nine critics is a member of The Florida Bar. Because The Florida Bar is an integrated bar, they are not allowed to practice before the courts in our state. I, therefore, respectfully suggest that none of the nine is qualified to speak as to Judge Carswell's abilities or qualifications.

I am enclosing for your further information a copy of the February 1970 issue of *The Florida Bar Journal*. Beginning on page 88 is an item concerning Judge Carswell and on page 73 is an apt comment on the courts and the criticism of Judge Carswell.

I have known Judge Carswell personally since 1952. In 1954 I became Assistant United States Attorney and served with him while he was United States Attorney for the Northern District of Florida. When he was elevated to the District Court bench, I became United States Attorney. Since February 1961, I have been engaged in the general practice of law in Tallahassee, which practice includes civil and criminal litigation in the Federal Court. Based on my personal knowledge of the man, on my personal experience as United States Attorney and as a practicing lawyer, I recommend his nomination to you and to the United States Senate and urge that his nomination be speedily confirmed.

Very truly yours,

WILFRED C. VARN.

Enclosures.

Name	Age	Years teaching FSU	Member of Florida bar	Political affiliation
Robert P. Davidow, associate professor, Dartmouth, Michigan, Harvard.	32	Less than 1 year	No.	Unknown.
Jarret Oeltjen, associate professor, Nebraska, Chicago	28	do	No.	Do.
Edwin M. Schroeder, Librarian, Tulane	33	do	No.	Do.
John W. Van Doren, associate professor Harvard, Yale	35	do	No.	Do.
Kenneth Vinson, full professor, Texas, Yale	34	do	No.	Do.
Raymond Maguire, assistant professor, Canisius, Harvard, Columbia.	31	Just short of 2 years	No.	Do.
John Yetter, assistant professor, Duquesne, Yale	30	do	No.	Do.
David F. Dickson, associate professor Princeton, Yale, FSU	37	4 years	No.	Republican.
Francis N. Millett, associate professor, Harvard, North Carolina, Alabama.	38	4 years	No.	Do.

Mr. GURNEY. The interesting thing is that these nine members of the faculty from Florida State University Law School who oppose the nomination of Judge Carswell are as follows:

Robert P. Davidow came from Dartmouth, Michigan, and Harvard, but has been teaching at Florida State less than 1 year.

Jarret Oeltjen, age 28, has been at Florida State University less than 1 year.

Edwin M. Schroeder is listed as a librarian. He does not even teach law. He has been at Florida State University less than 1 year.

John W. Van Doren went to Harvard and Yale. That does not surprise me. He is 35 years old and has been teaching at Florida State University less than a year.

Kenneth Vinson has been a teacher at Florida State University less than 1 year.

Raymond Maguire comes from Harvard and Columbia, is 31 years old, and has been teaching at Florida State University just short of 2 years.

John Yetter came from Duquesne and Yale, is 30 years old, and has been at Florida State University just short of 2 years.

David F. Dickson came from Princeton and Yale—there is a great background—is 37 years of age, and has been at Florida State University 4 years.

Francis N. Millett came from Harvard, is 38 years old, and has been at Florida State 4 years.

Not a single one of these members of the faculty are members of the Florida bar—not one. Though I do not know it, I doubt whether any of them has been in court; and, needless to say, they know nothing of Judge Carswell—again typical of the kind of opposition Judge Carswell is getting.

Here is another letter that I think is worthwhile bringing to the attention of the Senate. It is from a man named David L. Middlebrooks. I know him well, because I recommended his appointment to the U.S. district court to replace Judge Carswell. He is a longtime personal friend of mine, one of the outstanding lawyers in Florida.

As a matter of fact, he was one of the outstanding students of Florida University Law School. I wish I had his biography. I think he was first in his class, president of the student body, a member of the Law Review, and has other credentials like that. I called him up and asked him to write me a letter to explain what he knew about Judge Carswell, mainly because he probably practiced in Judge Carswell's court more than any other lawyer who came before him. This is what he said:

U.S. DISTRICT JUDGE,
Tallahassee, Fla., March 19, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senator, New Senate Office Building, Washington, D.C.

DEAR SENATOR GURNEY: You inquired this date by telephone of my acquaintance with the Honorable G. Harrold Carswell whose nomination as Associate Justice of the United States Supreme Court is presently being considered by the United States Senate.

I have known Judge Carswell since my admission to the Bar of Florida in the year 1956. Since his elevation from the position of United States Attorney to the position of Judge of the United States District Court for the Northern District of Florida, I have had numerous occasions to be before Judge Carswell in many different capacities as a lawyer. I doubt seriously if many practicing attorneys in the Northern District of Florida have had a better opportunity to become acquainted with this man or to learn as much as I have as to his character and ability.

During my entire legal career I was a member of two of the largest law firms in west Florida and as can be expected these law

firms handled a large portion of the litigation in Federal Court. Being primarily a trial attorney I had the occasion to be before Judge Carswell in both civil and criminal cases. For approximately seven years prior to my being appointed as United States District Judge for the Northern District of Florida, I was a member of a committee who recommended a list of attorneys to Judge Carswell for appointment to represent indigent defendants charged with offenses against the United States and as a member of this committee I was almost always present when the criminal docket was sounded and attorneys were appointed to represent indigents. In addition I was a member of a three-man committee to examine applicants for admission to the Bar of the United States District Court as to their qualifications to practice before this Court. I was appointed by Judge Carswell as Chairman of the Admiralty Rules Committee to suggest possible revision of the existing admiralty rules.

There were few times when Judge Carswell held Court in Pensacola that I did not appear before him in a contested matter or as his representative in the selection of competent attorneys to represent persons accused of crime. In these capacities I was able to witness his courtroom appearance and his attitude toward members of the Bar, both black Americans and white Americans. It goes without saying that I also had an opportunity to see how Judge Carswell treated those persons appearing before him as defendants in criminal cases.

Long before Judge Carswell was appointed as a Judge of the Fifth Circuit Court of Appeals, I had made the statement to many of my lawyer friends and other friends that it was my opinion that he was one of the best trial Judges in the State of Florida. I wish that it were possible that a poll be taken of the hundreds of lawyers who appeared before Judge Carswell to determine from these lawyers their opinions of Judge Carswell's ability as a jurist. I am confident that the great majority of them would share my opinion of this man.

Judge Carswell always treated lawyers and litigants with the respect that all human beings deserve and was especially anxious and determined to see that all persons accused of crime in his Court received competent counsel to represent them. Not once did I observe Judge Carswell treat a lawyer or litigant unfairly or harshly. He is the type of Judge who always rose from his chair when lawyers and litigants would enter his Chambers and meet them with a ready handshake.

There has been some comment made that Judge Carswell's manner in his association with counsel was other than courteous. It should be pointed out that during most of the years that Judge Carswell was Judge of the United States District Court that he handled the entire case load in the Northern District of Florida with little assistance. He was the only Judge in the Northern District of Florida which stretches geographically from Pensacola to Gainesville, a distance of some 350 miles. Congress saw fit to add an additional Judge in the Northern District of Florida approximately two years ago. I am sure that the heavy case load and the distance Judge Carswell was required to travel influenced him in attempting to handle litigation in the Northern District of Florida as promptly as possible. This might account for some comment that he was brusque in manner at times in Court proceedings.

During these many years I have also had an opportunity to visit with Judge Carswell socially and firmly believe that if Judge Carswell had any feeling of superiority where black Americans were concerned I would have observed it. No one could convince me that G. Harrold Carswell is a racist.

I felt obliged to give you the benefit of my observations of Judge Carswell because of the many criticisms made by persons who could not possibly know Judge Carswell as I have known him through the years. In my opinion he would be an outstanding United States Supreme Court Justice.

Sincerely,

D. L. MIDDLEBROOKS.

This, again, is from one who is now a U.S. district judge in the northern district of Florida, and really one of the outstanding members of the Florida bar, a man of unimpeachable credentials, and a man who appeared in Judge Carswell's court, probably, more than any other lawyer in his entire district.

I ask unanimous consent to have printed at this point in the RECORD, in addition to the letters I have read, a letter from Robert T. Mann, judge of the district court of appeals, Lakeland, Fla.; a letter from Frank A. Orlando, judge of the juvenile court of Broward County, Fla.; a letter from James W. West, county judge of Sumter County, Fla.; and a letter from John W. Booth, judge of the fifth judicial circuit, Bushnell, Fla.; and many telegrams which I have received as well.

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

LAKELAND, FLA.,
March 16, 1970.

Hon. EDWARD GURNEY,
U.S. Senate,
Washington, D.C.

DEAR ED: I am disturbed by the unfair and excessive criticism of Judge Harrold Carswell. I write to suggest to you that the prolongation of this controversy can only serve to discredit our judiciary.

Perhaps I am slightly biased by his recent citation with approval of one of my opinions, but I view Judge Carswell as a man of impeccable character and reputation. I do not know him intimately, but I know of nothing which would warrant his rejection by the Senate. It is, after all, the President's prerogative to nominate Justices. The Constitution contemplates that the Supreme Court will reflect a diversity of viewpoint.

The maintenance of a just and orderly society is a complex task in which we are all involved. It deserves our best efforts and our best men. I fully expect Judge Carswell to serve as Justice with far greater distinction than his detractors think possible.

I am pleased to hear that your wife is improving. Elizabeth and I join our prayers to yours for her speedy and complete recovery.

Sincerely,

BOB.

JUVENILE COURT OF BROWARD COUNTY,
Fort Lauderdale, Fla., March 20, 1970.

Re Judge G. Harrold Carswell.
Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR GURNEY: This letter is in response to the attached newspaper article concerning the appointment of Judge G. Harrold Carswell to the United States Supreme Court. I feel my response is necessary since, in my opinion, many unwarranted and untrue statements are being made by members of the judiciary with reference to Judge Carswell's appointment to the Supreme Court.

Before becoming a Judge of the Juvenile Court for Broward County in March of 1968, I served for four years as an Assistant Attorney General for the State of Florida. During that time I appeared before Judge Carswell representing the State of Florida in several cases. All of these cases had to do with Civil Rights and desegregation of state institutions or local school systems. I can say without a doubt that Judge Carswell was fair, impartial and applied the law of the land as it was written at the time we were presenting our cases to him. In a specific case dealing with the desegregation of the State Training Schools, Judge Carswell struck down a Florida Statute which required these institutions to be operated on a segregated basis. However, in order to give the State of Florida a reasonable time to make an orderly transition, he allowed us approximately three months to prepare and implement a desegregation plan. This, in my opinion, showed great judicial discretion on his part and, at the time of the case, was satisfactory to all parties involved.

As one who has known Judge Carswell both professionally and socially, I am quite disappointed in the members of the judiciary who have chosen to speak out against Judge Carswell without really knowing what type of a man he is.

It is a shame because a man does not have pro-labor or pro-civil rights activities in his background he cannot, without going through great embarrassment and unreasonable criticism, become a member of the United States Supreme Court. I am hopeful you will be able to prevail upon members of the United States Senate to see that Judge Carswell will be a true representative of the feelings of the American People and interpret the Constitution as it is written—not as he thinks it should be applied.

If there is anything I can do as a member of the Florida State Judiciary to assist you in your attempts to have Judge Carswell confirmed, please do not hesitate to call.

Thanking you very much, I am,

Sincerely,

FRANK A. ORLANDO,
Presiding Judge, Juvenile Court of Broward County.

BUSHNELL, FLA.,
March 18, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senator,
Washington, D.C.

DEAR SENATOR: Please continue to do everything in your power to get a good man on the Supreme Court. Please keep pushing for Judge Carswell.

Respectfully,

JAMES W. WEST,
County Judge, Sumter County.

STATE OF FLORIDA,
March 17, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GURNEY: The appointment of a conservative man such as Judge G. Harrold Carswell to the United States Supreme Court is long overdue, and now that we have the opportunity of securing such an appointment, I sincerely and earnestly urge that you, as our Senator, give your unqualified support to this appointment.

I am sure that the opposition will continue to raise smoke screens and attempt to defeat this selection by our President. The people of Citrus, Hernando and Sumter Counties, where I serve as presiding judge, are, in my opinion, solidly behind Judge Carswell and your part in assisting in his confirmation by the Senate would be well received.

Yours very truly,

JOHN W. BOOTH,
Circuit Judge.

PENSACOLA, FLA.,
March 19, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senate,
Washington, D.C.:

I respectfully urge your favorable consideration of Judge G. Harrold Carswell for the

United States Supreme Court. It could possibly be said that I am a member of a so-called minority group. I have had the privilege of trying cases before Judge Carswell on numerous occasions and found him to be fair, impartial, intelligent, and profound in his legal opinions. I would stake everything I own that Judge Carswell is not prejudiced against any person because of his race or religion and I feel that those who suggest such a thing are doing a terrible disservice to a great jurist and outstanding human being.

DAVID H. LEVIN.

VERO BEACH, FLA.,
March 19, 1970.

Senator EDWARD GURNEY,
New Senate Office Building,
Washington, D.C.:

As a practicing attorney in Vero Beach, Florida I would like to express to you that in my opinion that I and most lawyers in this area strongly support the nomination of Judge Harrold Carswell to the U.S. Supreme Court. The impression that the lawyers of Florida do not support Judge Carswell is in error.

CHER CLEM.

VERO BEACH, FLA.,
March 20, 1970.

Senator EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.:

As a practicing attorney and President of the Indian River County Bar Association in Vero Beach, Florida, I would like to express to you that in my opinion that I and most lawyers in this area strongly support the nomination of Judge Harrold Carswell to the U.S. Supreme Court. The impression that the lawyers of Florida do not support Judge Carswell is in error.

ROBERT JACKSON.

MARIANNA, FLA.,
March 19, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

Sincerely believe circus has lasted long enough. For sake of a strong court system commanding respect of all, urge your efforts to end farce involving Judge Carswell and press for immediate confirmation.

R. ROBERT BROWN,
County Judge, Juvenile Court Judge.

MONTICELLO, FLA.,
March 19, 1970.

Hon. ED GURNEY,
U.S. Senator, U.S. Congress,
Washington, D.C.

DEAR SENATOR GURNEY: I have known Judge Harrold Carswell since he became US District attorney. I have practiced before his court when he was district judge. He is most eminently qualified to sit on the US Supreme Court especially when viewed from the standpoint of the qualification of some present and former Justices. I sincerely believe he will interpret the law rather than legislate. I urge that the verification and the defamation spawned by Senators Bayh et. al. cease, and the Senate get on with immediate confirmation.

Respectfully,

KENNETH E. COOKSEY,
Judge, Monticello, Fla.

DE FUNIAK SPRINGS, FLA.,
March 19, 1970.

HON. EDWARD GURNEY,
U.S. Senate, Washington, D.C.

SIRS: I have been a county judge in Walton County, Fla for 21 years. I wish to say that the Hon Harrold Carswell is qualified in every respect. I give him my unqualified support. All my friends also feel this way.

JOE DAN TROTMAN.

MIAMI, FLA.,
March 20, 1970.

Hon. ED. J. GURNEY,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR GURNEY: Strongly support confirmation of Judge Carswell to the Supreme Court.

DAVID POPPER,
Dade County Courthouse.

FT. LAUDERDALE, FLA.,
March 20, 1970.

Hon. ED GURNEY,
New Senate Office Building,
Washington, D.C.:

Judge Carswell is eminently qualified because of his record of many years on the bench and a record of many sound decisions.

STEWART F. LAMOTTE, Jr.,
Circuit Judge, 17th Judicial Circuit.

PANAMA CITY, FLA.,
March 20, 1970.

Senator ED GUERNEY,
Senate Office Building,
Washington, D.C.:

Add my name to the growing list of Florida attorneys who without reservation endorse the nomination of Judge Harrold G. Carswell as justice of the United States Supreme Court. Based upon my practice before Judge Carswell I am of the opinion that he is a man of unusual ability, especially equipped for the responsibilities and demands of this high office.

DAYTON LOGUE.

PALM BEACH, FLA.,
March 20, 1970.

Hon. EDWARD GURNEY,
U.S. Senator,
Senate Office Building,
Washington, D.C.:

First telegram transcribed in error. Corrected copy reads as follows: Judge Harrold Carswell is eminently qualified to serve as associate justice and I earnestly recommend immediate and favorable action on his behalf by the Senate.

GEORGE W. HERSEY.

PALM BEACH, FLA.,
March 20, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

Judge Harrold Carswell is eminently qualified to serve as associate justice and I fervently recommend immediate and favorable action on his behalf by the Senate.

GEORGE W. HERSEY.

PENSACOLA, FLA.,
March 20, 1970.

Hon. EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

Considerable contact with Honorable G. Harrold Carswell while he was judge of the U.S. District Court for the Northern District of Florida has given me a very high regard for his character, mind and judicial abilities. I therefore strongly urge his approval by the Senate in his appointment to the United States Supreme Court.

WILLIAM FISHER, Jr.

ST. PETERSBURG, FLA.,
March 20, 1970.

HON. EDWARD J. GUERNEY,
Senate Office Building,
Washington, D.C.:

I wish to record my wholehearted endorsement of Judge Carswell for elevation to the Supreme Court.

MARK R. MCGARRY, Jr.,
Circuit Judge.

TAMPA, FLA., *March 21, 1970.*

Senator ED GURNEY,
Senate Office Building,
Washington, D.C.:

Having tried cases before Judge Carswell, winning and losing, and having recently argued in the U.S. Supreme Court, I can assure that Judge Carswell would be a valuable member of that Court. Press reports that he is not competent or is not intelligent are simply not based on the facts. The truth is he is too intelligent and too incisive in his thinking to be taken in by inept analogy or loose argument and he has an instinct for doing justice. As for the argument that he has been reversed in civil rights cases, would it not be fair to ask "who has not". I hope you can make those who think they should vote against confirming Judge Carswell know that they are being misled by people who have never, or rarely, practiced before him or have little idea of what a judge's duty is. If I can help in any way I hope you will let me know.

DEWEY R. VILLAREAL, JR.,
Flower White, Gillen Humkey and Kinney.

PANAMA CITY, FLA.,

Hon. EDWARD J. GURNEY,
U.S. Senate,
Washington, D.C.

I would like to reaffirm my convictions in support of Judge Carswell as a candidate for the Supreme Court. I practiced before Judge Carswell for approximately seven years and selfishly regretted his elevation to the fifth circuit court of appeals because of his extreme competence as a jurist on the district court level. However, there is no doubt that his ability demanded such consideration of Judge Carswell based on Judge Carswell demonstrated abilities. I feel extremely earnest in stating that all citizens would be well served by him as a member of our Supreme Court and accordingly I urge you to influence your colleagues to confirm Judge Carswell for membership on the Supreme Court.

ROWLETT. W. BRYANT.

MIAMI, FLA., *March 21, 1970.*

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

I wish to thank you for your support for Judge Carswell. He is highly qualified to serve on the U.S. Supreme Court. I am proud that President Nixon has nominated and that you will vote to confirm a Southern jurist who is gifted with common sense and practical experience as well as intellectual capability.

ROBERT W. RUST,
U.S. Attorney, Miami, Fla.

MIAMI, FLA.,
March 22, 1970.

Senator EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.:

I urge your support for confirmation of Judge Carswell.

THOMAS E. LEE, Jr.,
Circuit Judge.

MIAMI, FLA.,
March 21, 1970.

Senator EDWARD J. GURNEY,
Washington, D.C.

I urge support for confirmation of Judge Carswell.

THOMAS E. LEE, Jr.,
Circuit Judge.

WASHINGTON, D.C.,
March 20, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.

Telegram sent to Judge G. Harrold Carswell, New Orleans, Louisiana. Quote, as you may know, we of N.E.G.R.O. have spoken out

in support of your nomination to the United States Supreme Court. As we have neither met nor communicated it would seem useful on the eve of your confirmation by the Senate for me to explain to you why I consider that confirmation in the best interests of black America and the Nation.

Our country finds itself a cauldron of hatred and in the search for headlines and recognition too many of us can only throw more coals on the fire.

In this rush to self-destruction I * * * to tell which the participants hate more, their opponents or themselves. America needs to stop the shouting, to give iitself a second chance and in our view you, Judge G. Harrold Carswell, have become the symbol of that second chance. Blind forgetfulness and turning the other cheek may be attributes of saints and perhaps proper aspirations for men but for most of us your recent public recantation of views expressed in 1948 will do. We take you at your word. If at some instance we must believe that you are insincere, that man cannot grow in understanding that there is no personal redemption, then I would not be writing to you as a neurosurgeon, the president of N.E.G.R.O., or even as an American citizen but would be, as were my ancestors, a slave. Hopefully you are not the last, but certainly not the first, distinguished American to change his mind. But lest I be guilty of the naivete critics of my position claim for me, let me say that sincere or insincere your public recantation of racist views is a watershed in American history. It is a signal to all that your interest and those of any man who aspires to play a significant role in national life can no longer be served by the expression or practice of racism.

As an American I am aware of the need to give ourselves a second chance, but it is as a Negro that I must accept the censure of many to support your nomination as a symbol of the second chance my people need so desperately. For Negroes to insist on a national policy which precludes the concepts of rehabilitation and redemption of the individual is to close the door forever on our black brothers who, because they have been the victims of the very bigotry we decry are today chronic welfare recipients, drug addicts, alcoholics, and convicted criminals. To deny a Judge Carswell the chance to repudiate the task position that we abhor is to deny the black underprivileged as a group the hope that is implied in the principle of redemption. The cry from our people that all America must hear and need is the cry for a second chance.

In human history it has always been the best of us who have identified with the least of us. For you to serve as a symbol of the second chance for America's black forgotten is an opportunity hard one. I sincerely hope that history will record your career on the Supreme Court as distinguished service to that deeply human concept.

In the heat and rancor of national debate there seems little time or inclination today to concern oneself with the personal, human feelings of participants. May I now, regardless of past, present or future disagreement, take the opportunity to express to you as a fellow human being my own deep personal concern for your private self during this protracted period of intense public attention.

THOMAS W. MATTHEW, M.D.,
President, NEGRO.

PANAMA CITY, FLA.,
March 19, 1970.

Hon. EDWARD GURNEY,
U.S. Senator,
Washington, D.C.:

The following information relative to Marianna Civil Action No. M-572 Bay County, Florida, desegregation suit filed in January 1964. First counsel for Negro plaintiffs was Charles F. Wilson, Pensacola, Florida, who I understand, has filed a letter supporting Judge Carswell's nomination to Supreme Court. Present counsel, Theodore Bowers, is one of 14 different lawyers representing individual plaintiffs against school board in 7 years that this case has been pending. Judge Carswell was district judge for approximately 6 of those 7 years. During 6 years Judge Carswell actively encouraged and challenged the parties to pursue voluntary desegregation, failing which he entered numerous desegregation orders. He was constantly calling counsel together to determine desegregation progress. Voluntary efforts without court orders resulted in the total integration of high schools in 1967 by closing county's only all-Negro school. Presently there are no all black schools in Bay County, Florida. Indicative of Judge Carswell's fair play and fair rulings is that in 6 years of continuous desegregation litigation, plaintiffs and NAACP, thought it necessary to appeal his orders only one time and that in 1969 resulting in the Fifth Circuit Court of Appeals, en banc, saying of the Bay County desegregation efforts: "This system is operating on a freedom of choice plan. The plan has produced impressive results but they fall short of establishing a unitary school system." Page 23 of slip opinion—Sing Leton et al v. Jackson Municipal Separate School District et al, case No. 27863.

In 6 years I saw Judge Carswell patiently listen to all arguments of all counsel. No allegation made in any pleading anywhere or on appeal to higher court of mistreatment of any client or counsel by Judge Carswell at any time. No attorney in my 6 years before the court complained to the court of any alleged mistreatment, publicly or privately, prior to nomination of Judge Carswell to U.S. Supreme Court. Judge Carswell did request Justice Department representing USA to try to assign the same lawyer to our case for continuity in order to avoid the court having to review for new counsel old ground already covered and former rulings of the court on evidentiary matters. His patience and courtesy in bringing each new counsel up to date was remarkable to behold. All counsel were treated with respect and fairness. Judge Carswell constantly chided the school board to do better. He told us after Green v. New Kent County, that freedom of choice was out and that we must come up with some other plan. Presently school system operating on straight neighborhood zone plan with all black schools integrated with white students. Letter to follow.

JULIAN BENNETT.

Mr. GURNEY. Again I say to the Senate that it seems to me that if we are going to be fair in our judgment of this nominee to the Supreme Court, we certainly ought to weigh the evidence, as lawyers say—and many of us here are lawyers, including those who have made arguments on the floor of the Senate in the last few days—and in weighing that evidence, it seems to me that the best evidence which we have, certainly, is the evidence of men who know Judge Carswell, who practiced in his court, who met him socially, and who know him as a lawyer and as a judge, rather than the opinion of some law school professor, or some New York lawyer, or some other chap who is hundreds or thousands of miles away and who does not know the judge personally at all.

THE POSTAL STRIKE

Mr. GURNEY. Mr. President, great harm has been done to the Nation by the willful action of a small group of men who have engineered and led the walkout of postal employees.

They have hurt every segment of our society.

They have done great damage to many firms depending on airmail to do business. They have made life more miserable for the poor and the elderly who get their pension or welfare checks through the mail. They have struck a harsh blow at the morale of our troops in Vietnam who are not getting letters. They have struck a blow at the morale of many thousands of mothers and fathers, sisters and wives, of servicemen—particularly our young men overseas—because the mail is not being delivered.

This they have done because, in the minds of many of these postal workers, they have grievances that go beyond reason and make the kind of illegal action they have taken preferable to continued inaction.

This postal strike would not have been necessary—from their point of view—had the Congress of the United States acted in good time. For nearly a year now there have been major postal reform bills before the Congress. And for all those months the leadership of this Congress has refused to meet its obligations and take the action necessary to enact those administration proposals into law.

Mr. President, I call upon the leadership of the Congress to respond as quickly and as firmly as the President has responded to this crisis.

I call upon the leadership to act with speed, and reason, to the needs of the Nation and the postal workers.

Mr. CASE. 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 role.

Mr. HARRIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AUTHORIZING CORRECTIONS IN THE BILL (H.R. 11959) TO INCREASE EDUCATIONAL ALLOWANCES TO VETERANS

Mr. HARRIS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 554.

The PRESIDING OFFICER. (Mr. DOLE) laid before the Senate House Concurrent Resolution 554, which was read by the bill clerk, as follows:

H. CON RES. 554

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House of Representatives is hereby authorized and directed, in the enrollment of 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, to make the following corrections, namely: In section 202 of the bill, delete the subsection designation "(a)" immediately after "SEC. 202.", and delete all of subsection (b) thereof; in section 1696(a) of the new sub-

chapter added by section 204(a)(4) of the bill, delete "section 1682(b) of this title" and insert in lieu thereof "subsection (b) of this section"; and in the parenthetical matter contained in section 242(a) of the new subchapter added by section 214(a) of the bill, insert "need for" immediately after "including their".

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, House Concurrent Resolution 554 was considered and agreed to.

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. TYDINGS. Mr. President, I should like to address myself to the fitness of Judge G. Harrold Carswell to occupy a position on the highest court of our land.

My conclusion, after sitting through the hearings and studying the record, is that Judge G. Harrold Carswell has demonstrated neither the judicial temperment and fairness nor the professional competence commensurate with the high standard of excellence that must be demanded and should be demanded of a Justice of the Supreme Court. Therefore, I must oppose confirmation of the nomination.

As chairman of the Senate Subcommittee on Improvements in Judicial Machinery, I have been very much concerned with improving the operation of our Federal judicial system. I have chaired countless hearings over the past 5 years, initiated legislation, helped to draft legislation, modified and amended legislation—substantial legislation—dealing with the administration, practices and procedures of the Federal judicial system, including the creation of the Federal jury selection system now in operation, the complete overhauling—indeed, the abolition—of the U.S. commissioners system, setting up the new Federal magistrates system, the development of an effective approach to multidistrict litigation, the management of numerous omnibus judgeship bills, and involving many other legislative areas concerned with the improvement of the Federal judicial system.

Because of this legislative background as well as my personal inclinations and background, I feel a deep responsibility to my colleagues and to the Nation to delve deeply into the issues touching upon the effectiveness of Federal judiciary. Nothing is more relevant to that effectiveness than the process of assuring that the Federal bench and, in particular, the Supreme Court are manned by appointees of the highest quality. Men appointed to the Supreme Court have, for practical purposes, life tenure, with no effective means for discipline or removal. Their influence on our national life may very well transcend that of the President who appointed them.

The role of the Supreme Court in our society is too vital to be endangered by the appointment of men whose judicial temperament or professional qualifications are subject to serious doubt.

In considering those named by the President to vacancies on the Federal district and circuit courts over the past 5 years, and in considering previous nominees for the Supreme Court, I have consistently adhered to the position that, barring an unusual situation, the nomination of a man selected by the President for the Federal bench should be confirmed by the Senate if he has demonstrated a character beyond reproach, professional competency equal to the task set for him, and a proper judicial temperament.

As I stated earlier, the role of our Supreme Court in our society is far too vital to be endangered by the appointment of a man or of men whose judicial temperament or professional qualifications are subject to serious doubt. The notion that a Senator does not have an obligation to insist on a high degree of competence, ability, and judicial fairness runs completely contrary to the Constitution of the United States and to the entire history of our great Nation. There is only one reason why our Founding Fathers wrote into article III provisions requiring Senate advice and consent on Supreme Court nominees, and it is that they expected the Senate to exercise a high influence over the President—to, in the words of Alexander Hamilton, in Federalist Papers No. 76 or 77, put sufficient influence on the President of the United States in order to assure that:

> He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being, in some way or other, personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

Our Founding Fathers did not intend for the U.S. Senate to sit idly by and have that type of man nominated for the Supreme Court of the United States.

The man selected by the President for the Federal bench should have a character beyond reproach, professional competency equal to the task set for him, and a proper judicial temperament. By "proper judicial temperament" I mean at least the ability to put aside one's own prejudices and biases so as to be able to approach every case with a fair and open mind.

These criteria are not always easy to apply. I have made every effort to apply them in a consistent manner to those nominees whose names have been placed before the Senate.

In 1965, the first year I was in the Senate, I opposed the nomination to the district court of Massachusetts of Francis X. Morrissey, a man sponsored by two of my closest personal friends in the Senate, because I believed that his record did not demonstrate the legal ability requisite for a Federal judge. When the Governor of Mississippi, James P. Coleman, was nominated to the fifth circuit, I spoke in his favor on the floor of the Senate and voted to confirm, despite the firm opposition of many civil rights groups in my State. My examination of his record convinced me that he would make a fair and objective judge. Although I had supported the initial appointed of Mr. Justice Fortas, I took the lead in calling for his resignation when the unanswered questions surrounding his nonjudicial activities cast a cloud over the reputation of the Supreme Court. I also supported President Nixon's choice of Judge Warren Burger for Chief Justice, although I have not always agreed with him on substantive issues.

Now the Senate is asked to advise and consent to the appointment of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court.

I aproached the hearings on Judge Carswell's appointment seeking to learn not what he was when he delivered his infamous racial supremacy speech in 1948, but what he is in 1970, what kind of judge—what kind of man.

Unfortunately, some of the most revealing testimony was presented to the Judiciary Committee after Judge Carswell testified and the members of the committee were not able to review it with him. A request that he be recalled was rejected. Moreover, the short, general rebuttal letter that he submitted for the record was unresponsive and unenlightening. On the whole, however, the hearings were enlightening, indeed shocking, but hardly reassuring.

I will not dwell on Judge Carswell's willingness in 1965 to lend his name and the prestige of his office as U.S. attorney to an effort to circumvent the mandates of the Constitution by converting a public golf course into a private one. Nor will I attempt to analyze similar events that have come to light, such as his attempt, in 1969, to amuse the members of the Georgia Bar Association with a racial joke. These are serious matters, but not, I believe the keys to the case against Judge Carswell.

JUDGE CARSWELL'S LACK OF JUDICIAL TEMPERAMENT

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 their 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 toward particular causes, lawyers and litigants was manifest not only in his decisions but in his demeanor in the courtroom.

Prof. Leroy Clark of New York University supervised the NAACP legal defense fund litigation in Florida between 1962 and 1968. In this capacity he was in charge of the entire civil rights litigation in the State of Florida. Professor Clark believes that there is not a lawyer in the country who has appeared before Judge Carswell on more cases involving civil rights matters. Professor Clark appeared before Judge Carswell in no less than nine or 10 civil rights cases. Testifying before the Judiciary Committee hearings on the nomination, Professor Clark called Judge Carswell—

(T)he most hostile federal district court judge I have ever appeared before with respect to civil rights matters. . . .

Judge Carswell was insulting and hostile. I have been in Judge's 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. . . ."

* * * * *

(W)henever I took a 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, a man with that sort of record, whether sitting as a police magistrate, a people's court judge, or a circuit court judge, is not fit to sit on any court, let alone the Supreme Court of the United States.

Another lawyer who has represented various clients in litigation before Judge Carswell in cases involving the civil rights of black people is Theodore R. Bowers. Mr. Bowers has been admitted to practice in all the courts of the State of Florida, the U.S. District Court for the Northern District of Florida and the U.S. Court of Appeals for the Fifth Circuit. He actively practiced before Judge Carswell from 1965 until 1969, when Judge Carswell was elevated to the U.S. Court of Appeals. Mr. Bowers prepared an affidavit in which he strongly reinforces the opinion of Prof. Leroy Clark that Judge Carswell was antagonistic toward rights of minority groups.

Mr. Bower's affidavit states:

Honorable G. Harrold Carswell was very antagonistic toward cases and parties seeking to secure and vindicate the civil rights of Negroes. . . .

Mr. President, I ask unanimous consent to have printed in the RECORD, Mr. Bower's affidavit in full.

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

AFFIDAVIT

STATE OF FLORIDA,
County of Bay:

Theodore R. Bowers being duly sworn deposes and says:

1. That he is an Attorney at Law admitted to practice in all the courts of the State of Florida, the United States District Court for the Northern District of Florida and the United States Court of Appeals for the Fifth Circuit.

2. That he has represented various clients in litigation before the Honorable G. Harrold Carswell, as District Judge, in cases involving the civil rights of black people; that he actively practiced before said judge from 1965 until 1969, when Judge Carswell was elevated to the United States Court of Appeals for the Fifth Circuit.

3. That the Honorable G. Harrold Carswell was very antogonistic toward cases and parties therein seeking to secure and vindicate the civil rights of Negroes.

4. That I am engaged in the practice of law, full time, in the state Courts in the northern part of Florida; that with the exception of a few Municipal Court Judges and judges of inferior state courts of limited jurisdiction (courts below circuit court jurisdiction—the principal trial courts in Flordia), Judge Carswell is, in my opinion, the most prejudice judge before whom I have had the honor to practice.

Dated this 5th day of February, 1970.

THEODORE R. BOWERS.

Sworn to and subscribed before me this 5th day of February, A. D. 1970.

———— ————,
Notary Public.

Mr. TYDINGS. Mr. President, another member of the Florida bar, Maurice Rosen, an attorney involved in various civil rights cases in northern Florida between 1963 and 1964, in an affidavit prepared under oath, states:

That the reputation of Judge Harrold G. Carswell among attorneys handling civil rights cases during that period was that he was not sympathetic to the civil rights movement and that they could not expect to win a civil rights related case before him.

Mr. President, I ask unanimous consent to have the entire affidavit printed in the RECORD.

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

AFFIDAVIT

STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, personally appeared Maurice Rosen, who, being duly sworn upon oath, deposes and says:

1. That he is an attorney and member of the Bar of the State of Florida.

2. That he was involved in various civil rights cases in northern Florida during 1963 and 1964 as an attorney.

3. That the reputation of Judge Harrold G. Carswell among attorneys handling civil rights cases during that period was that he was not sympathetic to the Civil Rights Movement and that they could not expect to win a civil rights related case before him.

Further, affiant sayeth naught.

MAURICE ROSEN.

SWORN TO AND SUBSCRIBED before me this 5th day of February, 1970.

THELMA KAROSHIK,
Notary Public, State of Florida.

My commission expires December 12, 1972.

Mr. TYDINGS. Mr. President, another Florida lawyer, representing clients asserting their constitutional rights before Judge Carswell, James B. Sanderlin, a member of the Florida bar, sent me a telegram which I received this morning, and I ask unanimous consent to have the entire telegram printed in the RECORD.

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

ST. PETERSBURG, FLA.,
March 23, 1970.

Senator JOSEPH TYDINGS,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: I am a member of the Florida bar and have practiced law in Florida for approximately seven years and have handled a number of civil rights cases. Whenever a colleague and I were discussing the filing of a civil rights case we always tried to avoid Judge Carswell because we could never be sure that we could get an unbiased ruling from him. In his orders in a couple of cases I had before him rather than give the relief asked for in an order he wanted us to accept the good faith of the defendant who we were having to bring into court to seek relief against. By reputation in the field among all the lawyers who handled civil rights cases the feeling was that Judge Carswell could not be relied on for a fair impartial and equitable disposition of civil rights matters.

JAMES B. SANDERLIN.

Mr. TYDINGS. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BAYH). The Senator from Massachusetts is recognized.

Mr. BROOKE. Mr. President, supporters of Judge G. Harrold Carswell have maintained throughout the debate that there is no reason, or at least no legitimate reason, to deny him confirmation to the Supreme Court. I confess that I have been intrigued by their arguments and would like at this time to deal with these issues briefly.

First, it has been pointed out that Judge Carswell was nominated by the President, he is the President's choice, and this fact deserves some weight in our deliberations. I agree. But I am also conscious of the fact that under the Constitution there is a dual responsibility involved in the selection of a judge. The President nominates, but the Senate must give its advice and consent.

At no time in our history has it been expected, even by the men who drafted the Constitution, that the Senate should defer to the President's choice against its own best judgment.

James Madison, in the famous Federalist Papers, emphasized the supremacy of the Legislature in this regard, and believed it would be a check upon "political appointments" by the Executive.

Thus, our congressional mandate is clear: We would not be true to ourselves or to the people we represent if we were to allow ourselves to be governed solely by the President's will.

Second, it has been held that Judge Carswell has earned the highest respect of those with whom he has worked over the years. The Judiciary Committee of the American Bar Association has twice recommended him for confirmation to the Supreme Court. His own colleagues on the Fifth Circuit Court of Appeals have warmly endorsed his nomination. Lawyers who have practiced before him have given him high ratings for his fair and judicial handling of their cases.

But let us look more closely at these supposed indications of support. The American Bar Association has chosen not to rate nominees for the Supreme Court in the same manner that they rate appointees to the lower court. A recommendation of "qualified" in this case, therefore, carries with it no qualitative reference. We do not know if the members of the committee who investigated Judge Carswell's record regard him as "highly qualified," "exceptionally well qualified," or just "barely qualified." There is no indication whatsoever as to what they really think of the man. My guess is that a man would have to be an exceptionally poor candidate for any post to receive an "unqualified" recommendation from the committee, especially after he had been chosen by the President himself to sit on the highest court of the land.

I believe, therefore, that the ABA's en-

dorsement of Judge Carswell has been evaluated by his supporters in a manner all out of proportion to its actual significance.

The ABA committee hearings were far from extensive. They did not have all the evidence before them at the time they made their recommendations. They were, in fact, simply giving their pro forma stamp of approval to the name already selected by the President.

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

Mr. BROOKE. I yield.

Mr. TYDINGS. Is it not a fact that the ABA committee declined to hear testimony from all of the lawyers who testified against the nomination before the Senate Judiciary Committee?

Mr. BROOKE. It is my understanding that is a fact.

Mr. TYDINGS. Is it not also a fact that they did not take time to receive a full statement from Mr. Lowenthal even after Mr. Lowenthal requested the opportunity to place a written statement before them?

Mr. BROOKE. It is my further understanding that is also a fact.

Mr. TYDINGS. Is it not a fact that they gave their endorsement before they even took the trouble to read the hearing or the testimony taken at the hearings before the Judiciary Committee of the Senate?

Mr. BROOKE. I understand that is true.

Mr. TYDINGS. I thank the Senator.

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

Mr. BROOKE. I yield.

Mr. MATHIAS. Mr. President, I am a member of the American Bar Association. Very frankly, the association's participation in the last two nominations to the Supreme Court have resulted in a great deal of controversy.

It is a long time since I went to law school, but perhaps the distinguished Senator from Massachusetts, a former attorney general, may be able to refresh my recollection.

As I recall it, there is a rule of law that if one sees a casualty on the highway, he is under no obligation to stop and render first aid. But if he does, he has to do it well.

Mr. BROOKE. The Senator is correct.

Mr. MATHIAS. I think this is a situation of that sort. If the American Bar Association injects itself into these proceedings, it ought to be well done, if it is done at all.

I must confess that I think there is something wrong with the system. There is nothing wrong with the men. I know a great many of the men who serve on that Judicial Selection Committee. They are fine men. They are excellent lawyers. It seems to me that the commission they have been given is improperly drawn or we would not be ending up with the kind of controversial situation we have.

Regardless of the outcome of the pending nomination, regardles of how any individual Senator may act upon it, I think this is a very regrettable development.

Mr. BROOKE. Mr. President, as the Senator has very rightly pointed out, I think it is a great misfortune that the American Bar Association entered into this deliberation in the first instance.

The American public has been led to believe that the American Bar Association has conducted a rather exhaustive study and extensive review of the nominee's qualifications for the position to which he has been appointed.

The proponents, those who have been debating in favor of Judge Carswell, have been using the American Bar Association's approval as the highest recommendation possible that this nominee could receive. And I think it has been with some justification that the American people have been relying upon the American Bar Association's recommendation and approval.

I am a member of the American Bar Association, as is the distinguished junior Senator from Maryland.

I see the distinguished senior Senator from New Jersey on the floor, the distinguished Senator from Maryland, the distinguished senior Senator from Michigan, and the distinguished junior Senator from Michigan, also. I think we all are or have been at some time members of the American Bar Association.

Mr. CASE. Mr. President, would the Senator admit the senior Senator from New Jersey to that hallowed circle?

Mr. BROOKE. Mr. President, I think I named the distinguished senior Senator from New Jersey first.

Mr. CASE. Mr. President, I am sorry. I was reading, and I did not hear the Senator mention my name.

Mr. BROOKE. I think there are others who are also members of the American Bar Association. It has always appeared to represent the pinnacle of the legal profession. Therefore, for a long period of time this association has been called upon to make investigations and make recommendations to the President of the United States relative to his appointments to the Supreme Court.

Let me back up for a moment, before the nomination of Clement Haynsworth, and the most recent nomination to the Supreme Court, to the promotion of Mr. Justice Fortas to the position of Chief Justice of the United States. It is my understanding—and some Senator may correct me if I am wrong—that when the American Bar Association was called upon to make its recommendation to President Johnson in connection with his elevation of Justice Fortas to the highest and most exalted position of Chief Justice of the United States, there was a conference phone call made at 7 o'clock in the morning to the members of the judiciary committee of the American Bar Association to solicit their approval. This is incredible to me. If this is a fact—and I understand it to be a fact—it is incredible that this constituted the full extent of the investigation and the examination into Mr. Justice Fortas that the American Bar Association's judiciary committee was performing at the time it was to make its recommendation to the President.

I know that Mr. Fortas was a member of the Supreme Court, so that his qualifications, at least to sit as a member of that body, had already been examined. He was a member of that body. But still, here the President was asking for a recommendation for a Chief Justice of the United States from this highly legal body, the American Bar Association, and they oblige with a conference telephone call at 7 o'clock in the morning in order to make recommendations. As the distinguished senior Senator from Maryland pointed out in colloquy on the floor of the Senate this afternoon, little or no investigation was made into qualifications of the nominee now before us.

Mr. TYDINGS. Mr. President, will the Senator yield at that point?

Mr. BROOKE. I yield.

Mr. TYDINGS. Did the Senator know that John Lowenthal, professor of law at Rutgers University, whose testimony was so tremendously persuasive before the Committee on the Judiciary—and which is found at page 139 of the record and thereafter in the hearings—was invited by this committee of the American Bar Association to give his opinion of Judge Carswell's competence to sit on the Supreme Court; that he asked for time to submit a written statement and certain documentation; that within a day or two, before he had a chance to submit the documentation he was told that the committee had already made up its mind?

I do not know whether the committee would have been influenced by the testimony Professor Lowenthal produced at our hearings before the Committee on the Judiciary, but as one lawyer, I was very impressed, and I cannot help but think some members of that American Bar Association committee would have been equally impressed. I say this because I know that the individual members of this committee are outstanding lawyers and gentlemen who would like to view this nomination with an open mind.

I cannot help but think also, as the Senator reflected on the American Bar Association custom of passing on justices for the Supreme Court, how very different their treatment for handling justices of the Supreme Court is from handling judicial nominations for U.S. district judges and judges for U.S. circuit courts of appeal. In the latter instances, the Attorney General, at least in recent cases, has submitted names of candidates for district judges or judges for the U.S. courts of appeal to the American Bar Association and their committee. In one instance a nomination brought up here, proposed by two of my closest friends in the Senate—which nomination I opposed and it later was withdrawn, Frank Morrissey—was opposed by the American Bar Association after careful screening. But when one comes to Supreme Court nominations this procedure is not followed. Rather the President expects his selection to be quickly rubber stamped without careful evaluation of the nominee. Thus, the whole system of the American Bar Association's approval or disapproval of Supreme Court nominations is broken down because it appears to be nothing more or less than confirming or almost rubberstamping a nomination already announced by the President.

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

Mr. TYDINGS. I yield.

Mr. BROOKE. Does not the Senator feel that this is in fact a misrepresentation to the President, to the Senate, and to the American people? The President has every right to believe, the Senate has every right to believe, and the American people have every right to believe that when the American Bar Association gives approval or makes a recommendation, that judgment is based upon some extensive, if not exhaustive, examination of the total qualifications of the nominee.

Mr. TYDINGS. I think the Senator is absolutely correct. And because it is clearly not based on an exhaustive examination of the total qualifications of the nominee, something is wrong with the system. I do not see how it can be considered a fair examination.

Certainly, if ever there was an example that pointed out the failure of the Committee on Judicial Selections of the American Bar Association to do the job the lawyers of America have a right to expect of them, and which all of us who are members of the American Bar Association have a right to expect of them, that example is the nomination now pending before the Senate.

Mr. BROOKE. I have one comment on the point which the Senator from Maryland just raised relative to those judges who sat with the proposed nominee. I submit that the, supposed recommendation of those who practiced with Judge Carswell on the fifth circuit court of appeals is also open to question. There are 15 members of that court, of which he is one. Five letters of recommendation appear in the transcript of hearings, of which one, the letter of Judge Elbert B. Tuttle, has since been modified—and I might add by virtue of the investigation of the senior Senator from Maryland—it has been modified so significantly as to indicate a withdrawal of support.

According to Judge Tuttle, he indicated to Judge Carswell in a telephone conversation of January 28, 1970, while the confirmation hearings were still in progress, that: "I could not testify in support of his nomination."

Since then it has come to light, primarily through press reports that Judge Miner Wisdom, also of the fifth circuit, also withheld his endorsement. And that it was two other judges on the court who objected to the circulation of a joint letter endorsing the nominee.

Therefore, of the 15 judges on the court, the record stands at four and four with six judges, excluding Judge Carswell as an interested party, uncommitted. Given the natural reluctance of many members of the bench to comment on a matter that is constitutionally within the province of the legislative and executive branch to decide, this is a remarkable record.

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

Mr. BROOKE. I yield.

Mr. MATHIAS. I would like to make one thing clear. With reference to the participation of the American Bar Association in this proceeding, it is not only the senatorial members of the American Bar Association that are unhappy with the events that have evolved in connection with both the Haynsworth and the Carswell nomination. I hear from other members of the bar who are important members of the American Bar Association, that they are unhappy.

I think it also should be clear that it is apparently the system that is at fault because they are good men, strong men, and able and discerning men on the committee.

I think what we need to know is what commission that committee was given. Were they supposed to undertake a thoughtful evaluation of the kind that goes to the editors of Good Housekeeping, when they undertake to put the seal of approval on some product, which involves a thorough and comprehensive examination? Or is it just supposed to be like the medical examinations for draft boards during World War II; if the body was warm and breathed a little, they shot it through. What is the commission of that bar association committee?

Mr. TYDINGS. The Senator would agree that we need to know more about their mandate.

Mr. MATHIAS. I think we ought to know what job it was given, because I do not think we ought to be unfair to the members of the committee.

Mr. BROOKE. Mr. President, if the Senator will yield, we should know not only what job they were given, but what could be rightly expected by the Senate and by the Nation as to their recommendation.

Mr. MATHIAS. I think this is where every member of the American Bar Association assumes some responsibility, because I think the public, at least, thinks the commission given to it was the commission that Good Housekeeping is given in putting the seal of approval on something—evaluating the product, testing, checking the product's reputation, and everything else. That is where the bar association and where we in the Senate bear some responsibility.

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

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

Mr. BYRD of West Virginia. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. BROOKE. Mr. President, I had yielded to the Senator to ask a question. I thank the Senator from West Virginia for protecting my rights.

Mr. BYRD of West Virginia. I say to the able Senator, I may not continue to protect them very long.

If the Senator will yield further, may I ask how long this filibuster is expected to continue?

Mr. BROOKE. May I say to the distinguished Senator from West Virginia that even before coming to this august body I had always objected to filibusters, and certainly I have no intent of participating in a filibuster now. It was my understanding that this was a debate on the nomination of G. Harrold Carswell to be a member of the Supreme Court of the United States; that the proponents and opponents would be engaged in a debate which would be very helpful to the Senate in arriving at whatever decision it ultimately will come to in the days ahead. So I want to assure my very distinguished friend that, if this is a filibuster, I am not aware of it, and certainly not a party to it.

The matter which I am discussing here with my colleagues is one, I think, of great importance, and obviously they think it is of great importance to be here this late in the evening discussing these matters.

Again, I thank the distinguished Senator for protecting my rights to debate the nomination of G. Harrold Carswell.

Mr. MATHIAS. Mr. President, will the Senator yield for one final observation?

Mr. BYRD of West Virginia. Mr. President, will the able Senator yield?

Mr. BROOKE. I think, in all fairness, I should certainly yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, let me assure the distinguished Senator I have no objections to filibusters when they become necessary in the interest of a worthy purpose, but if we are going to have one, I think we ought to play by the rules, and a filibuster is a pretty tough, hard game. I think we ought soon to begin to apply the rules, and I think those who want to continue in this extended debate should be put on notice that there will come a time, if this is going to be a filibuster—I have no objection, as I say, to filibusters; there are times when I think filibusters are proper, and I have participated in them myself—but there are rules of the Senate which I think, when it becomes evident that a filibuster is in progress on this nomination, should be utilized and rigidly applied by Senators who wish to bring this matter to a vote in due time.

Mr. BROOKE. I am aware of the Senator's feelings about filibusters and the fact that he has participated in them, but I want to assure him that he and I disagree in this regard. I object to filibusters, as I have said, and, I repeat, I am not a party to a filibuster, if it is one. I spoke on this nomination before, and I said then I expected to speak on it further, because certain issues have come to mind that I would like to debate. But I have other matters to debate, and I am sure the Senator stands for my right to debate them, and debate them without their being characterized as filibusters.

Mr. BYRD of West Virginia. If the Senator will permit me to just say that I certainly want to hear him when he discusses these matters further, I certainly defend his right to say what he wishes and to speak as long as he desires. But if this is going to be a filibuster—and my remarks are not directed to the Senator solely—then I think there comes a time when we have to apply the rules, and one rule we are breaking right now, should any Senator wish to object, is that of yielding for other than a question. The able Senator yielded to me, and I thank him.

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

Mr. BROOKE. I yield.

Mr. CASE. Does the Senator know—and this is to elicit information—whether in the course of our discussions the exact letter of the selection committee of the American Bar Association to the chairman of our Judiciary Committee of January 26, 1970, has been placed in the CONGRESSIONAL RECORD?

Mr. BROOKE. I do not know.

Mr. CASE. If not, would the Senator object if I asked at the appropriate time to do so, or if I asked him if he would insert that letter into the RECORD at this point, perhaps, together with a statement by the standing committee on Federal judiciary, which is the same committee to which I referred, which sets out precisely the considerations that were taken into account and those that were not taken into account?

Mr. BROOKE. I assure the Senator that I would not object, and would consider it a contribution if the Senator would have it printed in the RECORD at this point.

Mr. CASE. If the Senator will yield for that purpose, I wonder if the Senator from West Virginia would object if I asked permission to insert it in the RECORD at this time.

Mr. BYRD of West Virginia. Yes, I object.

Mr. CASE. Mr. President, if the Senator will yield further——

Mr. BYRD of West Virginia. Mr. President, I withdraw my objection.

The PRESIDING OFFICER. The Chair would like to be advised of what the will of the Senate is.

Mr. BROOKE. Mr. President, the distinguished Senator from West Virginia has withdrawn his objection, so the distinguished Senator from New Jersey can insert the matter into the RECORD.

Mr. CASE. Mr. President, I ask unanimous consent that I may have printed in the RECORD at this point the American Bar Association letter on the Judge Carswell nomination, and also a statement of the qualifications it considered in connection with the matter.

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

REPORT OF THE AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON FEDERAL JUDICIARY, FEBRUARY 20, 1970

It is our pleasure to report that the relations between President Nixon's administration and our Committee continue to be excellent. Attorney General Mitchell and Deputy Attorney General Kleindienst have pursued an unbroken policy of recommending to the President for appointment to the Federal District Courts and Courts of Appeals only lawyers found by our Committee to be qualified, well qualified or exceptionally well qualified. President Nixon is the first President who has maintained this policy, unbroken, during his first year in office when political pressures upon a new administration are often most intense.

GENERAL ACTIVITY OF THE COMMITTEE

Since January 20, 1969 the Committee has submitted a total of 46 Informal Reports and 39 Formal Reports. Six Formal Reports and three Informal Reports are still in progress.

Of the Formal Reports submitted, 24 were for vacancies in the District Courts and 15 were for vacancies in the Courts of Appeals. Four of the candidates were found to be "Exceptionally Well Qualified", 20 were found to be "Well Qualified", and 14 were found to be "Qualified". One was found "Not qualified by reason of age".

Of these investigated informally, 40 were found qualified or better and six not qualified. Five names were withdrawn from consideration while an investigation was in progress.

The Committee has also reported favorably to the Judiciary Committee of the Senate as to the professional competence, integrity and judicial temperament of a nominee for the office of Chief Justice of the United States, Warren E. Burger, and of two nominees for the office of Associate Justice of the Supreme Court of the United States, Chief Judge Clement E. Haynsworth and Judge G. Harrold Carswell. The problem posed to the Committee by these nominations will be discussed at greater length at the end of this report.

The Committee deeply appreciates the ready cooperation which it has received from members of this Association.

PRESIDENTIAL APPOINTMENTS AND NOMINATIONS

Since January 20, 1969 President Nixon has nominated 31 persons for judicial office other than the Supreme Court. Of these, four have been found "Exceptionally Well Qualified", 15 "Well Qualified" and 12 "Qualified". Of these, 27 have been confirmed. In addition, four vacancies exist in Courts of Appeals and 12 in District Courts for which nominations have not yet been submitted. Three of these vacancies are over one year old, the others less than seven months.

Attached as Exhibit A is a list of vacancies in existence since January 20, 1969 and the President's action taken as to each.

APPEARANCE AT INDUCTION CEREMONIES

The Committee has continued the practice established several years ago of appearing through one of its members or authorized representatives at the induction ceremonies of judges. At such occasions, when appropriate under the procedures of the Court in question, the representative of the Committee has made a brief statement outlining its function, emphasizing the objective of the American Bar Association to encourage the appointment of qualified judges, and extending congratulations and best wishes to the new judge. We believe that these appearances are valuable to the Association and to the profession. We are grateful to all of the lawyers who have given their time to assist the Committee in this effort.

ANTICIPATED WORKLOAD

In addition to the usual vacancies arising from retirement, resignation and death, the Committee anticipates a large increase in its work as a result of the expected passage of pending bills which will add approximately 70 new federal judgeships.

AGE RESTRICTIONS

Since the last meeting of the Association, the Committee has reconsidered its guideline as to the maximum age at which persons under consideration for judicial nomination should be considered qualified. As to persons *not* already in the Federal judicial system, there has been no change: A person over the age of 64 will not be considered qualified for nomination to a United States District Court or Court of Appeals; a person over 60 will not be approved unless he would otherwise have been found well qualified or exceptionally well qualified. As to United States District Judges who are under consideration for appointment to a Court of Appeals, if they are over the age of 64 they will be approved only if they would otherwise have been well qualified or exceptionally well qualified; after reaching the age of 68, they will be considered not qualified by reason of age. This represents a liberalization of the rule as expressed in our last report in that the requirement for District Judges between the age of 64 and 68 has been dropped from exceptionally well qualified to well qualified and eligibility for retirement has been eliminated as a basis in itself for disqualification.

SUPREME COURT APPOINTMENTS

In his first year in office, President Nixon has nominated three lower court judges for vacancies on the Supreme Court. The first, Judge Warren E. Burger of the Court of Appeals for the District of Columbia was nominated and confirmed as Chief Justice of the United States. Chief Judge Clement E. Haynsworth of the Fourth Circuit Court of Appeals was nominated for the office of Associate Justice but was not confirmed by the Senate. Judge George Harrold Carswell, of the Fifth Circuit Court of Appeals was then nominated for this vacancy. His nomination is now awaiting action by the Senate.

All of these nominees were reported favorably by our Committee. President Nixon has followed his announced policy of not consulting the Committee with respect to the nomination of Supreme Court justices. In each case, however, the Senate Committee on the Judiciary has requested the Committee's views as to persons nominated for this Court.

In accordance with past practices, the Committee has restricted its comments to matters of professional qualification—integrity, judicial temperament, and professional competence. As to Judge Haynsworth, the Committee's view was expressed by the formulation in use for several years—"highly acceptable from the viewpoint of professional qualifications." At that time, however, the Committee decided to discontinue the future use of this obscure formulation and to limit its rating to "qualified" or "not qualified". Accordingly, in the case of Judge Carswell, the Committee responded to the inquiry of the Senate by letter and in more expanded form. A copy of this letter is attachted hereto as Exhibit B. In this letter the Committee expressly stated that its investigation was limited to the professional competence, integrity and judicial temperament of the nominee.

Notwithstanding the limitation which the Committee has expressed in one form or another as to the scope of its evaluation of Supreme Court nominees, critics from time to time have attacked its views as though they constituted full endorsement of the President's selection. Yet professional qualification was only one of a number of equally important factors properly considered by the President in making his selection which the Committee has never attempted to evaluate—and which it is accordingly in no position to explain or defend.

The minimum standards of integrity, judicial temperament and professional competence which the Committee traditionally applies to Supreme Court nominees are substantially the same as those applied for federal Courts of Appeals. The Committee has not attempted to suggest that these standards be different for the Supreme Court. This does not imply that added distinction is not to be sought in Supreme Court nominees but rather that this quality is not as readily measurable in the narrow terms of professional competence as in the case of the lower courts, because of the unique powers of the Supreme Court.

If the Committee adheres to its present practice, its evaluations will continue to be criticized at least in part on the basis of factors not within the relatively narrow scope of its investigation. On the other hand, if it were to depart from its previous policy and undertake to express its view as to a nominee's ideology, stature and distinction it would be drawn into areas involving nonprofessional matters and areas in which evaluation is extremely subjective.

The Committee has been and is continuing to review its procedures and scope of in-

vestigation with emphasis on its role as to Supreme Court appointments which, unlike those for other federal courts, are made without consultation with the Committee. It will welcome the suggestions of members of this House for its improvement.

Respectfully submitted.

Sumner H. Babcock, Albert R. Connelly, Harry G. Gault, Robert H. Harry, Charles A. Horsky, Richard E. Kyle, Norman P. Ramsey, Miles G. Seeley, John A. Sutro, Sr., Robert L. Trescher, Sherwood W. Wise, Lawrence E. Walsh, Chairman.

AMERICAN BAR ASSOCIATION,
New York, N.Y., January 26, 1970.

HON. JAMES O. EASTLAND,
Chairman, U.S. Senate Judiciary Committee, Washington, D.C.

DEAR SENATOR: Thank you for your telegram of January 21, 1970 inviting the comments of the American Bar Association Standing Committee on the Federal Judiciary with respect to Judge G. Harrold Carswell, who has been nominated for the office of Associate Justice of the Supreme Court of the United States. The Committee is unanimously of the opinion that Judge Carswell is qualified for this appointment.

This committee has previously investigated Judge Carswell for appointment to the District Court in 1958 and for appointment to the Court of Appeals for the Fifth Circuit in 1969. On each occasion Judge Carswell was reported favorably for these appointments. The Committee has now supplemented these investigations within the limits fixed by your telegram.

With respect to nominations for the Supreme Court, the Committee has traditionally limited its investigation to the opinions of a cross-section of the best informed judges and lawyers as to the integrity, judicial temperament and professional competence of the proposed nominee. It has always recognized that the selection of a member of the Supreme Court involves many other factors of a broad political and ideological nature within the discretion of the President and the Senate but beyond the special competence of this Committee. Accordingly, the opinion of this Committee is limited to the areas of its investigation.

In the present case the Committee has solicited the views of a substantial number of judges and lawyers who are familiar with Judge Carswell's work, and it has also surveyed his published opinions. On the basis of its investigation the Committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States.

Respectfully yours,
LAWRENCE E. WALSH,
Chairman.

Mr. MATHIAS. Mr. President, will the Senator from Massachusetts yield one further time to me?

Mr. BROOKE. I yield.

Mr. MATHIAS. Mr. President, as we entered the debate on this second controversial nomination, it appeared to me that it would be helpful to learn how much controversy there had been in previous confirmation debates in this century. I asked the Library of Congress to take a look into that question. The Library reports that, including the Haynsworth debate, there had been 13 prior rollcalls on confirmations in this century, the first being that of Justice McReynolds, in 1914.

As one reviews those rollcalls, he is compelled to note the absence of any high degree of controversy in most of the cases.

I think it is very instructive that although there were rollcalls in these 13 cases, in most of them the opposition which is recorded is very small; and of course in a number of cases there was approval of confirmation by voice vote—the roll was not even called—which is evidence that there was very little controversy on those matters.

My only point is that certainly the Senate was not any less aggressive, or any less concerned, or any less interested in the quality of the Supreme Court during those years than it is now. I think we have to assume that our predecessors were as vigilant in the public interest during this whole period as we are. But the point is that, I think, someone had done his homework in almost every one of these cases; and I think it is regrettable that the country is again in the situation in which we now find ourselves.

I ask unanimous consent to have these rollcalls printed at this point in the RECORD. I believe they are instructive and helpful, and outline the historical perimeter of the problem we now face.

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

[From the Journal of Executive Proceedings of the Senate, Vol. XLVII]

NOMINATION OF JUDGE MCREYNOLDS

SATURDAY, AUGUST 29 (LEGISLATIVE DAY, AUGUST 25) 1914

The Senate proceeded to consider executive business at 11 o'clock and 20 minutes a.m., with the Vice President in the chair.

Consideration of the nomination of James Clark McReynolds to be an Associate Justice of the Supreme Court of the United States was resumed.

After discussion, the question being, Will the Senate advise and consent to the said nomination? Mr. Norris demanded the yeas and nays, and the demand being adequately seconded, the Vice President directed the Secretary to call the roll. The call resulted, 44 yeas and 6 nays, as follows:

Yeas: Messrs. Bankhead, Brady, Bryan, Burton, Chamberlain, Chilton, Clarke of Arkansas, Colt, Culberson, Dillingham, Fall, Gallinger, Hughes, Lea of Tennessee, Lee of Maryland, Lewis, McCumber, Martin, Martine, Myers, Nelson, Newlands, O'Gorman, Overman, Perkins, Pittman, Pomerene, Ransdell, Reed, Shafroth, Sheppard, Shields, Simmons, Smith of Maryland, Smith of Michigan, Smith of South Carolina, Smoot, Swanson, Thomas, Thompson, Thornton, Townsend, White, and Williams—44.

Nays: Messrs. Clapp, Cummins, Jones, Norris, Poindexter, and Vardaman—6.

Accordingly, it was

Resolved, That the Senate advise and consent to the appointment of the said James Clark McReynolds to be an Associate Justice of the Supreme Court of the United States agreeably to his nomination.

By unanimous consent, Mr. Smith of Georgia, who had been unavoidably absent during the roll call, was permitted to state that if he had been present he would have cast his vote in favor of Mr. McReynolds' confirmation.

[From the CONGRESSIONAL RECORD—Senate, June 1, 1916, Vol. 53, p. 9032]

CONFIRMATION OF JUDGE BRANDEIS

EXECUTIVE SESSION

Mr. STONE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 30 minutes spent in executive session the doors were reopened.

NOMINATION OF LOUIS D. BRANDEIS

The injunction of secrecy was removed from the following proceedings in executive session:

UNANIMOUS-CONSENT AGREEMENT, MAY 26, 1916

That not later than Thursday, June 1, 1916, the majority members of the Committee on the Judiciary and the minority members thereof may file reports upon the nomination of Louis D. Brandeis to be an Associate Justice of the Supreme Court of the United States, which reports shall forthwith be printed in confidence for the use of the Senate; that, on the said day—Thursday, June 1, 1916—at not later than 4:55 o'clock p.m., the Senate shall proceed to the consideration of executive business, and that at 5 o'clock p.m., on the said day, the Senate shall proceed to vote, without debate, upon the said nomination to a final conclusion.

It is further ordered that, after the said vote, the said reports and the proceedings upon the vote shall be printed in the RECORD, and the injunction of secrecy removed from all matters in relation to said nomination.

Vote on the question of advising and consenting to the appointment of Mr. Brandeis. Yeas and nays asked by Mr. CHILTON.

YEAS, 47

Ashurst, Bankhead, Beckham, Broussard, Chamberlain, Chilton, Culberson, Fletcher, Gore, Hardwick Hitchcock, Hollis.

Hughes, Husting, James, Kern, La Follette, Lane, Lea, Tenn., Lee, Md., Lewis, Myers, Norris, O'Gorman.

Overman, Owen, Phelan, Pittman, Poindexter, Ransdell, Reed, Saulsbury, Shafroth, Sheppard, Shields, Simmons.

Smith, Ariz., Smith, Ga., Smith, Md., Smith, S.C., Stone, Taggart, Thomas, Thompson, Underwood, Vardaman, Walsh.

NAYS, 22

Brady, Brandegee, Clark, Wyo., Cummins, Curtis, Dillingham, du Pont, Fall, Gallinger, Harding, Lippit, Lodge.

Nelson, Newlands, Oliver, Page, Smith, Mich., Sterling, Sutherland, Townsend, Warren, Works.

NOT VOTING, 27

Borah, Bryan, Burleigh, Catron, Clapp, Clarke, Ark., Colt, Goff, Gronna, Johnson, Me., Johnson, S. Dak., Jones, Kenyon, McCumber.

McLean, Martin, Va., Martine, N.J., Penrose, Pomerene, Robinson, Sherman, Smoot, Swanson, Tillman, Wadsworth, Weeks, Williams.

Announcing the vote, the Vice President stated that the resolution of confirmation had been agreed to, and announced that the nomination had been confirmed.

Mr. FALL. I have a general pair with the Senator from New Jersey (Mr. Martine). I transfer my pair to the Senator from Utah (Mr. Smoot) and vote "nay." If the Senator from New Jersey (Mr. Martine) were present and not paired he would vote "yea."

Mr. HOLLIS. I have a pair with the junior Senator from New York (Mr. Wadsworth). I transfer that pair to the Senator from Maine (Mr. Johnson). If the Senator from Maine were present he would vote "yea." If the Senator from New York (Mr. Wadsworth) were present he would vote "nay." I vote "yea."

I also desire to state that if the Senator from Minnesota (Mr. Clapp) were present he would vote "yea." He is paired with the Senator from Iowa (Mr. Kenyon), who would vote "nay."

Mr. JONES. I have a pair with the junior Senator from Virginia (Mr. Swanson) and therefore withhold my vote.

Mr. LA FOLLETTE. The Senator from Idaho (Mr. Borah) is paired with the Senator from North Dakota (Mr. Gronna). If the Senator from Idaho were present he would vote "nay."

and the Senator from North Dakota would vote "yea."

Mr. THOMAS. The Senator from Virginia (Mr. Martin) is necessarily absent. If he were present he would vote "yea."

Mr. HUGHES. My colleague (Mr. Martine) is necessarily absent from the Senate. If present he would vote "yea." He is paired with the Senator from New Mexico (Mr. Fall).

Mr. OWEN. I have a pair with the Senator from New Mexico (Mr. Catron). I transfer that pair to the Senator from Florida (Mr. Bryan) and vote "yea."

Mr. JAMES. I desire to announce that the Senator from Ohio (Mr. Pomerene) is paired with the junior Senator from Massachusetts (Mr. Weeks). If present the Senator from Ohio would vote in favor of the confirmation of Mr. Brandeis and the Senator from Massachusetts would vote against the confirmation.

Mr. SAULSBURY. I am paired with the junior Senator from Rhode Island (Mr. Colt). I transfer that pair to the Senator from South Dakota (Mr. Johnson) and vote "yea." If the Senator from South Dakota were present he would vote "yea."

Mr. SUTHERLAND. I have a general pair with the senior Senator from Arkansas (Mr. Clarke), who is absent, but I am at liberty to vote on this question and I vote "nay."

Mr. THOMAS. I have a general pair with the Senator from North Dakota (Mr. McCumber). I transfer that pair to the senior Senator from Virginia (Mr. Martin) and vote "yea."

Mr. LODGE. I desire to announce that my colleague (Mr. Weeks) is paired with the senior Senator from Ohio (Mr. Pomerene). If my colleague were present he would vote "nay."

Mr. WILLIAMS. I have a general pair with the senior Senator from Pennsylvania (Mr. Penrose). If present he would vote "nay" and I would vote "yea," if I had the privilege; but I withhold my vote in consequence of my pair.

Mr. THOMPSON. I have a pair with the Senator from Illinois (Mr. Sherman), but under an arrangement with the Senator from Illinois, if his vote is not controlling, I am permitted to vote on this nomination. I therefore vote "yea." I am requested to announce that if he were present he would vote "nay."

Mr. TILLMAN. I have a pair with the junior Senator from West Virginia (Mr. Goff). If I were at liberty to vote I would vote "yea."

Mr. CURTIS. I have been requested to announce that the Senator from Maine (Mr. Burleigh) is paired with the Senator from Arkansas (Mr. Robinson).

Mr. NEWLANDS (after the result of the vote had been announced). Regarding my vote, I should like to say that I have great admiration for Mr. Brandeis as a propagandist and publicist, but I do not regard him as a man of judicial temperament, and for that reason I voted against his confirmation.

[From the CONGRESSIONAL RECORD—Senate, vol. 64, p. 813]

CONFIRMATION OF JUDGE BUTLER

EXECUTIVE SESSION

Mr. JONES of Washington, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After 3 hours and 40 minutes spent in executive session the doors were reopened.

CONFIRMATION OF PIERCE BUTLER

In executive session this day, following the confirmation of Pierce Butler to be an Associate Justice of the Supreme Court of the United States, on motion by Mr. NORRIS and by unanimous consent, the rules were suspended, and it was

Ordered, That the vote by which the Senate declined to rerefer the nomination to the Committee on the Judiciary and the vote by which Mr. Butler was confirmed be made public.

The vote, on the motion of Mr. LA FOLLETTE to recommit the nomination to the Committee on the Judiciary, resulted—yeas 7, nays 63, as follows:

YEAS, 7

Harris, Heflin, La Follette, McKellar, Norris, Sheppard, Trammell.

NAYS, 63

Ashurst, Ball, Bayard, Brandegee, Broussard, Bursum, Cameron, Caraway, Colt, Cummins, Curtis, Dial, Dillingham, Ernst, Fernald, Fletcher.

Frelinghuysen, George, Glass, Gooding, Hale, Harrison, Hitchcock, Johnson, Jones, N. Mex., Jones, Wash., Kellogg, Kendrick, Keyes, King, Lenroot, Lodge.

McCumber, McLean, McNary, Moses, Myers, Nelson, New, Nicholson, Norbeck, Oddie, Overman, Page, Pepper, Phipps, Poindexter, Reed, Mo.

Reed, Pa., Robinson, Shortridge, Smoot, Stanley, Sterling, Sutherland, Townsend, Wadsworth, Walsh, Mass., Walsh, Mont., Warren, Watson, Weller, Williams.

NOT VOTING, 26

Borah, Brookhart, Calder, Capper, Couzens, Culberson, Edge, Elkins, France, Gerry, Harreld, Ladd, McCormick, McKinley.

Owen, Pittman, Pomerene, Ransdell, Shields, Simmons, Smith, Spencer, Stanfield, Swanson, Underwood, Willis.

Mr. BROOKHART announced his pair with Mr. CALDER, and stated that if he were not paired he would vote "yea."

So the Senate refused to recommit the nomination to the Committee on the Judiciary.

The vote on confirmation resulted—yeas 61, nays 8, as follows:

YEAS, 61

Ashurst, Ball, Bayard, Brandegee, Broussard, Bursum, Cameron, Caraway, Colt, Cummins, Curtis, Dial, Dillingham, Ernst, Fernald, Fletcher.

Frelinghuysen, Glass, Gooding, Hale, Harrison, Hitchcock, Johnson, Jones, N. Mex., Jones, Wash., Kellogg, Kendrick, Keyes, King, Lenroot, Lodge, McCumber.

McLean, Moses, Myers, Nelson, New, Nicholson, Oddie, Overman, Page, Pepper, Phipps, Poindexter, Pomerene, Reed, Mo., Reed, Pa., Robinson.

Shortridge, Smoot, Spencer, Stanley, Sterling, Sutherland, Townsend, Wadesworth, Walsh, Mass., Walsh, Mont., Warren, Warson, Williams.

NAYS, 8

George, Harris, Heflin, La Follette, Norbeck, Norris, Sheppard, Trammell.

NOT VOTING, 27

Borah, Brookhart, Calder, Capper, Couzens, Culberson Edge, Elkins, France, Gerry, Harreld, Ladd, McCormick, McKellar.

McKinley, McNary, Owens, Pittman, Ransdell, Shields, Simmons, Smith, Stanfield, Swanson, Underwood, Weller, Wills.

Mr. BROOKHART announced his pair with Mr. CALDER, and stated that if at liberty to vote he would vote "nay."

So the nomination of Pierce Butler as Associate Justice of the Supreme Court of the United States was confirmed.

[From the CONGRESSIONAL RECORD—Senate, vol. 66, p. 3057]

NOMINATION OF JUDGE STONE

The PRESIDING OFFICER. The yeas and nays have been ordered on confirming the nomination of Mr. Stone, and the Secretary will call the roll.

The reading clerk proceeded to call the roll, and Mr. ASHURST responded "yea."

Mr. SHORTRIDGE. For the benefit of the RECORD, I ask unanimous consent that the report of the hearings before the Committee on the Judiciary be incorporated as a part of the proceedings of this day.

Mr. HEFLIN. Mr. President, does that contain the testimony of those who have appeared against Mr. Stone?

Mr. CURTIS. Mr. President, I will have to make a point of order against the request of the Senator from California. The roll call was commenced and there had been a response.

The PRESIDING OFFICER. The Chair sustains the point of order. The Secretary will proceed with the roll call.

The reading clerk resumed the calling of the roll.

Mr. CURTIS (when his name was called). I have a pair with the senior Senator from Arkansas (Mr. Robinson), who is absent, but on this vote I understand that were he present he would vote as I shall vote, and I therefore vote "yea."

Mr. NORRIS. (when Mr. La Follette's name was called). I was requested to announce that the senior Senator from Wisconsin (Mr. La Follette) is absent on account of illness. If he were present, he would vote "nay."

Mr. WALSH of Montana (when his name was called). In view of the fact that I am counsel for Senator WHEELER, I ask to be excused from voting.

Mr. WATSON (when his name was called). I have a pair with my colleague (Mr. Ralston). If he were present, he would vote as I intend to vote, and therefore I vote "yea."

Mr. WHEELER (when his name was called). Mr. President, I shall refrain from voting on this question, with the permission of the Senate.

The roll call was concluded.

Mr. CURTIS. I was requested to announce that the Senator from Illinois (Mr. McCormick) is unavoidably detained from the Senate. Were he present, he would vote "yea."

Mr. BROUSSARD (after having voted in the affirmative). I have a general pair with the senior Senator from New Hampshire (Mr. MOSES), who, if he had been present, would have voted as I have voted.

Mr. JONES of Washington. I desire to announce that the Senator from New Hampshire (Mr. Moses), the Senator from Missouri (Mr. Spencer), and the Senator from West Virginia (Mr. Elkins) are necessarily absent, and if present they would vote "yea."

Mr. JONES of New Mexico. I was requested to announce that the Senator from Maryland (Mr. Bruce) is necessarily absent, and that if present, he would vote "yea."

The rollcall resulted—yeas 71, nays 6, as follows:

YEAS—71

Ashurst, Ball, Bayard, Bingham, Borah, Brookhart, Broussard, Bursum, Butler, Cameron, Capper, Caraway, Copeland, Couzens, Cummins, Curtis, Dale, Dial.

Edge, Edwards, Ernst, Fornald, Ferris, Fess, Fletcher, George, Glass, Gooding, Greene, Hale, Harreld, Harrison, Howell, Johnson, Calif., Jones, N. Mex., Jones, Wash.

Kendrick, Keyes, Ladd, McKeller, McKinley, McLean, McNary, Mayfield, Means, Metcalf, Neely, Norbeck, Oddie, Overman, Pepper, Phipps, Ransdell, Reed, Mo.

Reed, Pa., Sheppard, Shields, Shortridge, Simmons, Smith, Smoot, Stanfield, Stanley, Sterling, Swanson, Wadsworth, Walsh, Mass., Warren, Watson, Weller, Willis.

NAYS—6

Frazer, Heflin, Johnson, Minn., Norris, Shipstead, Trammell.

NOT VOTING—19

Bruce, Dill, Elkins, Gerry, Harris, King, LaFollette, Lenroot, McCormick, Moses.

Owen, Pittman, Ralston, Robinson, Spencer, Stephens, Underwood, Walsh, Mont., Wheeler.

The PRESIDENT pro tempore. Upon the ques-

tion, Shall the Senate advise and consent to the nomination of Harlan Fiske Stone to be Associate Justice of the Supreme Court of the United States the yeas are 71 and the nays are 6. So the Senate advises and consents to the nomination.

Mr. CURTIS. I ask that the President be notified of the action of the Senate.

The PRESIDENT pro tempore. The President will be notified.

[From the CONGRESSIONAL RECORD—House, Feb. 13, 1930, Vol. 72, p. 3591]

NOMINATION OF JUDGE HUGHES

Mr. KEYES (when Mr. Moses's name was called). My colleague (Mr. Moses) is necessarily absent. If present, he would vote "yea."

Mr. FESS (when Mr. Reed's name was called). I desire to announce that the senior Senator from Pennsylvania (Mr. Reed) is detained at the Naval Arms Conference in London. If present, he would vote "yea."

Mr. SHEPPARD (when the name of Mr. Robinson of Arkansas was called). The senior Senator from Arkansas has been paired, at his request, in favor of the confirmation. He is paired with the junior Senator from Nebraska (Mr. Howell), who, if present, would vote "nay." The Senator from Arkansas is detained in attendance at the Naval arms conference in London.

Mr. THOMAS of Oklahoma (when his name was called). On this question I have a pair with the junior Senator from Indiana (Mr. Robinson). I understand that if he were present he would vote "yea." If I were permitted to vote, I would vote "nay."

Mr. WATSON (when his name was called). I have a general pair with the senior Senator from South Carolina (Mr. Smith), who is detained at home by reason of illness, and who, I am informed, would vote "nay" if present. I transfer my pair to the senior Senator from Pennsylvania (Mr. Reed) and vote "yea."

The roll call was concluded.

Mr. SHEPPARD. The senior Senator from Maryland (Mr. Tydings) is unavoidably detained from the Senate. If present, he would vote "nay." He is paired with the senior Senator from Rhode Island (Mr. Metcalf), who would, if present, vote "yea."

Mr. FESS. The junior Senator from Kentucky (Mr. Robsion), if present, would vote "yea."

The result was announced—yeas 52, nays 26, as follows:

YEAS, 52

Allen, Ashurst, Baird, Barkley, Bingham, Broussard, Capper, Copeland, Dale, Deneen, Fess, Fletcher, Gilbert.

Glenn, Goff, Goldsborough, Gould, Greene, Grundy, Hale, Harrison, Hastings, Hatfield, Hebert, Jones, Kean.

Kendrick, Keyes, McCulloch, McNary, Oddie Patterson, Phipps, Pine, Ransdell, Schall, Shortridge, Smoot, Steck.

Steiwer, Stephens, Sullivan, Swanson, Thomas, Idaho, Townsend, Trammell, Vandenberg, Wagner, Walcott, Walsh, Mass., Waterman, Watson.

NAYS, 26

Black, Blaine, Blease, Borah, Bratton, Brookhart, Connally, Couzens, Dill, Frazier, George, Glass, Harris, Hawes.

Johnson, La Follette, McKellar McMaster, Norbeck, Norris, Nye, Overman, Sheppard, Simmons, Walsh, Mont., Wheeler.

NOT VOTING, 8

Brock, Caraway, Cutting, Hayden, Heflin, Howell, King, Metcalf, Moses, Pittman.

Reed, Robinson, Ark., Robinson, Ind., Robsion, Ky., Shipstead, Smith, Thomas, Okla., Tydings.

So the Senate advised and consented to the nomination of Charles Evans Hughes to be Chief Justice of the United States.

The VICE PRESIDENT. The President will be notified.

[From the CONGRESSIONAL RECORD—Senate, Vol. 72, p. 8487]

NOMINATION OF JUDGE PARKER

The VICE PRESIDENT. Eighty-four Senators have answered to their names. A quorum is present. The question is, Will the Senate advise and consent to the nomination?

Mr. HARRISON and Mr. McKellar called for the yeas and nays, and they were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. TRAMMELL (when Mr. Fletcher's name was called). I desire to announce the unavoidable absence of my colleague (Mr. Fletcher) on account of illness.

Mr. ROBINSON of Arkansas (when Mr. George's name was called). The Senator from Georgia (Mr. George) is absent. If he were present, he would vote "nay."

Mr. GLENN (when his name was called). On this matter I have a special pair with the senior Senator from Florida (Mr. Fletcher), who is unavoidably absent from the Chamber. I understand that if present he would vote "yea." If I were at liberty to vote, I should vote "nay."

Mr. BLACK (when Mr. Heflin's name was called). My colleague the senior Senator from Alabama (Mr. Heflin) is absent on important business. He is paired with the Senator from South Dakota (Mr. Norbeck). If my colleague were present, he would vote "nay," and if the Senator from South Dakota were present I am informed that he would vote "yea."

Mr. LA FOLLETTE (when Mr. McMaster's name was called). The junior Senator from South Dakota (Mr. McMaster) is unavoidably absent. If present, he would vote "nay."

Mr. MCNARY (when his name was called). On this question I have a pair with the senior Senator from South Carolina (Mr. Smith). If he were present, he would vote "yea." If I were at liberty to vote, I should vote "nay."

Mr. KEYES (when Mr. Moses's name was called). My colleague (Mr. Moses) is unavoidably absent. He is paired with the junior Senator from Oklahoma (Mr. Thomas). If present, my colleague would vote "yea."

Mr. PHIPPS (when his name was called). I have a pair with the Senator from Georgia (Mr. George), who is necessarily absent. If I were at liberty to vote, I should vote "yea."

Mr. STEIWER (when his name was called). On this question I have a pair with the junior Senator from Pennsylvania (Mr. Grundy), who is necessarily absent from the Chamber. I find that I can transfer my pair to the junior Senator from South Dakota (Mr. McMaster), and I transfer the pair and will vote. I vote "nay."

Mr. THOMAS of Oklahoma (when his name was called). On this question I have a special pair with the senior Senator from New Hampshire (Mr. Moses). As stated, if present he would vote "yea." If I were at liberty to vote, I should vote "nay."

The roll call was concluded.

Mr. HATFIELD. My colleague the senior Senator from West Virginia (Mr. Goff) has a special pair with the junior Senator from Iowa (Mr. Brookhart). If my colleague were present, he would vote "yea," and I am informed that if the junior Senator from Iowa were present he would vote "nay."

Mr. FESS. I desire to announce that the junior Senator from Kentucky (Mr. Robsion) is paired with the junior Senator from Utah (Mr. King). If the junior Senator from Kentucky were present and at liberty to vote, he would vote "nay," and the junior Senator from Utah would vote "yea."

YEAS—39

Allen, Baird, Bingham, Blease, Broussard, Dale, Fess, Gillett, Glass, Goldsborough, Gould, Greene, Hale, Harrison, Hastings, Hatfield, Hébert, Jones, Kean, Keyes, McCulloch, Metcalf, Oddie, Overman, Patterson, Ransdell, Reed, Shortridge, Simmons, Smoot, Steck, Stephens, Sullivan, Swanson, Thomas, Idaho, Townsend, Walcott, Waterman, Watson.

NAYS—41

Ashurst, Barkley, Black, Blaine, Borah, Bratton, Brock, Capper, Caraway, Connally, Copeland, Couzens, Cutting, Deneen, Dill, Frazier, Harris, Hawes, Hayden, Howell, Johnson, Kendrick, La Follette, McKellar, Norris, Nye, Pine, Pittman, Robinson, Ark., Robinson, Ind., Schall, Sheppard, Shipstead, Steiwer, Trammell, Tydings, Vandenberg, Wagner, Walsh, Mass., Walsh, Mont., Wheeler.

NOT VOTING—16

Brookhart, Fletcher, George, Glenn, Goff, Grundy, Heflin, King, McMaster, McNary, Moses, Norbeck, Phipps, Robsion, Ky., Smith, Thomas, Okla.

So the Senate refused to advise and consent to the nomination.

[From the CONGRESSIONAL RECORD—Senate, vol. 81, p. 9103]

CONFIRMATION OF JUSTICE BLACK

I further announce that the Senator from Connecticut (Mr. Maloney) is absent because of illness.

The Senator from Montana (Mr. Wheeler), the Senator from Nevada (Mr. McCarran), the Senator from South Carolina (Mr. Smith), and the Senator from Massachusetts (Mr. Walsh) are unavoidably detained.

The result was announced—yeas 63, nays 16, as follows:

YEAS—63

Adams, Andrews, Ashurst, Bankhead, Barkley, Berry, Bilbo, Bone, Brown, Mich., Brown, N.H., Bulkley, Bulow, Byrnes, Capper, Caraway, Chavez.

Clark, Connally, Dieterich, Donahey, Ellender, Frazier, George, Gillette, Green, Guffey, Harrison, Hatch, Herring, Hitchcock, Holt, Hughes.

Johnson, Colo., La Follette, Lee, Lewis, Logan, Lonergan, Lundeen, McAdoo, McGill, McKellar, Minton, Moore, Murray, Neely, Nye, Overton.

Pepper, Pittman, Pope, Radcliffe, Reynolds, Schwartz, Schwellenbach, Sheppard, Shipstead, Smathers, Thomas, Okla., Thomas, Utah, Truman, Van Nuys, Wagner.

NAYS—16

Austin, Borah Bridges, Burke, Byrd, Copeland, Davis, Gerry.

Glass, Hale, Johnson, Calif., King, Lodge, Steiwer, Townsend, White.

NOT VOTING—16

Bailey, Black, Duffy, Gibson, Hayden, McCarran, McNary, Maloney, Norris, O'Mahoney, Russell, Smith, Tydings, Vandenberg, Walsh, Wheeler.

So the nomination of Senator Hugo L. Black, of Alabama, to be Associate Justice of the Supreme Court of the United States, was confirmed.

Mr. NEELY. Mr. President, for friendly reasons which all will understand, I move that the Senate reconsider the vote by which it has just advised and consented to the confirmation of the nomination of Senator Black.

Mr. BARKLEY. Mr. President, I move to lay that motion on the table.

The VICE PRESIDENT. The question is on the motion of the Senator from Kentucky.

The motion to lay on the table was agreed to.

Mr. BARKLEY. Mr. President, I now move that the President be notified of the action of the Senate in advising and consenting to this nomination.

The VICE PRESIDENT. The question is on the motion of the Senator from Kentucky.

The motion was agreed to.

[From the CONGRESSIONAL RECORD—Senate, Apr. 4, 1939, vol. 84, p. 3788]

CONFIRMATION OF JUDGE WILLIAM O. DOUGLAS

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William O. Douglas to be an Associate Justice of the Supreme Court of the United States?

Mr. BARKLEY. I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. BARKLEY (when Mr. Tydings' name was called). The Senator from Maryland (Mr. Tydings) is unavoidably detained. I am authorized to say that if he were present he would vote "yea."

The roll call was concluded.

Mr. BYRNES (after having voted in the affirmative). I have a pair with the Senator from Maine (Mr. Hale). I transfer that pair to the senior Senator from Illinois (Mr. Lewis), and let my vote stand.

Mr. AUSTIN. The Senator from Wisconsin (Mr. Wiley) and the Senator from Vermont (Mr. Gibson) are necessarily absent from the Senate. If present, both Senators would vote "yea."

I also announce that the Senator from Minnesota (Mr. Shipstead), who is necessarily detained, would, if present, vote "yea."

Mr. MINTON. I announce that the Senator from California (Mr. Downey), the Senator from Iowa (Mr. Herring), the Senator from Oklahoma (Mr. Lee), and the Senator from Florida (Mr. Pepper) are detained in Government departments. I am advised that if present and voting these Senators would vote "yea."

The Senator from Oklahoma (Mr. Thomas), the Senator from Missouri (Mr. Truman), the Senator from Illinois (Mr. Lucas), and the Senator from Idaho (Mr. Clark) are unavoidably detained. I have been requested to announce that if present and voting these Senators would vote "yea."

The Senator from Montana (Mr. Wheeler) is detained in a meeting of the Committee on Interstate Commerce.

The Senator from West Virginia (Mr. Holt) is absent because of a death in his family.

The Senator from North Carolina (Mr. Bailey), the Senator from iVrginia (Mr. Glass), the Senator from Indiana (Mr. Van Nuys), the Senator from Ohio (Mr. Donahey), and the Senator from Massachusetts (Mr. Walsh) are unavoidably detained.

Mr. MCKELLAR (after having voted in the affirmative). I inquire if the senior Senator from Delaware (Mr. Townsend) has voted?

The PRESIDING OFFICER. The Chair is informed the Senator from Delaware has not voted.

Mr. MCKELLAR. I have a pair with the senior Senator from Delaware, which I transfer to the junior Senator from Illinois (Mr. Lucas), and allow my vote to stand.

Mr. HILL. My colleague the senior Senator from Alabama (Mr. Bankhead) is detained from the floor on official business. I am authorized to say that if present he would vote "yea."

Mr. BARKLEY. The senior Senator from Illinois (Mr. Lewis) is absent on important public business. I am authorized to say that if present he would vote "yea."

Mr. OVERTON. The junior Senator from Louisiana (Mr. Ellender) is absent, attending a committee meeting. I am authorized to say that if present he would vote "yea."

The result was announced—yeas 62, nays 4, as follows:

YEAS—62

Adams, Andrews, Ashurst, Austin, Barbour, Barkley, Bilbo, Bone, Borah, Brown, Burlow, Burke, Byrd, Byrnes, Caraway, Chavez.

Clark, Mo., Connally, Danaher, Davis, George, Gerry, Gillette, Green, Guffey, Gurney, Harrison, Hatch, Hayden, Hill, Holman, Hughes.

Johnson, Colo., King, LaFollette, Logan, Lundeen, McCarran, McKellar, McNary, Maloney, Mead, Miller, Minton, Murray, Neely, Norris, O'Mahoney.

Overton, Pittman, Radcliffe, Reynolds, Russell, Schwartz, Schwellenbach, Sheppard, Smathers, Smith, Steward, Taft, Thomas, Utah, Wagner.

NAYS—4

Frazer, Lodge, Nye, Reed.

NOT VOTING—30

Bailey, Bankhead, Bridges, Capper, Clark, Idaho, Donahey, Downey, Ellender, Gibson, Glass, Hale, Herring, Holt, Johnson, Calif., Lee, Lewis.

Lucas, Pepper, Shipstead, Thomas, Okla., Tobey, Townsend, Truman, Tydings, Vandenberg, Van Nuys, Walsh, Wheeler, White, Wiley.

So the nomination of William O. Douglas, of Connecticut, to be Associate Justice of the Supreme Court of the United States was confirmed.

Mr. BARKLEY. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination of Mr. Douglas.

The PRESIDING OFFICER. Without objection, the President will be notified.

[From the CONGRESSIONAL RECORD—Senate, Mar. 16, 1955, vol. 101, p. 3036]

CONFIRMATION OF JUDGE HARLAN

The PRESIDING OFFICER (Mr. Frear in the chair). A quorum is present.

The question is, Will the Senate advise and consent to the nomination of John Marshall Harlan to be an Associate Justice of the Supreme Court of the United States?

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCOTT (when his name was called). On this vote I have a pair with the senior Senator from Oregon (Mr. Morse), who is absent. If he were present and voting he would vote "yea." If I were permitted to vote I would vote "nay." I withhold my vote.

The rollcall was concluded.

Mr. CLEMENTS. I announce that the Senator from Georgia (Mr. George), the Senator from Michigan (Mr. McNamara), the Senator from Oregon (Mr. Morse), the Senator from Montana (Mr. Murray), the Senator from Alabama (Mr. Sparkman), and the Senator from Missouri (Mr. Symington) are absent on official business.

The Senator from Massachusetts (Mr. Kennedy) is absent by leave of the Senate because of illness.

I further announce that the Senator from Massachusetts (Mr. Kennedy), the Senator from Michigan (Mr. McNamara), and the Senator from Missouri (Mr. Symington) if present and voting, would each vote "yea."

Mr. KNOWLAND. I announce that the Senator from New Hampshire (Mr. Bridges), the Senator from Massachusetts (Mr. Saltonstall), the Senator from Kansas (Mr. Schoeppel), the Senator from New Jersey (Mr. Smith), and the Senator from North Dakota (Mr. Young) are absent on official business.

The Senator from Kansas (Mr. Carlson) is necessarily absent.

If present and voting the Senator from Massachusetts (Mr. Saltonstall) and the Senator from New Jersey (Mr. Smith) would each vote "yea."

The result was announced—yeas 71, nays 11, as follows:

YEAS—71

Aiken, Allott, Anderson, Barkley, Barrett, Beall, Bender, Bennett, Bible, Bricker, Bush, Butler, Byrd, Capehart, Case, N.J., Case, S. Dak., Chavez, Clements, Cotton, Curtis, Daniel, Dirksen, Douglas, Duff.

Dworshak, Ellender, Flanders, Frear, Fulbright, Goldwater, Gore, Green, Hayden, Hennings, Hickenlooper, Holland, Hruska, Humphrey, Ives, Jackson, Jenner, Johnson, Tex., Kefauver, Kerr, Kilgore, Knowland, Kuchel, Lehman.

Long, Magnuson, Malone, Mansfield, Martin, Iowa, Martin, Pa., McCarthy, Millikin, Monroney, Mundt, Neely, Neuberger, O'Mahoney, Pastore, Payne, Potter, Purtell, Robertson, Smith, Maine, Thye, Watkins, Wiley, Williams.

NAYS—11

Eastland, Ervin, Hill, Johnston, S.C., Langer, McClellan, Russell, Smathers, Stennis, Thurmond, Welker.

NOT VOTING—14

Bridges, Carlson, George, Kennedy, McNamara, Morse, Murray, Saltonstall, Schoeppel, Scott, Smith, N.J., Sparkman, Symington, Young.

So the nomination was confirmed.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith of the confirmation of the nomination of John Marshall Harlan, of New York, to be an Associate Justice of the Supreme Court of the United States.

[From the CONGRESSIONAL RECORD—Senate, May 5, 1959, Vol. 105, p. 7472]

CONFIRMATION OF JUDGE STEWART

I also announce that the Senator from Missouri (Mr. Symington) is necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania (Mr. Clark), the Senator from Utah (Mr. Moss), the Senator from Montana (Mr. Murray), the Senator from West Virginia (Mr. Randolph) and the Senator from Missouri (Mr. Symington) would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado (Mr. Allott), the Senator from Indiana (Mr. Capehart), and the Senator from Wisconsin (Mr. Wiley) are absent on official business.

The Senator from Nebraska (Mr. Curtis), the Senator from Iowa (Mr. Hickenlooper), and the Senator from New York (Mr. Javits) are necessarily absent.

If present and voting, the Senator from Colorado (Mr. Allott), the Senator from Indiana (Mr. Capehart), the Senator from Nebraska (Mr. Curtis), the Senator from New York (Mr. Javits), and the Senator from Wisconsin (Mr. Wiley) would each vote "yea."

The result was announced—yeas 70, nays 17, as follows:

YEAS—70

Aiken, Anderson, Bartlett, Beall, Bennett, Bible, Bridges, Bush, Butler, Byrd, W. Va., Cannon, Carlson, Carroll, Case, N.J., Case, S. Dak., Chavez, Church, Cooper, Cotton, Dirksen, Dodd, Douglas, Dworshak, Engle.

Frear, Goldwater, Gore, Green, Gruening, Hart, Hartke, Hayden, Hennings, Hruska, Humphrey, Jackson, Johnson, Tex., Keating, Kefauver, Kennedy, Kerr, Kuchel, Langer, Lausche, McCarthy, McGee, McNamara, Magnuson.

Mansfield, Martin, Monroney, Morse, Morton, Mundt, Muskie, Neuberger, O'Mahoney, Pastore, Prouty, Proxmire, Saltonstall, Schoeppel, Scott, Smathers, Smith, Williams, N.J., Williams, Del., Yarborough, Young, N. Dak., Young, Ohio.

NAYS—17

Byrd, Va., Eastland, Ellender, Ervin, Fulbright, Hill, Holland, Johnson, S.C., Jordan, Long, McClellan, Robertson, Russell, Sparkman, Stennis, Talmadge, Thurmond.

NOT VOTING—11

Allott, Capehart, Clark, Curtis, Hickenlooper, Javits, Moss, Murray, Randolph, Symington, Wiley.

So the nomination of Potter Stewart to

be an Associate Justice of the Supreme Court of the United States was confirmed.

Mr. DIRKSEN. Mr. President, I move that the vote by which the nomination was confirmed be reconsidered.

Mr. JOHNSON of Texas. Mr. President, I move to lay on the table the motion to reconsider.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

[From the CONGRESSIONAL RECORD—Senate, Aug. 30, 1967, Vol. 113, p. 24656]

CONFIRMATION OF JUDGE THURGOOD MARSHALL

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). On this vote I have a live pair with the distinguished Senator from Mississippi (Mr. Stennis). If he were present and voting he would vote "nay." If I were permitted to vote I would vote "yea." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada (Mr. Bible), the Senator from Virginia (Mr. Byrd), the Senator from Alaska (Mr. Gruening), the Senator from Oklahoma (Mr. Harris), the Senator from Minnesota (Mr. McCarthy), the Senator from Maine (Mr. Muskie), and the Senator from New Mexico (Mr. Montoya) are absent on official business.

I also announce that the Senator from Indiana (Mr. Hartke), the Senator from North Carolina (Mr. Jordan), the Senator from Arkansas (Mr. McClellan), the Senator from South Dakota (Mr. McGovern), the Senator from Montana (Mr. Metcalf), the Senator from Wisconsin (Mr. Nelson), the Senator from Georgia (Mr. Russell), the Senator from Florida (Mr. Smathers), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. Bible), the Senator from Alaska (Mr. Gruening), the Senator from Indiana (Mr. Hartke), the Senator from South Dakota (Mr. McGovern), the Senator from Montana (Mr. Metcalf), the Senator from Maine (Mr. Muskie), and the Senator from New Mexico (Mr. Montoya) would each vote "yea."

On this vote, the Senator from Oklahoma (Mr. Harris) is paired with the Senator from Florida (Mr. Smathers).

If present and voting, the Senator from Oklahoma would vote "yea" and the Senator from Florida would vote "nay."

On this vote, the Senator from Wisconsin (Mr. Nelson) is paired with the Senator from Georgia (Mr. Russell).

If present and voting, the Senator from Wisconsin would vote "yea" and the Senator from Georgia would vote "nay."

On this vote, the Senator from Minnesota (Mr. McCarthy) is paired with the Senator from Arkansas (Mr. McClellan).

If present and voting, the Senator from Minnesota would "yea" and the Senator from Arkansas would vote "nay."

Mr. KUCHEL. I announce that the Senator from Iowa (Mr. HICKENLOOPER) and the Senator from California (Mr. MURPHY) are absent by leave of the Senate on official business.

The Senator from Arizona (Mr. FANNIN) is detained on official business.

If present and voting, the Senator from California (Mr. MURPHY) would vote "yea."

The result was announced—yeas 69, nays, 11, as follows:

[No. 240 Ex.]

YEAS—69

Aiken, Allott, Anderson, Baker, Bartlett, Bayh, Bennett, Boggs, Brewster, Brooke, Burdick, Cannon, Carlson, Case, Church, Clark, Cooper, Cotton, Curtis, Dirksen, Dodd, Dominick, Fong.

Fulbright, Gore, Griffin, Hansen, Hart, Hatfield, Hayden, Hruska, Inouye, Jackson, Javits, Jordan, Idaho, Kennedy, Mass., Kennedy, N.Y., Kuchel, Lausche, Long, Mo., Magnuson, McGee, McIntyre, Miller, Mondale, Monroney.

Morse, Morton, Moss, Mundt, Pastore, Pearson, Pell, Percy, Prouty, Proxmire, Randolph, Ribicoff, Scott, Smith, Spong, Symington, Tower, Tydings, Williams, N.J., Williams, Del., Yarborough, Young, N. Dak., Young, Ohio.

NAYS—11

Byrd, W. Va., Eastland, Ellender, Ervin, Hill, Holland, Hollings, Long, La., Sparkman, Talmadge, Thurmond.

NOT VOTING—20

Bible, Byrd, Va., Fanning, Gruening, Harris, Hartke, Hickenlooper, Jordan, N.C., Mansfield, McCarthy, McClellan, McGovern, Metcalf, Montoya, Murphy, Muskie, Nelson, Russell, Smathers, Stennis.

So the nomination was confirmed.

Mr. HART. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

[From Record Vote Analysis, Vote No. 27, June 9, 1969]

WARREN EARL BURGER—NOMINATION

Subject: Warren E. Burger—Nomination to be Chief Justice of the United States. Vote on confirmation.

Action: Confirmed.

Synopsis: Background—In June 1968, President Johnson accepted "effective at (his) pleasure" the resignation of Earl Warren as Chief Justice of the United States and he subsequently sent to the Senate the nomination of Abe Fortas, Associate Justice of the Supreme Court, to succeed Earl Warren as Chief Justice. After hearings, that nomination was reported to the Senate in September 1968, where it was debated at some length until October 1, 1968, when a motion to invoke cloture failed (see Vote No. 569, 90th Cong., 2d sess.). On the following day President Johnson withdrew the nomination. On May 14, 1969, Associate Justice Fortas resigned, following disclosures concerning certain of his financial activities while on the bench.

On May 23, 1969, President Nixon sent to the Senate the nomination of Warren E. Burger, a judge of the U.S. Court of Appeals for the District of Columbia to succeed Earl Warren as Chief Justice.

Those favoring confirmation contended:

Judge Burger was superbly qualified to serve as Chief Justice. He was educated at the University of Minnesota and at St. Paul College of Law (St. Paul, Minn.) where he received an LL.B. degree, magna cum laude, in 1931. He thereafter practiced law in St. Paul until he was appointed by President Eisenhower to be an Assistant Attorney General of the United States in 1953. Since 1956 he had served on the U.S. Court of Appeals for the District of Columbia.

While on the bench, Judge Burger had been a strict constructionist of the Constitution. He had counseled judicial restraint in his opinions. Apparently he felt the court should interpret the law, but not legislate. His record indicated he believed in strong enforcement of the law, and in equal treatment—with favoritism toward none.

As Chief Justice, Judge Burger would have the chance to be the leader in the reform of judicial philosophy. By example and by leadership, as Chief Justice he could exert a powerful force to restore the reputation of the Supreme Court and to make the Court once again the object of universal respect.

Judge Burger had been subject to the acid test of having to pass upon highly controversial matters. No other circuit court in the Nation had more such matters submitted to it than did the U.S. Court of Appeals for the District of Columbia.

The nominee had participated in 13 years of decisions, some written by him for the majority and some in which he agreed with the majority. However, a great many of them were dissenting opinions in which, without overstepping the bounds of decency and personal accommodation which must prevail on such a high court, he nevertheless was found speaking out fully and clearly for the high principles of constitutional law or of jurisdictional law. He had not hesitated to speak out strongly at times against decisions dominated by other members of the court. With him as Chief Justice one could look ahead to a time when the quality manifested by him so frequently in those 13 years would prove helpful to our country, to the restored strength of the meaning of the Constitution as it was meant to be interpreted, to law enforcement officers, to the lower courts, and to our whole people, in that the whole people would have greater confidence in our judicial processes.

It was a good thing at this juncture that the President had nominated as Chief Justice a person whose record as a lawyer and as a judge could be evaluated from objective information, from decisions he had rendered, and from his philosophy as illustrated by those decisions. His confirmation would have a stabilizing influence and would be welcomed throughout the United States. However, some speeches in favor of confirmation reflected upon the Court and upon the retiring Chief Justice. The Supreme Court, like other institutions, had made errors in decisions. But that Court, under the leadership of Chief Justice Warren had followed the spirit and intent of the Constitution. It had made notable strides to make the promise of the Constitution a living reality.

When a man had been nominated, admittedly for one of the highest offices in the land, he should be subjected to the closest scrutiny. But not one single cogent point had been raised during this debate why the Senators should not vote on this nomination.

With respect to criticism concerning procedure on this nomination, on May 26 a notice was placed in the Congressional Record giving public notice of the time and place at which the hearing would be held. Prior to that date one individual had requested the opportunity to testify. She was subsequently asked to submit a written statement to the commitee and she did so.

On the morning of June 3, the date of the hearing, the committee was open for business at 8 a.m. One individual sent a telegram to the committee counsel requesting a postponement for 3 days in order that he might testify on the nomination. The committee declined that request. Thereafter, committee counsel suggested he submit a statement to the committee but he failed to do so.

After the hearing started, a Mr. Randolph Phillips came into the committee office and complained that he had not been able to hear the testimony, but he did not request the opportunity to testify at any time.

Sixty or seventy witnesses were present in

favor of confirmation, among them five or six former presidents of the American Bar Association. The committee did not hear them but it would have heard this gentleman if he had made a timely request. One could not come in just before a committee meeting and expect to be heard. Under the rules, he would have had no right to testify if someone had invoked the rule.

The members of the committee were unanimously satisfied, 13–0, that this nomination should be approved. The committee could not manufacture testimony against the nominee nor could it manufacture witnesses against him. The committee had before it no grounds of objection to the appointment.

This matter was on the calendar by action of the majority party. If there were those who thought it should not have been brought up on this day, they missed their forum. They could have taken it up within their own caucus or their own steering committee.

Those opposing confirmation contended:

They were opposing the nomination not on the merits, but because the hearing record had been received only that morning and they had not had a chance even to read it. After the recent unfortunate affair on the Court, assurances were being given by everyone that there would be a careful review of any of the appointments. The Senators had a responsibility to read the record of the hearings before voting for a Chief Justice.

There was also the statement circulated among some Senators by Randolph Phillips, chairman of the Committee Opposed to the Confirmation of Judge Warren Earl Burger to be Chief Justice of the United States. When Mr. Phillips saw on the day of the hearing that he would not be admitted to the hearing, he asked the Secretary to the committee counsel to seek from Senator Mansfield office authorization for him to be admitted. The secretary refused, saying that he was at the head of the line and would be admitted as soon as there was a seat.

Only 1 hour and 45 minutes was given to a public hearing before the committee. When lawyers wished to testify, who apparently were not publicity seekers, consideration should be given to deferring the matter for a few days.

One Senator opposed confirmation because in 1952 the nominee was an active participant against him in his campaign for reelection. The Senator objected to the manner in which the issues were presented to the people of his district that year because he felt they misrepresented his position and they were designed to elicit an emotional if not prejudiced response.

Action: The nomination was confirmed.

The result was announced—yeas 74, Nays 3, as follows:

YEAS 74

Aiken, Allen, Allott, Anderson, Baker, Bayh, Bellmon, Bennett, Bible, Boggs, Brooke, Burdick, Byrd, Va., Byrd, W. Va., Cannon, Case, Cooper, Cotton, Curtis, Dirksen, Dodd, Dole, Dominick, Eagleton, Eastland.

Ellender, Ervin, Fannin, Goodell, Griffin, Gurney, Hansen, Harris, Hartke, Hatfield, Holland, Hruska, Jackson, Jordan, N.C., Jordan, Idaho, Kennedy, Long, Magnuson, Mathias, McClellan, McGee, McGovern, Miller, Mondale, Montoya.

Mundt, Muskie, Packwood, Pearson, Proxmire, Randolph, Russell, Saxbe, Schweiker, Scott, Smith, Sparkman, Spong, Stennis, Stevens, Symington, Talmadge, Thurmond, Tower, Tydings, Williams, N.J., Williams, Del., Yarborough, Young, N. Dak.

NAYS 3

McCarthy, Nelson, Young, Ohio.

ANSWERED "PRESENT" 1

Fulbright.

NOT VOTING 22

Church, Cook, Cranston, Fong, Goldwater, Gore, Gravel, Hart.

Hollings, Hughes, Inouye, Javits, Mansfield, McIntyre, Metcalf, Moss.

Murphy, Pastore, Pell, Percy, Prouty, Ribicoff.

	Republicans (43)	Democrats (57)
Analysis of vote:		
Yeas (74)	36	38
Nays (3)	0	3
Present (1)	0	1
Not voting (22)	7	15
Positions of Senators not voting:		
Not paired—Position "yea"	[1] 7	[2] 11
Not paired—No position	0	[3] 4

Note: Absent: Official business: Church, Fong, Hart, Inouye' Javits, Mansfield, Percy. Necessarily absent: Cook, Cranston' Goldwater, Gore, Hollings, Hughes, McIntyre, Metcalf, Moss' Murphy, Pastore, Pell, Prouty, Ribicoff. Because of a death in the family: Gravel.

[1] Cook, Fong, Goldwater, Javits, Murphy, Percy, Prouty.

[2] Church, Cranston, Gravel, Hollings, Hughes, Mansfield, McIntyre, Moss, Pastore, Pell, Ribicoff.

[3] Gore, Hart, Inouye, Metcalf.

[From the CONGRESSIONAL RECORD—Senate, Nov. 21, 1969, Vol. 115, p. 35396]

NOMINATION OF CLEMENT F. HAYNSWORTH, JR.

The question is, Will the Senate advise and consent to the nomination of Clement Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States?

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The VICE PRESIDENT. The Chair wishes to caution the gallery that there will be no outbursts at the announcement of this vote.

The legislative clerk called the roll.

The result was announced—yeas 45, nays 55, as follows:

[No. 154 Ex.]

YEAS—45

Aiken, Allen, Allott, Baker, Bellmon, Bennett, Boggs, Byrd, Va., Byrd, W. Va., Cook, Cotton, Curtis, Dole, Dominick, Eastland.

Ellender, Ervin, Fannin, Fong, Fulbright, Goldwater, Gravel, Gurney, Hanson, Holland, Hollings, Hruska, Jordan, N.C., Long, McClellan.

Mundt, Murphy, Pearson, Prouty, Randolph, Russell, Smith, Ill., Sparkman, Spong, Stennis, Stevens, Talmadge, Thurmond, Tower, Young, N. Dak.

NAYS—55

Anderson, Bayh, Bible, Brooke, Burdick, Cannon, Case, Church, Cooper, Cranston, Dodd, Eagleton, Goodell, Gore, Griffin, Harris, Hart, Hartke, Hatfield.

Hughes, Inouye, Jackson, Javits, Jordan, Idaho, Kennedy, Magnuson, Mansfield, Mathias, McCarthy, McGee, McGovern, McIntyre, Metcalf, Miller, Mondale, Montoya, Moss, Muskie.

Nelson, Packwood, Pastore, Pell, Percy, Proxmire, Ribicoff, Saxbe, Schweiker, Scott, Smith, Maine, Symington, Tydings, Williams, N.J., Williams, Del., Yarborough, Young, Ohio.

So the nomination was rejected.

Mr. BROOKE. Mr. President, I ask the distinguished Senator from Maryland whether he thinks that the American Bar Association has lived up to its responsibility in regard to the recommendation that has been received in the case of G. Harrold Carswell.

Mr. MATHIAS. As I have already indicated to the distinguished Senator from Massachusetts, I think whatever the members of the American Bar Association judicial selection committee may have felt about their conclusion, we ought to be entitled to feel that it was plenary, comprehensive, complete, and final; and I do not believe that the results have fulfilled that definition which the public expected.

Mr. BROOKE. I asked the Senator what weight, if any, he feels the Senate should give to the recommendation of the American Bar Association in this matter of the nomination of G. Harrold Carswell.

Mr. MATHIAS. I had felt, as a new Member of this body, when I approached the first confirmation proceeding in which I was involved, that we should give very great weight to it, that it would be very helpful in a decision—not final nor determinative, but worthy of great weight. But I must confess that I have retreated somewhat from that position.

Mr. BROOKE. I certainly do not want to thrust the Senator to the wall, but the Senator is a very distinguished member of the Committee on the Judiciary, and, as has been pointed out in this colloquy, the American Bar Association committee apparently did not have the benefit of the hearings of the Judiciary Committee and apparently did not conduct an extensive inquiry into the qualifications of the nominee, G. Harrold Carswell. So I ask the Senator from Maryland what weight he will give to its recommendation. Does he feel that he is bound in any way by the recommendation of the American Bar Association of G. Harrold Carswell?

Mr. MATHIAS. Let me say immediately that I consider myself bound in no way whatever, and that I am extremely disappointed in the course that events have taken. That is why I again point out that I think there may be some dichotomy between what the members of that committee thought they were doing and what we and the members of the general public thought they did. I think it would be of value, both in this case and in any future case, to understand fully what that dichotomy may be, if one does exist.

Mr. BROOKE. Did the Senator know that the American Bar Association generally rates nominees "highly qualified," "exceptionally well qualified," and "qualified"; and that it is my understanding—I may be corrected if I am in error—that this is the first time that a person nominated to be Supreme Court Justice has been recommended simply as "qualified," without the use of the adjectives "highly qualified" or "exceptionally well qualified"?

Mr. CASE. Mr. President, if the Senator will yield, in its own report to our Committee on the Judiciary, the Bar Association Committee described exactly what it did. This is the first time that it has limited its judgment, or its expression of its judgment, on a Supreme Court Justice to the single word "qualified."

It had another formulation in regard to Judge Haynsworth, which, I am sorry, has been sent to the Office of the Official Reporters for inclusion in the RECORD; but it is obviously, as the Senator suggests, a much more comprehensive statement.

The thrust of the Senator's remarks is absolutely in the right direction. I personally have never seen a report which was so apologetic as the one which the American Bar Association committee,

headed by Judge Walsh, from New York, made in this case. One of the most significant statements in it is that the committee is unhappy, in effect, because its critics have thought that it was rendering a comprehensive judgment, and it expressly disclaims having done that. It expressly states it is not rendering a comprehensive judgment on Judge Carswell's qualifications.

(At this point Mr. HART assumed the chair as Presiding Officer.)

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

Mr. BROOKE. I yield.

Mr. BAYH. The Senator from Massachusetts, who has the floor, has been very kind, and I must say that while acting as Presiding Officer I listened with great interest to the point that has been raised here. I appreciate the Senator from Michigan (Mr. HART) making it possible for me to express a thought in this general direction.

As a relatively young Member of this body, and also a relatively young member of the American Bar Association, I must say very frankly that the exposition of the almost cavalier manner in which our professional association has treated these last two nominations to the Supreme Court is a matter of some significant concern to me, and I am hopeful that, because of the manner in which it is being discussed now, and because several learned members of the bar and legal scholars, I understand, have sent telegrams to the Bar Association asking that it be changed, the result of this discussion will be that greater attention will be given to this significant choice.

As Senators know, there was a considerable amount of concern over the approval given by the Bar Association committee to the Haynsworth nomination. At that particular time, the committee was called into an unusual second Sunday session, and they met most of the day. It seemed to me rather ironic that although there had been documented, at least to the satisfaction of the Senator from Indiana, several areas in which that nominee had violated specific canons of ethics that had been promulgated by the bar association itself, nevertheless, two-thirds of that committee still felt compelled to go ahead and endorse the nomination.

I just wonder if the members of the committee—and, indeed, all of us in the American Bar Association—realize that we are permitting this organization, of which we are all members, to more or less put the Good Housekeeping seal of approval on a nominee, with not the kind of attention that should be given to a decision of this consequence. I think the Senator from Massachusetts and the others who have participated in this colloquy have rendered a significant service, not just in permitting us to examine the nominee before us but, of greater consequence, in perhaps changing the approach to this by the bar association committee, to that in the future a greater degree of study will go into it before recommendation is made.

I salute the Senator from Massachusetts for bringing this matter to our attention.

Mr. BROOKE. I thank the distinguished Senator from Indiana.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article entitled "The American Bar: A Failure of Responsibility," written by the distinguished columnist Anthony Lewis, and published in today's New York Times.

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

THE AMERICAN BAR: A FAILURE OF RESPONSIBILITY

(By Anthony Lewis)

LONDON.—Some of us have an instinctive respect for the legal profession. We believe with Holmes that "the practice of law, in spite of popular jests, tends to make good citizens and good men." But the performance of the organized bar of the United States is making it hard to sustain that view.

The constitutional rights and legal traditions that protect Americans from arbitrary treatment by authority are under intense attack these days. Lawyers, of all people, might be expected to understand and speak out. But with some honorable exceptions, the voice of the bar is unheard.

RIGHTS UNDER ATTACK

For example, it has long been a fundamental assumption that the police may not invade a man's house or his person without some notice and some showing of cause. Now, in the name of fighting crime, legislation is being pushed to let policemen break into homes, and take blood or fingerprints or other physical evidence from suspects without their consent.

The Nixon Administration has sought, and the House has passed, legislation authorizing the "preventive detention" of men accused but not convicted of crime. There may be good arguments for the idea. But at the least it faces weighty objections in a constitutional system based on the assumption of trial first, sentence after.

The American Bar Association might have discussed some of the pressing issues of official power and individual freedom at its meeting last month in Atlanta. Instead, the delegates debated genocide—and managed to find dangers in the notion of a stand against mass murder. A small majority opposed the Administration's request that the United States join every other major country in ratifying the 1949 treaty on genocide.

Twenty years ago Philip L. Graham, late publisher of the Washington Post and a lawyer himself, told a group of lawyers that their profession had "substantially failed to meet its proper obligation of supporting individual freedom." It had silently acquiesced, he said, in restrictions that not long before "would have raised the collective hairs of this association straight on end."

Mr. Graham happened to be speaking to one legal group that did and does take a serious view of its public duty: The Association of the Bar of the City of New York. But for most of the profession has judgment is even more painfully true now than when he spoke.

THE BAR'S RESPONSIBILITY

The bar surely should feel a special responsibility toward the Supreme Court of the United States. In Britain it would be unthinkable for the profession to stay silent in the face of a political assault on the judicial process, yet that is what in fact is now happening in the United States.

Worse yet, the American Bar Association is playing a supporting role in what must be taken as a calculated effort to demean the Supreme Court. That is the nomination of Judge G. Harrold Carswell to the Court.

The A.B.A.'s Committee on the Federal Judiciary has found Judge Carswell "qualified." This of a nominee whose supporters have been unable to find a single opinion, a speech, a professional activity to which they can point as evidence of the slightest legal distinction. While Judge Carswell sat on the Federal District Court, his decisions taken to appeal were reversed 59 per cent of the time. If he is "qualified" to sit on the Supreme Court, it would be simpler for the A.B.A. committee to do its work by keeping current a list of lawyers who would be "unqualified"—possibly about five.

The irony is that the president of the A.B.A., Bernard G. Segal, must know as well as anyone what an insult to the Court and to the American legal profession the nomination of Judge Carswell is. Mr. Segal is an enlightened man who was for years the dedicated chairman of the A.B.A. Judiciary Committee. One understands the restraints upon him but still wishes he would speak out.

In failing to fulfill its public function the organized bar is surely inflicting wounds upon itself. Bright young people already question the outlook of the legal profession; the big firms are having a very difficult time attracting the best law graduates. If lawyers want to retain their traditional place of honor and influence in American life, they will have to remember, and live by, those other words of Justice Holmes: "The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race."

Mr. BROOKE. Mr. President, in view of this laxness on the part of the American Bar Association, I do not regard it as surprising that a number of outstanding legal scholars have recently petitioned the ABA to reconsider its recommendation, and to exercise its responsibility by applying to this nomination the same standards it would apply to nominees for lower courts. I concur in this request, and hope that another meeting of the ABA judiciary committee will be held in the near future.

At the same time that the view of the ABA judiciary committee is considered, attention should also be paid to the many hundreds of members of that organization who have openly expressed their strong opposition to the nomination. To cite but a few examples:

Four hundred and fifty-seven lawyers and legal scholars from all over the Nation signed a letter accusing Judge Carswell of having a "closed mind," and being unfit for service on the highest court in the land.

The entire faculty of the University of Iowa College of Law has let it be known, in letters to President Nixon and to Senator MILLER:

We are profoundly disturbed that you and others are willing to support apparent bias and proven mediocrity in order to find (a conservative justice).

The majority of the faculty at Florida State University School of Law in Tallahassee—the law school which Judge Carswell helped to found—has expressed their opposition to his confirmation.

The Washington State Trial Lawyers Association said a poll of its members showed 64 percent were opposed to the appointment of Judge Carswell to the Supreme Court.

A letter signed by over 50 percent of the students at the University of Colorado College of Law, future members of

the ABA, registered their opposition to Judge Carswell's appointment.

There are a multitude of other examples which could be cited. But these are representative of the widespread feeling of dissatisfaction and dismay among members of the legal profession with the present nomination. They throw considerable question on the value of the ABA committee's own unanimous endorsement.

The judge's own qualifications are often cited as reason for the confirmation of his nomination. He is a graduate of law school, a former district attorney, a district judge, and a member of the circuit court of appeals: Seventeen years of continuous public service, in which his nomination was three times confirmed by the Senate for the positions he held.

Mr. President, I have serious doubts about the efficacy of a system which would three times give a man its unqualified support for increasingly responsible posts without once looking into his record. I have read the transcript of his three previous hearings. The longest hearing took 15 minutes, and at no time was an issue of substance raised. I give no credence whatsoever, therefore, to the fact that he has thrice been confirmed by his body.

His record of public service over the last several years has been widely debated in this body, and I do not intend to reiterate the innumerable points which have been made in nearly 2 weeks of public debate on the nomination.

It is worth noting, however, that this "record of public service" includes active participation of then U.S. Attorney Harrold Carswell in a scheme to circumvent the law of the land which he was sworn to uphold. It includes repeated charges of abuse and rudeness directed toward plaintiffs and counsel in numerous civil rights cases, which some have suggested is a violation of the Florida canon of ethics for judicial procedure. It includes a record of 59 percent reversals in his written decisions which were appealed to a higher court—a reversal rate which is 2½ times that of the national average for Federal judges. It includes five reversals in a single year in habeas corpus cases where previous appellate rulings should have governed. And it includes the incorporation in a property deed in the late 1960's of clauses requiring the enforcement of "white only" provisions, a practice declared illegal by the Supreme Court in 1948. (Shelley v. Kraemer, 334 U.S. 1, 1948).

"Seventeen years of public service" says nothing about the quality of that service. Judge Carswell's record in my judgment, hardly qualifies him for higher judicial appointment.

I have no quarrel with the argument that we need a "strict constructionist" on the Supreme Court of the United States. Indeed, I would be willing to vote for such a man if I were convinced that he went to the Court with a reasonably open mind, and that he had the capacity to be fair in his judgments. But I have no such confidence in the case of Judge Carswell. As I said in my speech of February 25, announcing my opposition to his confirmation after the most exhaustive—and discouraging—review of his record:

> The law is ever complex, and a judge's decisions must necessarily include some contradictions and ambiguities. Nevertheless, the judge's decisions afford no sufficient reassurance that he has come to recognize his responsibilities to protect the equal rights of all those appearing before him.

Several highlights stood out in the record then; for me, they stand out even more clearly now:

The judge gives the appearance of having consistently moved at the slowest possible pace, stretching out judicial action and effectively delaying relief for those seeking reasonable compliance with the 1954 Brown decision.

The judge consistently dismissed habeas corpus hearings without even granting the evidentiary hearing which an increasing number of appellate reversals clearly indicated were required.

The judge dismissed a civil rights case in 1968 purely on the basis of a defendant's affidavit, which previous higher court rulings had shown had no probative value.

Are such decisions the mark of a true conservative, a "strict constructionist" of constitutional law and requirements, or do these and other cases more properly suggest a pattern of dilatory, minimal action which tended to frustrate rather than promote the cause of justice?

Mr. President, I have tried to deal today with some more of the arguments which have been raised in Judge Carswell's favor. I find them lacking in substance. I continue to oppose the nomination, and will work actively toward that end.

But my concern is far broader than the prospects of having one unworthy man sit among the other eight distinguished Justices of this Nation. My concern is with respect for the law which is the essential component of a government of laws; with confidence in the justness of Government which is one of the twin pillars of democracy.

Let us look to the Nation, to its needs and expectations. Let us look to the future, to its hopes and aspirations. Let us reject the nomination now before us, and find us a man who, whatever his political philosophy or ideology, is a man of breadth and scope, and wise impartiality in the handling of the law.

Mr. President, a majority of the professors at my law school alma mater, Boston University, recently expressed in a joint letter to me their opposition to the confirmation of Judge Carswell's nomination. In their letter, these professors of the law stressed the need for "outstanding professional and intellectual qualifications" on the Supreme Court, and the need to appoint only fairminded individuals. On both counts, they believe Judge Carswell is lacking.

I ask unanimous consent that the text of the letter be printed at this point in the RECORD.

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

BOSTON UNIVERSITY,
SCHOOL OF LAW,
Boston, Mass., March 13, 1970.

HON. EDWARD W. BROOKE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BROOKE: As law teachers deeply concerned about the law and its administration, we oppose the appointment of Judge G. Harrold Carswell to the United States Supreme Court.

We believe that no one should be appointed to our highest tribunal whose qualifications do not meet the most exacting standards. An appointment to the Supreme Court is the highest honor our nation can bestow on a lawyer. If our judiciary is to remain respected, that honor must be earned by outstanding professional and intellectual credentials. It is our considered judgment that Judge Carswell's record fails to show that he meets these requirements.

We further believe that in the present times only someone whose record of fairmindedness to all citizens is completely unblemished should be appointed to our highest tribunal. Judge Carswell does not meet this requirement. His racial statements in the past and the more recent charges of abuse to civil rights lawyers made against him by responsible members of the bar, inescapably cast doubt on his impartiality and fairness in civil rights cases. As we all know, in these matters it is more important than ever to avoid any grounds for suspicion of bias in our system of law.

A judiciary that can claim the respect of even those who disagree with its decisions is a foundation on which this nation has been built. We urge you not to undermine this foundation, for to do so will only fortify those disenchanted groups who claim that the courts and legal process offer no hope for meaningful justice.

We earnestly request that you vote not to confirm the appointment of Judge Carswell.

Respectfully yours,

David A. Rice, Daniel G. MacLeod, Paul McCarthy, Daniel G. Partan, Henry Paul Monaghan, Eugene C. Roemele, Phillip I. Blumberg, Leonard P. Strickman, Clarence R. Laing, Stanley Z. Fisher, Albert R. Beisel, Jr., Banks McDowell, Ernest M. Haddad, John P. Wilson, William E. Ryckman, Paul M. Siskind, Paul J. Liacos, Members of the Faculty of Law.

Mr. BROOKE. Mr. President, I yield the floor.

ORDER FOR RECOGNITION OF SENATOR HOLLAND TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the remarks by the able senior Senator from Maine (Mrs. SMITH) on tomorrow, the able senior Senator from Florida (Mr. HOLLAND) be recognized for not to exceed 15 minutes.

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

PRESIDENT NIXON'S STATEMENT ON POSTAL STRIKE

Mr. HRUSKA. Mr. President, President Nixon today has made a clear and concise statement regarding the postal strike now affecting many of the major cities of this Nation. I commend the President's determination to meet his constitutional obligation, and insure that the mails will go through.

I join the President in urging the striking postal employees to return to work so that negotiations concerning their legitimate grievances can begin.

Mr. President, Congress has declared strikes by Federal workers illegal because their services are essential to the orderly functioning of our Government and our society. The postal service must not be interrupted if we are to maintain our economic system, and insure the free flow of personal and private communications. Americans are particularly dependent on mail service and the country cannot tolerate prolonged interruption for any reason.

I am in agreement that the present postal salaries are inadequate. I have voted for increases in the past and intend to do so in the future. However, I am in total agreement with the President that negotiations cannot proceed under the club of an outlaw strike.

Perhaps even more dismaying is the fact that this illegal strike, if it is allowed to continue, may give encouragement to the lawless and the dissidents. If Federal employees are allowed to disregard their oath of office and blatantly violate Federal law, how can we ask others with grievances to act differently?

We simply cannot allow any Federal Government workers to defy the law and the injunction of the courts. If they succeed in this defiance, the Nation will be at the mercy of every public employee group with any sort of grievance.

Mr. President, I urge the striking postal workers to return to work so that we can get on with the business of negotiating a fair and just return for their services.

DISRUPTION OF POSTAL SERVICE

Mr. PELL. Mr. President, the disruption of postal service is a tragedy for both the postal workers and the American public. It is already dealing a body blow at our business and national welfare, and soon can cause immense anguish to all social security and veterans' benefit recipients, including 122,271 Rhode Island recipients of social security checks and 33,884 Rhode Island recipients of veterans checks.

The tragedy lies in the fact that this disruption has resulted from the backfiring of the tactic of tying postal reform to the pay raise. Yet, while the President may have believed this justified, there has been too much cute legislative gamesmanship involved.

One thing is clear: Full postal service must be restored promptly throughout the country.

I sympathize deeply with the frustration of our postal workers with their wage structure, particularly in view of the general wage increases that have been occuring in private industry and their annoyance with our own action in having raised congressional salaries with raising their salaries.

The postal workers need and deserve a pay raise, and it should be granted to them promptly. At the same time, I am most disappointed that postal workers, in pursuit of a redress of their grievances, have seen fit to disregard their sworn obligation not to strike.

Personally, I have supported every postal pay raise bill that has come before the Congress since I became a Member of the Senate. During that time, since January 1961, I have voted for postal pay raises that have increased pay rates by more than 50 percent.

Indeed, 3 months ago, I voted in the Senate for a bill, H.R. 13000, that would have provided another pay raise for postal workers. But that bill has been effectively blocked in conference because the President decided there would be no pay raise unless it were linked to his postal reform proposal.

I urge the President, Members of Congress, and the postal workers, be they the leadership or rank and file, to work together in order that the mails may move quickly, the present unfair wage structure brought more nearly in line with that of others doing equivalent work, and agreement reached on the outline of a postal structure that can more efficiently handle our mails as we move into the 1970's.

REDEFINING THE LAW OF THE SEA

Mr. PELL. Mr. President, I invite the attention of Senators to an editorial entitled "Redefining the Law of the Sea," published recently in the New York Times.

While the editorial bears primarily on the State Department's recent announcement in favor of a 12-mile territorial sea, the point is also made that this decision could be of little value unless the United States reaches a decision on the outer limits of the Continental Shelf. In this regard the editorial states:

> The United States has attempted to keep these questions separated. . . . But some American legal experts have pointed out that unlimited American claims to rights to exploit the sea bed could encourage claims by other nations to other rights above the ocean floor.

To point up the justification for this observation, I need only remind Senators of the 200-mile claims on the part of Chile, Ecuador, and Peru.

Mr. President, as chairman of the Subcommittee on Ocean Space of the Foreign Relations Committee, I know for the past couple of years that the executive branch has done little more than wring its hands over the Continental Shelf boundary issue, primarily as a delaying tactic to placate the oil industry. The Nation's interest can no longer afford the luxury of such contrived delay; and to paraphrase the memorable words of William Jennings Bryan, I think the American people have the right to demand that this administration stop sacrificing the national interest on a "cross of oil."

I hope that Senators will give serious consideration to the points raised in the New York Times editorial. I ask unanimous consent that it be printed in the RECORD.

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

REDEFINING THE LAW OF THE SEA

The United States has taken a useful but limited first step toward redefining its position on the limits of national jurisdiction over the seas with the announcement by a State Department official that this country now favors extending territorial waters of all countries to a distance of 12 miles.

The United States decision, reversing longstanding insistence on a narrower territorial sea, will help speed United Nations plans for a new conference on the law of the sea to eliminate ambiguities left by earlier conferences in 1958 and 1960. It should assure agreement on the 12-mile limit, already widely accepted, providing that other nations go along with a reasonable American demand for guarantees of free passage through and above international straits that could otherwise be closed under a 12-mile regime.

In disclosing the decision in a speech at Philadelphia recently John R. Stevenson, the State Department's legal counselor, also called for "carefully defined preferential fishing rights for coastal states on the high seas." This proposal could indicate a disposition to move at last toward a compromise agreement to end this country's prolonged dispute with several Latin American states over American fishing activities off the West Coast of the Southern Hemisphere.

Unfortunately, the Stevenson address and a more recent United States statement before the United Nations Seabed Committee leave in doubt the American position on another sea law issue that is of more urgent interest to many U.N. members. That is the question of the limits of national rights on the continental shelf.

In calling for preparatory steps toward a conference on the Law of the Sea last December, the General Assembly made clear it expected the conference to deal with this issue, too, noting that "the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf, the superjacent waters, and the sea-bed and ocean floor beyond national jurisdiction, are closely linked together."

The United States Government has attempted to keep these questions separated. It has appeared to drag its feet on efforts to limit national jurisdiction over the shelf and to establish an international regime that would oversee the orderly exploitation of the sea bed for the benefit of all mankind. This American posture helps to perpetuate an ambiguous 1958 agreement which permits practically unlimited exploitation of the sea bed, an anarchic state of affairs strongly favored by American oil interests, among others.

But some American legal experts have pointed out that unlimited American claims to rights to exploit the sea bed could encourage claims by other nations to other rights above the ocean floor. "I am persuaded wherever the coastal state has sovereign rights for the purposes of exploiting natural resources, it acquires in the long run . . . exclusive rights for other and probably all purposes," Professor Louis Henkin of Columbia University told a Senate subcommittee recently. "Wide continental shelves, then, will mean wide areas under the increasing control of other coastal states from which various uses by the United States could be effectively barred."

If professor Henkin's interpretation is correct—and it is persuasive—the new United States position on territorial seas will be of limited value unless it is accompanied by a decision also to join with other nations to curtail national exploitation of the continental shelves.

NEED FOR NEW WAYS TO VIEW THE WORLD

Mr. PELL. Mr. President, the Saturday Review for March 7 contains an article written by Frank K. Kelly which I commend to Senators and other readers of the RECORD.

It is brought home to us in many ways that, if we are to survive, we must have some new ways of viewing the world. We need an end to hatred and violence among men and a new reverence for the earth which supports all life.

Mr. Kelly's article supports this view and contains an interesting proposal for action toward this end.

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

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

THE POSSIBILITIES OF TRANSFORMATION—A REPORT ON THE STATE OF MANKIND: 1970

(By Frank K. Kelly)

At the very moment of lift-off there is no sense of movement, an astronaut said. Man may have passed his own moment of lift-off into ultimate change. Now we have a sense of voyaging in ways that are stranger than our dreams.

The word has passed through cities and towns of Europe and the Americas, through the ancient streets and paths of Asia and Africa, to the nomads carrying transistor radios in the Himalayas and the Andes and along the Amazon and the Nile: Man lives on a beautiful colored ball, traveling at high speed through enormous darkness toward the fires of countless suns. The landing on the moon confirmed the solidity of other worlds. Many of us expected to see what we saw; many accepted it with a shrug or a smile. To young people already aware of science fiction, it was a happening that had happened long before. But the sight of our little globe shining in space made us realize that we can be inside and outside at the same time.

In each of us, now that we know so much and know how little that is, there are two states of being, embracing and struggling: Mankind I and Mankind II. We are still attached to the earth, but our minds move in and out in a dizzying rhythm. We are changing so swiftly that we do not know what we are or what we may become.

Since Hiroshima, we have known that the old man must die. The man of devouring ambition, the consuming man, must give way to the new man, the learning man, the man of understanding, the servant of life. The future depends upon our opening of ourselves to the emergence of the servant. The great transformation as we enter the Seventies is the realization that everything can be transformed. Men and nations still fight for land and resources, for principles and pride, but the skies are full of satellites riding high above the drawn lines. No one is dominant over his own destiny; no one can really control any territory anymore.

As we awaken to the knowledge that we have been lifted into ultimate changes beyond our dreams, some of us are fearful; others feel a terrible joy. Many believe that scientists will develop fairly clear explanations of where we are going or build a Great Computer that will bring together all the factors necessary to make a new web of life. There may be thousands, perhaps millions, of unknown factors—but they will be found, the worshipers of New Science believe.

Many have refused to think any longer about immortality of the soul; they contend that man is on the verge of discovering ways of everlasting physical survival. A temporary embodiment of invisible forces, he is learning how to remold the body in which he finds himself. With fabricated parts, man may go on and on from world to world. Death will be confined to lesser forms of life.

Many others believe they are participating in a revolution of the spirit. Institutional churches may be dying, but there are religious torrents running among the young and the old, among people of all ages and places. Mankind II may combine this spiritual revolution with an enormous effort to preserve or reconstruct the web of physical life. The blood sacrifices of Jesus and Gandhi, of Martin Luther King, of John and Robert Kennedy, of all those torn by violence, may be truly honored by those who make the future.

We now have a growing awareness of the importance of the person. Each man is a universe penetrated by other universes. A world begins with each of us, and no one knows its end. What spirals on toward an unknown destination cannot be contained in a vehicle of culture and civilization or described as a collection of invisible atoms linked together into a visible whole. The urgency that shook atoms together into a brain, that began to look through eyes and speak with tongues, is transforming man as man transforms all.

In this transformation we naturally want the strength and goodness of the old man to survive in the new. But the kind of valor and toughness in the old man may now have to yield to a new valor—the courage to surrender joyfully, to accept the fact that we are all closely related to one another, breathing upon one another, touching one another whether we want to touch or not.

The signals that will guide us in the continuing voyage into the future will be the signals of persons in contact—mysterious persons with universal human rights, men like women and women like men, aware that the whole wonder of mankind can be deciphered in every human face, aware that we are all going together and we won't know where we're going until we get there—and then we'll go beyond.

The spread of compassion in the midst of killing the world over indicates that the old man is being replaced. He may refuse to acknowledge that there is any grace in surrendering to peaceful change. He sinks slowly down within us, with roars and rages, retreating into darkness with his scarred shield firmly held, dying with a warning that he may return. Cool eyes of cameras in the skies record the monstrous miseries, the self-inflicted wounds, the crucifixions that men put upon others and upon themselves. But such things are not regarded as inevitable anymore. Even those who say that fighting cannot be quickly stopped—and a bitter truth is on their side—do not want war anymore.

In the United States, Japan, Germany, and other nations where radical groups have been controlled by force leaders seek better solutions to the problems that provoked the violence. Many are calling for drastic changes in the technological society that has crippled or alienated so many people. Wars are no longer considered profitable; industrialists and students alike have recognized that settlement of disputes by armed conflicts must be abandoned.

The gloomiest predictions made during the years since the establishment of the United Nations have not yet come true. The U.N. has been relatively feeble from the beginning—largely dependent upon the major nations, which have often failed to give that support. Yet the U.N. and related agencies—the World Health Organization, the Food and Agriculture Organization, the International Labor Office, the International Bank, UNICEF, the U.N. Development Fund, and many others—have helped to build the foundations for a community of man. U Thant has cited the process of decolonization that has "liberated nearly a billion people in less than a quarter of a century—a development on a scale that was inconceivable in 1945 and in which the U.N. has played a central role. . . . The obligation of the rich nations to assist the poor ones is now widely regarded as a normal feature of life and a new moral precept in the international community. And I think of the Universal Declaration of Human Rights, the effort to make it increasingly applicable, and the endless struggle against racism and discrimination in all their different forms that has been and is being waged at the United Nations."

The Secretary General also has stressed the increasing internationalism of young people. "Nothing could do more," he commented, "to increase the effectiveness of the United Nations than a modification of the concept of national sovereignty in harmony with the intellectual and technological realities of our time. There I believe that artists, scientists, businessmen, those who deal with communications of all kinds, and the young people can help us in a decisive way."

The young sing of answers "blowin' in the wind." All people now realize that the world's winds blow from one continent to another. We breathe our neighbors' air, and they breathe ours. Without clean air, we will choke and die together.

In matters of environment, the implication is clear. Mankind will have to choose between material progress and the continuation of life on Earth.

Sverker Astrom, the Swedish Ambassador to the United Nations, recently proposed a resolution calling for a world conference on what man is doing to his environment. Representatives of fifty-three nations endorsed the proposal, and it was adopted unanimously by the General Assembly. The conference will be held in Stockholm in 1972, but all governments concerned by the swelling tide of pollution obviously have been confronted by demands for more immediate action.

Ambassador Astrom told the Assembly: "Even if we avoid the risk of blowing up the planet, we may, by changing its face, unwittingly be parties to a process with the same fatal outcome. Indiscriminate and uncontrolled use of modern technology, indispensable as such technology is for economic and social progress, may set trends in motion which lead to unforeseen harmful effects in unexpected places."

Ambassador Astrom suggested that the conference might prepare a "Universal Declaration on the Protection and Betterment of the Human Environment." He said he did not know whether many of the damaging effects of runaway technology are irreversible, but he felt that steps to halt pollution have to be taken as swiftly as possible.

In Sweden, a national Consultative Board for Environmental Problems has been created to check the contamination of air and water. Swedish experts found that many pollutants were coming from the high chimneys of Britain and West Germany. Builders of such chimneys in Britain had claimed that their acrid fumes would be carried far from the United Kingdom—perhaps as far as Moscow. The Russians, becoming alarmed, have begun to show more interest in international efforts to control pollution.

Man may have to consider the effects of weather-changing experiments. Should the weather-modifying projects conducted by the United States, Israel, and other countries be monitored by an international commission? Israel has produced rain vital to a parched land in the Middle East, but what will be the long-range consequences? Can computers take into account all the filth spewed by factory chimneys, fallout from hydrogen bombs tested in the atmosphere by Communist China and perhaps others, effects on the earth's crust of underground explosions set off by the Soviet Union and the United States, and all the other repercussions of technological devices?

The crisis of environment will certainly be one of the great issues of the Seventies. President Nixon has established a council to con-

sider all environmental problems, and the governors of many states are studying what needs to be done. Representative Richard L. Ottinger and other members of Congress have proposed a Constitutional amendment that provides for an "Environmental Bill of Rights." Senator Gaylord Nelson of Wisconsin has called for a "national land and ocean use policy that will set environmental standards with immediate sanctions for violations."

Political scientist Harvey Wheeler has predicted a "new politics of ecology." This issue, Wheeler said, produces "conflicts in the realm of knowledge and thought, in Teilhard de Chardin's 'noösphere.' Here we need new policy-forming institutions, based on a different kind of representation, eventually producing new parties devoted to the politics of ecology."

The question of saving life on Earth has become most pressing in the United States; the effects of pollution have become most noticeable here. In California and New York protesters with a wide range of political views have become almost as concerned about the preservation of environment as they are about the Vietnam War.

Divisions between reactionaries and radicals, conservatives and liberals, have become blurred in the struggle to save the air, water, and fertile earth necessary for human survival. Activist students participated in a conference convened by Governor Ronald Reagan of California and heard Mr. Reagan admit that California had been severely damaged. "We messed it up to begin with," Reagan said. "And we can clean it up. The opportunity is ours. The responsibility is ours."

Two powerfully phrased resolutions offered by California students were adopted at conferences on "People and Air" and "People and Water." A twenty-year-old girl from the University of California at Davis asked the state government to ban internal combustion engines in California by 1975. Another resolution, offered by a student from Berkeley, demanded reconsideration of a gigantic water project on which the California state government has already spent many millions of dollars. The resolution said: "Recycling of waste water and desalinization must be given a higher priority than long-distance water transport." It added that "the California water plan must not undergo any further development without further study of the degradation of the ecology of California." Meeting at Stanford University, 200 student leaders formed a confederation to create "more public awareness of our environmental crisis through wide-spread education, the electoral process, lobbying, economic boycotts, and public demonstrations of concern."

People in other states have prodded legislators and governors, judges and city managers, industrialists and union leaders to join the struggle while time remains.

The sign of unity is a sign of hope. This spring there will be a gathering in San Francisco to celebrate the first twenty-five years of the United Nations, to look at the dangers through which mankind has passed, and to renew mankind's confidence in the future. In my view, this would be the right time to present a report on mankind and life on Earth. California would be the right place to assemble those who might produce the ideas and the fiery determination needed to have Earth as a home for man.

Two other major issues to be faced by mankind are population control and the expansion of food production to feed the hungry millions now on the planet.

The prospects for many countries have improved enormously in the last few years, with the doubling of wheat, rice, and corn crops in Asia, Africa, and Latin America through the use of new types of gains, spoilage control, availability of fertilizers, better irrigation methods, and more use of machines. Barring unforeseen disasters, India expects to produce enough food for her 550 million people in 1970–71. Mexico now produces enough wheat for her population and ships a half-million tons of the grain to other countries. Indications are that Pakistan and Turkey will also be exporting grain in the next few years. A study recently released by the U.N. Food and Agriculture Organization indicates that by 1985 the demand for food in the poorer countries will be about two-and-a-half times the 1962 level. New types of wheat, rice, and other cereals are expected to meet this demand, using only one-third of the area now under cultivation. Land not used for cereals will be released for other crops.

These trends may give us enough time to bring the world's population under control before mass starvation occurs. Two distinguished groups recently have issued reports strongly recommending the establishment of a U.N. Commissioner for Population. The United Nations Association Policy Panel—headed by John D. Rockefeller, 3rd—said that such a commissioner should be added to the U.N. Development Program and should administer a fund of $100-million annually for family planning activities. The Commission on International Development, supported by the World Bank and headed by Lester Pearson, former Prime Minister of Canada, recommended that "the United Nations should appoint a Commissioner for Population. An international program should be launched through the World Bank in consultation with the World Health Organization for the mobilization of research in the field of fertility control."

There has been a most hopeful change in attitude toward population control in India, Japan, Pakistan, and other countries, where thousands of men have submitted voluntarily to sterilization. If the new man—the man of compassion, cooperation, understanding—is to dominate the development of mankind in the future, every human being must cooperate. It is clear that people in all parts of the world are awakening to this necessity.

The material resources of the earth are limited and must be conserved. But limitations on the resources of the spirit—the functioning of the mind, the outreach of human sympathy, the awareness that many men still have of an awesome presence given the name of God—have not yet been discovered.

U Thant pointed out the bitter paradoxes of the last twenty years: "On the one hand, there is the remarkable effort of the international community to define common aspirations on a world-wide and regional basis. On the other hand, it is clear that, in spite of the greater awareness and demand for the respect of the individual, serious violations of human rights, including resort to violence and terror, continue to occur."

In 1970 the struggle for human rights will be given more attention than ever before. Many people, young and old, black and white, rich and poor, socialists and businessmen, intellectuals and activists, are now seeking ways of coming together. Huge gaps in understanding and communication have always existed. But this is an age in which these gaps are being recognized and fully explored.

As Mankind II develops, a global dialogue on the rights and duties of man must be initiated and supported by people with many varying views. As we travel outward and inward on the immense journey into an ultimate transformation, we must speak of what we owe to one another as well as what we expect of one another. Our duties to one another in the crisis of our age are very great.

Many eyes have been opened. Many governments have begun to see the folly of what is being done to the earth. The Strategic Arms Limitation Talks indicate that the United States and the Soviet Union want to turn away from the monstrous arms race that has been devouring our substance and shadowing our lives. The emergence of man as the servant of life must be encouraged. The reasons for hope must be shown as clearly as the reasons for alarm.

All education institutions and nongovernmental organizations concerned with the building of a "social and international order" for the attainment of universal human rights should unite to sponsor a continuing report on the state of mankind.

The Center for the Study of Democratic Institutions, the World Man Fund, the Fund for Peace, the World Academy of Arts and Sciences, the John XXIII International Institute, the World Law Fund, the Center for the Study of the Future of Man, the United Nations Associations, the World Federalists, the Cooperators (a newly founded society), and others should devote part of their resources to the formation of a Council for Humanity. The council would present a series of statements by spokesmen for mankind: men and women from a wide variety of countries and cultures.

The council might be composed of leaders from the sponsoring organizations. Half the members would be chosen by youth organizations, and none could serve more than a year. The council would have a very small staff, so that no opportunity for the formation of a bureaucracy would arise.

The first council would simply be charged with beginning a discussion on the state of mankind. Council members would examine the vital issues and make recommendations for national and regional action. Every country would be asked to provide at least four hours of free broadcasting time each month for statements by council speakers. Additional time would be provided for commentaries and criticisms and suggestions for statements from other viewpoints. Newspapers and leading magazines in all nations would be asked to carry the texts of these statements or extensive summaries.

At the end of each year, a day for mankind might be celebrated. The statements of the spokesmen would be published in many languages, in an annual report, and distributed to schools and libraries all over the world. The people of the earth would be urged to write to the council, giving their views and their ideas of speeding the development of a world civilization.

The vast resources of information available through the U.N. and other organizations could be used by members in preparing their statements—but they would speak as persons, communicating with other persons, not as officials speaking for governments or to governments.

There is a turn against war. There is a turn toward the unity of man, stronger than all strife and divisions. There is a turn toward hope. There is a growing realization that we have lifted off into a new age. There is pain ahead. There is suffering. There is a stretching of the very being of man, and the fear that the transformation of this time will change us more than we ever want to change. But while there are voices that we can hear, let us listen to them. Beyond the darkness, there may be light.

PROGRAM

Mr. BYRD of West Virginia. Mr. President (Mr. BAYH), for the benefit of the Senate, and before the Senate shortly adjourns until 10 o'clock tomorrow morning, I shall recapitulate the orders previously entered by the able majority leader.

Following the disposition of the reading of the Journal tomorrow morning, the able senior Senator from Maine (Mrs. SMITH) will be recognized for 10 minutes. The senior Senator from Florida (Mr. HOLLAND) will then be recog-

nized for not to exceed 15 minutes; after which there will be a brief period for the transaction of routine morning business, not to exceed 15 minutes with statements therein limited to 3 minutes, following which the Senate will proceed to the consideration of the conference report on H.R. 514.

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 10 minutes p.m.) the Senate adjourned until tomorrow, March 24, 1970, at 10 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate March 23, 1970:

FEDERAL POWER COMMISSION

John N. Nassikas, of New Hampshire, to be a member of the Federal Power Commission for the term of 5 years expiring June 22, 1975. (Reappointment)

U.S. MARSHAL

William B. Henderson, of Kentucky, to be U.S. marshal for the western district of Kentucky for the term of 4 years vice Harry M. Miller, retired.

CONFIRMATION

Executive nomination confirmed by the Senate March 23, 1970:

AGENCY FOR INTERNATIONAL DEVELOPMENT

Robert Harry Nooter, of Missouri, to be an Assistant Administrator of the Agency for International Development.

EXTENSIONS OF REMARKS

SITUATION IN GREECE

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 23, 1970

Mr. EDWARDS of California. Mr. Speaker, the situation in Greece seems to be worsening every day. Not only are more and more individuals suffering the barbarism of a government which uses torture to keep its citizens in line, but the country which was the first democracy and remained a symbol to the free world for years, under the reign of the junta is turning more and more toward the East and away from the principles of freedom. I request that two articles which appeared in the most recent issue of News of Greece be included in the RECORD. The first is the preface from a new book by James Becket, "Barbarism in Greece," whose report for Amnesty International was the first comprehensive account of the use of torture by the Greek junta. The second describes the growing alliance of the junta with the Eastern European countries, while still enjoying a great deal of military support from the United States. How can the United States, in good conscience, still continue its support for such a government?

The articles follow:

BARBARISM IN GREECE

The subject of this book is horrible. Torture belongs on the darkest side of human behavior, yet in the Greek case there are entries to be made on the credit side of the human ledger. People outside of Greece, especially in Europe, have cared about what was going on, and public opinion has played a role. The European Press has vigorously pursued the subject. The international community through its oragnizations has shown that it is willing to try to do something about it. The Scandinavian governments brought their case before the European Commission of Human Rights not for any commercial or territorial advantage, but because they believed in human rights. Despite pressure from many sides, they had the perseverance to see the case through to its conclusion. The members of the Commission conscientiously discharged their duty, concluding that the Greek regime tortures political prisoners as a matter of policy. Most important of all. Greeks themselves, at great personal sacrifice, had the courage to tell their stories and give their names.

I am convinced that because of this fewer Greeks have been tortured than would have been if the regime had a free hand. Efforts from abroad, however, have their limits, which are tragically demonstrated by the fact the regime continues to torture prisoners. In a sense the possible international effort has now been made, and torture has not been stopped. The future is uncertain. All that has happened, all that is described in these pages cannot be simply forgotten by Greeks. If there is not a change soon, it is difficult to see how Greece can avoid great bloodshed.

GREECE AND THE WORLD: JUNTA TURNS EAST

Relations between the colonels and their Communist neighbors have always been based on expediency, rather than on the ringing denunciations of "communism" and "fascism" which the two parties have uttered for public consumption. They have become especially close in the past year, as both have been estranged from the West European democracies by the objections of the latter to torture in Greece and the invasion of Czechoslovakia.

Two recent developments are especially striking. One is the conclusion of a new economic agreement with the U.S.S.R., under which Soviet exports to Greece are to be stepped up and receive most-favored-nation treatment. At the same time, the Soviet Union is to send technicians to the area north of Kavalla to look for peat (and according to some reports other minerals) and prepare plans for electric production based on it. Greece is to pay for this survey with some of its perennially surplus tobacco. From the Soviet point of view, however, one cigaret might seem an adequate recompense. For the area in question is the site of major American top-secret radar installations. And the Soviet technicians, hunting for minerals with the aid of modern electronic devices, might reasonably be expected to discover other things as well.

The second development is the resumption of trade with Albania for the first time since the end of World War II. The announcement of this agreement between the junta and Communist China's only satellite does not specify what commodities are involved. An appropriate exchange, however, might give Greece a supply of the little red book of Mao's thoughts in return for an equal quantity of the book in which Papadopoulos has embalmed his commentaries.

The junta has also decided to station a permanent trade representative in East Germany, while agreeing to increase its trade with Bulgaria. And Hungary has sent a trade delegation to Athens in connection with the holding of a "Hungarian Festival" there—at a time when the intellectual and artistic world of democratic countries is engaged in a cultural boycott of the Greek dictatorship. "Agreement in principle" has also reportedly been reached on a trade pact with Peking.

The junta will certainly find itself more at home ideologically with the Eastern dictatorships than with the democracies which just chased it out of the Council of Europe. Yet in the present state of the world Papadopoulos may soon find himself faced with the necessity of making an agonizing choice between Moscow and Peking: "Under which king, Bezonian? Speak or die!"

FINAL ACTIONS IN APPROPRIATION BILLS, 91ST CONGRESS, FIRST SESSION—INCLUDING FOREIGN ASSISTANCE AND LABOR-HEW-OEO

HON. GEORGE H. MAHON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 23, 1970

Mr. MAHON. Mr. Speaker, as Members will recall, when the House adjourned sine die on December 23 last, two of the appropriation bills for the current fiscal year 1970 had not been finally enacted—the foreign assistance bill and the Labor-HEW-OEO bill. Conference reports on both bills were pending at adjournment.

Summaries of the appropriations business of the session—including those in the CONGRESSIONAL RECORD, volume 115, part 30, page 41213—were made on the basis of the enacted bills plus the amounts in the two conference agreements.

The session-end summaries on the foregoing tentative basis disclosed that in the appropriation bills Congress had, with respect to budget requests for fiscal year 1970 appropriations, reduced the President's budget request by the net amount of $5,604,000,000.

In the final enactments with respect to the two pending bills on which action has now been completed, further reductions, aggregating $766,659,624, were made. The foreign assistance bill was reduced $54,650,000 from the original conference agreement. In the enacted Labor-HEW-OEO bill, H.R. 15931, further reductions, aggregating $712,009,624, were made from the conference agreement on H.R. 13111 which the President vetoed and the House failed to override. The $365,233,000 of the latter sum was in reductions