of proposed legislation to amend title 38, United States Code, in order to authorize the Administrator to make advance educational assistance payments to certain veterans; to make improvements in chapter 37 of such title; and for other purposes; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 14685. A bill to amend the International Travel Act of 1961, as amended, in order to improve the balance of payments by further promoting travel to the United States, and for other purposes; with amendments (Rept. No. 91-976). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 14714. A bill to amend authority of the Secretary of the Interior under the act of July 19, 1940 (54 Stat. 773), to encourage through the National Park Service travel in the United States, and for other purposes; with an amendment (Rept. No. 91-977). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DONOHUE:

H.R. 16734. A bill to amend the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 to assist the States in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the States in the provision of such services in accordance with such plan, to assist in the construction of facilities to provide the services needed to carry out such plan, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 16735. A bill to assist the States in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the States in the provision of such services in accordance with such plan, to assist in the construction of facilities to provide the services needed to carry out such plan, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 16736. A bill to amend the Mental Retardation Facilities Construction Act to extend and improve the provisions thereof, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. PODELL:

H.R. 16737. A bill to establish a senior citizens skill and talent utilization program; to the Committee on Education and Labor.

By Mr. RARICK:

H.R. 16738. A bill to amend title 38 of the United States Code so as to entitle veterans of World War I and their widows and children to pension on the same basis as veterans of the Spanish-American War and their widows and children, respectively; to the Committee on Veterans' Affairs.

By Mr. TEAGUE of Texas (for himself and Mr. AYERS (by request)):

H.R. 16739. A bill to extend for a period of 10 years the existing authority of the Administrator of Veterans' Affairs to maintain offices in the Republic of the Philippines; to the Committee on Veterans' Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. YOUNG introduced a bill (H.R. 16740) for the relief of Lt. Bruce B. Oliver, U.S. Naval Reserve, which was referred to the Committee on the Judiciary.

MEMORIALS

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

346. By the SPEAKER: A memorial of the Legislature of the State of Idaho, relative to appropriating funds for financing cooperative fire control; to the Committee on Appropriations.

347. Also, a memorial of the Senate of the General Assembly of the State of Colorado, relative to the accuracy of the enumeration of students in the 1970 Federal census; to the Committee on Post Office and Civil Service.

PETITIONS, ETC.

Under clause 1 of rule XXII,

428. The SPEAKER presented a petition of the Federation of Citizens Associations of the District of Columbia, relative to penalties for persons involved in criminal bombings; to the Committee on the Judiciary.

SENATE—*Thursday, April 2, 1970*

The Senate met at 11 o'clock a.m. and was called to order by Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia.

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

Almighty God, who has made and preserved us a nation, help us and all the people of this land to affirm by our lives that we are "a nation whose God is the Lord." Accept our surrender to the Lordship of Him who came to set us free and make us good.

Be Thou Lord of our homes, Lord of our churches and schools, Lord of our business and labor, Lord of our ballot boxes and peace tables, and Lord of this Senate.

Measure our thoughts and deeds and words not by the faulty features of our comrades but by the faultless glory of the Son of Man. Lift all consultations of this place into the light and wisdom of Thy higher kingdom—for Thine is the kingdom, and the power, and the glory, for ever and ever. 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., April 2, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. BYRD of Virginia thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, April 1, 1970, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations for the District of Columbia Council under New Reports.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar under New Reports will be stated.

DISTRICT OF COLUMBIA COUNCIL

The assistant legislative clerk proceeded to read sundry nominations under District of Columbia Council.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

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

Mr. MANSFIELD. Mr. President, I move that the President be notified immediately of the confirmation of these nominations.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I should like to be recognized in my own right as a Senator from Montana.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

EVENTS IN SOUTHEAST ASIA

Mr. MANSFIELD. Mr. President, I was pleased by the action taken by the French Cabinet on yesterday in relation to its desire to seek a negotiated solution to the war in Indochina.

The French, of course, have a deep interest, culturally, economically, and otherwise, in both Laos and Cambodia. They have ambassadors in North Vietnam and mainland China. They have been maintaining a discreet silence during the course of negotiations in Paris.

I think the action taken yesterday is an indication of a revived interest on the part of the French which could well turn out to be helpful. It certainly offers hope through negotiations of, perhaps, a reconvening of the Geneva Conference of possibly creating "a zone of neutrality and peace" which would encompass all of the former associated states of Indochina.

I read from an article published in today's New York Times, entitled "France Proposes Indochina Parley":

> "The French Government is convinced," the Cabinet said, "that the extension of a war that tends to become indivisible can be avoided only by negotiation between all interested parties with a view to seeking and guaranteeing the bases of a peace, itself indivisible."

The French Government seems to be indicating the possibility of a resumption of the Geneva Conference of 1954, to which we were not a party, except through an observer, Under Secretary of State Bedell Smith was waiting outside the door at Geneva. We were not a signatory. But that is not significant at this point.

It is possible that the French proposal could replace the talks that have taken place during the past year or so in Paris among the American, South Vietnamese, North Vietnamese, and Vietcong delegates. Those discussions have come to naught. They have never gotten off dead center. Nevertheless, they have to be maintained, because to stop them would be to negate any possibility, no matter how slim, of achieving some agreement thereby.

I do not know whether the French contacted the U.S. Government on this matter, but it would be my guess—and I can speak only for myself—that the U.S. Government is not averse to the sort of undertaking being initiated by the French Government.

May I say also that I am very much pleased with the attitude of our Government in the Cambodian situation. We have assumed the lowest kind of low profile. We have not indicated any other than ordinary interest in what is going on there. We hope that there will be no intervention. There is no prospect of that, at the present time, or of an aid program.

Thus, I want to say a good word for the administration for its conduct in this potentially difficult and dangerous situation with which it finds itself confronted at this time.

I am sure that the President will be aware of the developments and that he will do the best he can to keep our intervention in Vietnam from spreading further, to maintain the neutrality status of Cambodia, and to do what can be done, indirectly, to bring about a settlement.

SENATOR MILLER DELIVERS MAJOR ADDRESS ON ENVIRONMENTAL CONTROL

Mr. PEARSON. Mr. President, on March 7, the senior Senator from Iowa (Mr. MILLER) addressed a Grinnell College audience on the subject of environmental control.

He declared that—

> Environmental control must be a cooperative venture, involving all citizens and calling on the resources of the federal, state, and local governments as well as private industry.

However, my colleague warned against overreacting to the problems of pollution.

He said:

> We must take care that federal responsibility . . . does not turn into federal usurpation.

He remarked:

> We must guard against blind haste in buying solutions to the many and very complex aspects of the environmental problem.

He stressed:

> We must guard against the possibility of becoming so preoccupied with the environmental problem that other pressing human problems are put aside.

His remarks are well worth noting and I ask unanimous consent to have the address printed in the RECORD.

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

ENVIRONMENTAL CONTROL

(By U.S. Senator JACK MILLER, Iowa)

It seems to me that in these days one must be either an optimist or a pessimist—there is no middle ground.

Whether we like it or not, reform definitely is the order of the day for our nation and its citizens.

Those who fear reform, those who are content to have it forced upon them, must be pessimistic about the coming decade.

Those who welcome constructive change, those who are trying to initiate and manage change for the better rather than just change for the sake of change, which is what "reform" really is, should regard the 1970s as a decade of opportunity.

It is on this basis that I salute you as fellow optimists.

And I also commend you for being so concerned that you are acting, through this "Action Now Day," to initiate reform at the local level in solving environmental control problems.

These "Action Now" programs, spearheaded by Elly Peterson, are an excellent grass roots approach to tackling and resolving these problems.

Environmental control must be a cooperative venture, involving all citizens and calling on the resources of the federal, state, and local governments as well as private industry.

As Elly has said, we must "work *together* to bring about solutions to the problems."

But I should sound a few words of caution.

We must take care that federal responsibility—and it does have a share of the responsibility in cleaning up our environment—does not turn into federal usurpation. Right now we can see how the power of the federal government to prescribe time tables for water pollution control action by municipalities, regardless of the time table for federal money to assist those municipalities, the bond limitations of those municipalities, the economic conditions of those municipalities—we can see how this power could be abused.

Americans in the past have too often been slow in recognizing major national problems. But when they do, they respond with the fervor of a volunteer fire department. Unfortunately, when they are aroused to action, they sometimes tend to rush off in all directions—not necessarily in the right directions.

Such may be the case with the present environmental crisis, considered by many to be the major challenge of the 70s.

To those who are joining this crusade to preserve our environment, I would offer these words of caution:

Guard against blind haste in buying solutions to the many and very complex aspects of the environmental problem. When we become alarmed over a national problem, there is a tendency to spend huge sums of money in a hurry on hastily-devised programs, the results of which are too often wasteful and, indeed, counter-productive.

Guard against the possibility of becoming so preoccupied with the environmental problem that other pressing human problems are put aside.

Do not let the objective of a healthful environment absorb all your capacity for work and imagination. We can make progress in the battle against air pollution, for example, but we must also make progress in teaching poor children to read. We can progress in building sewage treatment plants, but we must make progress in building public housing. It may be easier to get people behind efforts to save our lakes and rivers, but it is terribly important to sharply reduce the crime rate. Smog removal from our cities will

not be meaningful unless we do a job on urban blight.

If we approach the environmental problem in a calm and sensible manner, we will solve it and our other problems too.

For the first time, a President of the United States has recognized the high priority of maintaining and improving the quality of our environment. Since the Water Pollution Control Act of 1963, bipartisan efforts have prompted Congress to make a good beginning on a problem that is not really new. Historians, for example, will tell us that the Mediterranean area was once covered by evergreens, oaks and pines. However, by the Golden Age of Greece, much of this land had been stripped bare. Plato wrote of deforestation and grazing as causing the drying up of springs and the destruction of most fertile soil. This devastation of the land, in turn, caused water to "run from the naked earth into the sea," so the lands "resembled the bones of a diseased body." Because the earth was then young and sparsely populated, the effects of this destruction were not of catastrophic proportions. All a person needed to do was move on to another area.

(Over twenty years ago I observed what centuries of failure to practice conservation had done to once productive lands and forests in China.)

In the last few years, catastrophe has been regularly predicted for this planet because of some of the same misuses of the land as in Plato's time.

Some of our country's noted scientists have made rather frightening predictions. Dr. Dillon Ripley, secretary of the Smithsonian Institution, has said: "In 25 years somewhere between 75 percent and 80 percent of all the species of living animals will be extinct." A noted ecologist, Dr. Barry Commoner of the Center for the Biology of Natural Systems at St. Louis' Washington University has warned "that we are unlikely to avoid environmental catastrophe by the 1980s unless we are able by that time to correct the fundamental incompatibilities of major technologies with the demands of the ecosystem."

Noting that the United States provides one-third to one-half of the industrial pollution of the oceans, California ecologist Dr. Paul Ehrlich has predicted the end of the oceans as a productive resource within the next 50 years unless pollution is stopped. While time predictions which are impossible to prove precisely may be looked upon as "sensationalism," this does not deny the danger and the need for action.

Perhaps the best perspective was given by former astronaut Wally Schirra: "The moon is not hospitable. Venus is not hospitable. Mars is not hospitable. We'd better do what we can to clean up Earth because this is what we've got."

Industrialization, urbanization, and population growth have made the situation such that we can no longer move away from the pollution and conservation problems we create. And these problems affect every American—everyone in the world itself.

It was most appropriate that on the first day of the new decade, President Nixon signed into law the National Environmental Policy Act, which authorizes studies and research, establishes a national environmental policy and sets up the Board of Environmental Quality Advisors to counsel the President.

As passed by the Congress, the legislation contained this "Declaration of National Environmental Policy" in Section 101:

"(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

In signing the bill, the President noted that "unless we move on it now, believe me, we will not have an opportunity to do it later."

Again, in his State of the Union Message, the President expressed his concern by declaring that "we can no longer afford to consider air and water common property, free to be abused by anyone without regard to the consequences. Instead we should begin now to treat them as scarce resources which we are no more free to contaminate than we are free to throw garbage into our neighbor's yard."

Further evidence of the President's concern comes from one newspaper's report that "there are more people in the White House now working on environment than on any single issue, and that includes Vietnam."

Congressional concern about the environment moved ahead in the 91st Congress. The National Environmental Policy Act was passed as a noncontroversial bill in both Houses. The amount of environmental material inserted in the Congressional Record by Senators and Congressmen in the first session of the 91st was exceeded only by material on the issue of Vietnam.

While substantial support has long existed for conservation activities, it has been difficult to get across to the public the importance of pollution control, because pollution is so delayed in its effects. Increased public concern is largely a result of three factors: (1) pollution has become more evident because it has grown worse; and it can be seen, smelled and heard; (2) dramatic events and pronouncements have taken place. Statements such as Thor Heyerdahl's recent observation that the ocean looked like a "sewer" have had startling effects. And (3) journalists themselves have begun to press the issue, and the press has finally given wide play to the dramatic prophesies of ecologists and others.

As a result, there is today a broad based public concern. The Gallup Poll shows that three out of four people think pollution is one of our major domestic problems. The National Wildlife Federation reports that in its poll 85 percent of the American people are concerned about the state of the environment.

This public concern has been reflected in concrete actions such as a recent referendum in Trenton, Maine, in which the community solidly rejected an aluminum reduction factory and a nuclear power plant because of the likelihood of pollution, although they offered needed jobs and money.

A vocal segment of our population interested in pollution has been our students. A recent Council on Education survey shows that 90 percent of this year's college freshmen feel that the federal government should do more to control pollution. Another example will be an April 22 "teach-in" on campuses across the country, with some 300 to 400 campuses participating. For some reason, the militant, radical students have been, for the most part, slow to become involved in the environmental issue, leaving it to the more moderate activist students.

I believe this student involvement is moving along constructive lines, but it will be up to people like you to make sure this is the way it will continue—and that it will be kept in perspective with respect to other national problems.

Another facet of the environmental problem is population. The United States with only 5 percent of the world's population uses 50 percent of the world's resources. Thus, we have been able to well afford our population.

Dr. Robert Rienow of the State University of New York has observed: "Every 7½ seconds a new American is born. He is a disarming little thing but he begins to scream loudly in a voice that can be heard for seventy years. He is screaming for 26 million tons of water, 21,000 tons of gasoline, 10,150 pounds of meat, 28,000 pound of wheat, and great storehouses of all other foods, drinks and tobacco. These are his lifetime demands on his country and its economy. He is requisitioning $5,000 to $8,000 for school building materials, $6,000 worth of clothing, $7,000 worth of furniture—and 210 pounds of peanuts. He is heralded as a prodigious consumer in a nation that has one-fifteenth of the world's people but consumes half of its produce. In one year we use up enough big trees to build a 10-foot boardwalk 30 times around the world at the equator."

Considered in this light, it should not be assumed that we cannot have a population problem ourselves. The stark social tragedies in overpopulated countries—overpopulated in the sense of more people than resouces to meet their needs—are very real.

A fundamental key to the pollution problem has been man's self-image. Down through the ages, man has imagined himself to be living on a virtually unlimited planet. There has always been a frontier beyond the known limit of human habitation. When things got too difficult, he solved his problems by moving towards an unknown. He has also thought himself to be the ecological dominant (even before he understood that such a word as ecology existed), a creature capable of changing his environment at his will, yet independent of it. In fact, man has been so impressed with his ability to change the living landscape to his immediate interest that he has come to believe that he is exempt, in some respects, from the biological laws governing his life as well as plants and animals. This attitude is a fundamental part of Judaeo-Christian

tradition. The Book of Genesis teaches man was created in the image of God who gave him "dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth and over every creeping thing that creepeth upon the earth."

Americans have for too long accepted pollution as the price to be paid for progress. Anyway, air and water resources seemed to be unlimited.

Then we came to realize that these resources were finite and that pollution had to be controlled. This seemed a good idea but there were drawbacks: it cost money and it seemed to benefit people downstream the most.

Also there was pollution from industry. Industry means jobs and production. People didn't want to lose jobs or pay higher costs.

Then, with the increase in leisure time and money, recreation became more important. Clean water, preservation of our wilderness areas and wild rivers became important.

Attitudes have been changing. Considerable action has already taken place. Much more is needed.

And this can happen if programs are developed that spur the involvement of all members of our society. The programs must be such that they will stir the imagination and support of the majority, those who will have to pay the bill . . . the very ones who oftentimes feel they receive none of the benefits for their tax dollars.

If we—and that means you—are to muster the resources needed to tackle pollution and other problems, the majority must be rallied behind the specific programs—not just behind the objectives. And this can be accomplished if it is impressed upon them that the problem is a problem for everyone.

For too long, we have been concerned with "crash" programs, programs that merely substitute new problems for the old ones, programs that are attacked in a half-way fashion, instead of considering the long-range effects.

If we are to correct the imbalance in our national life, that is, get to the root cause of problems by practicing prevention, we must replace impatience for immediate solutions with well thought-through and coordinated programs of lasting benefit. Solutions which result in more problems than they solve must be avoided.

We must persuade those who pay the bill that a better future for them will be the result of their acting in unison to cope with the problems, and that the programs they are paying for will bring about solutions that endure.

People like you can help in this persuasion.

This also means that the governments—city, county, state and federal—must account in detail to the taxpaying public where their money is being spent, why it is necessary to spend it, and what returns they can expect for their dollar.

If we in government—and you as activists in this area—can present a good case, public support can be enlisted on the side of the programs needed to achieve our national policy on the environment.

The President well stated the challenging question:

"In the next 10 years we shall increase our wealth by 50 percent. The profound question is—does this mean that we will be 50 percent richer in a real sense, 50 percent better off, 50 percent happier?"

It was the right question, and to find the right answers, we must first ask the right questions. As Daniel P. Moynihan, the President's counselor on domestic affairs, has said, not all forms of growth are good. He believes, as I believe, that a Nation is mistaken if it believes it is progressing simply because it is growing economically and growing in population.

The President, to assure that this nation will benefit from our future growth, has proposed:

—a four-year, $10 billion program, partly financed by the Federal Government, to build waste treatment plants to control water pollution.

—a variety of additional actions—including research, incentives, and new regulations—to resist and reverse contamination of the environment.

"The great question of the seventies," the President remarked, "is: Shall we surrender to our surroundings or shall we make peace with nature and begin to make reparations for the damages we have done to our air, to our land, and to our water?

"Restoring nature to its natural state is a cause beyond party and beyond factions. It has become a common cause of all the people of America. It is a cause of particular concern to young Americans because they more than we will reap the grim consequences of our failure to act on programs which are needed now if we are to prevent disaster later."

This really is the task before you as you bend your efforts to initiate and manage constructive change in the area of environmental control.

The President spoke of the debt to nature which we owe because of "our years of past carelessness." That debt is much larger than is generally recognized.

As an editorialist for one of our larger Iowa television stations recently commented, in discussing what must be done to clean up our environment:

"Will we be willing to spend the money to do this? The answer is that we eventually will have to. It is just a matter of time . . . and not very much time at that."

It is clear that you have taken up that challenge, through your "Action Now" program, and I thank you for your efforts.

REPEAL OF ABORTION LAWS IN MARYLAND

Mr. PACKWOOD. Mr. President, several weeks ago, I introduced a bill which would eliminate principally all the restrictions against abortion in the District of Columbia. I have recommended that other States do likewise insofar as regulations and laws on abortion in their States are concerned.

This week, the Maryland State Legislature has eliminated practically all restrictions on abortion in the State of Maryland, although the Governor has not, as yet, indicated whether he will veto or approve that law.

There is substantial public, broad-based support for the elimination in this country of most of the present restrictions against abortion.

I ask unanimous consent to have printed in the RECORD three resolutions from very well respected and broad-based groups indicating support for the elimination of restrictions against abortion. The first is a resolution adopted by the American Baptist Convention at its annual assembly in Boston, June 1968; the second is from the American Medical Women's Association, which is the principal female medical association group in the United States; and the third is from the American Protestant Hospital Association.

There being no objection, the three resolutions were ordered to be printed in the RECORD, as follow:

RESOLUTIONS ADOPTED BY THE AMERICAN BAPTIST CONVENTION: BOSTON, MASS., MAY 29–JUNE 2, 1968

NATIONAL AFFAIRS

I. Abortion

Because Christ calls us to affirm the freedom of persons and the sancity of life, we recognize that abortion should be a matter of responsible personal decision. To this end we as American Baptists urge that legislation be enacted to provide:

1. That the termination of a pregnancy prior to the end of the 12th week (first trimester) be at the request of the individual(s) concerned and regarded as an elective medical procedure governed by the laws regulating medical practice and licensure.

2. After that period the termination of a pregnancy shall be performed only by a duly licensed physician at the request of the individual(s) concerned, in a regularly licensed hospital, for one of the following reasons as suggested by the Model Penal Code of the American Law Institute:

(a) When documented evidence exists that this is a danger to the physical and mental health of the woman;

(b) When there is documented evidence that the conceptus has a physical or mental defect;

(c) When there is documented evidence that the pregnancy was the result of rape, incest or other felonious acts.

Further we encourage our churches to provide sympathetic and realistic counseling on family planning and abortion.

We commend study, research and development of understanding on the part of the populace led by the people of our churches toward an enlightened view of this provocative problem.

LIBERALIZATION OF ABORTION AND VOLUNTARY STERILIZATION LAWS

Whereas, repressive laws encourage criminal abortion, and these in turn continue to be one of the important causes of maternal morbidity and mortality;

Whereas, there has been an increasing demand for abortion and voluntary sterilization; be it

Resolved, That the AMWA approve removing restrictions on abortion and voluntary sterilization for those who, for family planning or health reasons, wish it, and that this be done with the approval of their physicians.

Resolved, That the AMWA encourage counseling with regards to abortion both in group and individual medical practice.

POLICY STATEMENT ON PREGNANCY INTERRUPTION

The following shall be the policy position of the American Protestant Hospital Association:

Believing that the integrity of the family unit and the institution of marriage is jeopardized, if not destroyed, by unwanted children, and believing that the condition of pregnancy and the bearing of children may cause physical suffering and mental anguish, and believing that social maladjustment may be related to or result from unwanted children, and those conceived out of wedlock and until such time as totally effective and acceptable contraceptive material and techniques have been developed, pregnancy may be interrupted at the request of and with the informed consent of a woman, her legal guardian or nearest relative if she is under the age of consent. No woman should be compelled to undergo, or a physician to perform a procedure that would interrupt pregnancy if either has ethical, religious, or any other objection to such a procedure. All reasonable efforts should be made to remove APHA Policy Statement on the Interruption of Pregnancy economical barriers that would

prohibit the exercise of the option provided by this statement.

It is also the position of this Association that all procedures performed in conformity with this policy should be by licensed practitioners of medicine and in a facility which in all respects conforms to the then current acceptable standards of organized medicine and hospitals.

Approved by the Council on Governmental Relations 1–1970.

Approved by the Board of Trustees 1–27–70.

Approved by the House of Delegates 3–2–70.

Mr. PACKWOOD. Mr. President, I say again they are all well-known and well-respected, responsible associations. And they have all indicated that the restrictions against abortion in this country should be eliminated.

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

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. HARRIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARRIS. Mr. President, I ask unanimous consent that I may proceed for 15 minutes.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

SENATE RESOLUTION 383—RESOLUTION TO EXPRESS THE SENSE OF SENATE FOR AN INDOCHINA CONFERENCE

Mr. HARRIS. Mr. President, as Shakespeare said in "Julius Caesar":

There is a tide in the affairs of men,
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.

I believe affairs in Indochina have reached such a state. The United States has a chance to take these affairs at the flood and give the world—and that section of it—a new hope for peace.

For some time, there has been much speculation that the Vietnam war might spill over into the rest of Indochina. That speculation has now been overtaken by events. But the spillover actually occurred long ago, even though the full public realization of that fact has only recently come. It is now manifestly clear, if it was not before, that what happens in Laos and Cambodia cannot be disentangled from what happens in Vietnam.

The use of the so-called Ho Chi Minh and Sihanouk Trails and the Port of Sihanoukville in Cambodia to supply troops and materiel to North Vietnamese forces in South Vietnam has been at least indirectly connected with both the Pathet Lao offensive and the Lon Nol-Chen Heng coup in Cambodia.

In Laos, intensive bombing by the United States of the Ho Chi Minh Trail, with the tacit consent of the Laotian Government, and the U.S.-aided penetration of government forces into the Plain des Jarres last fall changed the status quo, and the recent offensive by the Pathet Lao with North Vietnamese assistance thereafter followed, its goal being the recapture of the plain, which the Pathet Lao had held almost continuously in recent years, and to exert pressure on the Laotian Government to secure a halt in American bombing in Laos.

While Royal Laotian forces in recent days have, for now at least, stemmed the advance of the Pathet Lao, a condition of peace and neutrality for Laos seems unattainable so long as the Vietnam war continues, with use of Laotian trails by the North Vietnamese on the one hand and American bombing to interdict such use on the other.

In Cambodia, the precarious balancing of interests by Prince Sihanouk and his efforts to prevent direct Cambodian involvement in the war, finally ended with the recent coup. Most Americans were slow to understand that as long as the Vietnam war continued, some accommodation with the North Vietnamese presented the only way for the Cambodians to retain a fragment of independence, even though this policy at times appeared to stretch the concept of neutrality beyond recognizable limits. When the demands of that accommodation became too heavy, Prince Sihanouk was deposed.

The new government, greeted at first with considerable enthusiasm in this country, in fact presents us with a decidedly mixed blessing. It has made clear a firm intention to force the North Vietnamese out of the country. If this cannot be done diplomatically with the aid of China and the Soviet Union, which, in view of initial refusals, seems now to be a remote possibility, it is the apparent intention of the Cambodian Government to try to accomplish this goal by force of arms. Since there are as many as 60,000 North Vietnamese and Vietcong troops presently in Cambodia, and thousands more are crossing into the country, the chances of success without major outside assistance to the Cambodian Government are highly questionable. Already South Vietnamese troops have been invited to help and have been employed in this military effort, and the pressure will undoubtedly mount for the use of American forces as well.

Peace and neutrality cannot be achieved for Cambodia so long as the Vietnamese war continues. Since the North Vietnamese seem determined not to remove their troops from their Cambodian sanctuaries while that war continues, the United States must—given our current policy—either assist attempts to dislodge them militarily or acquiesce in their freedom from retaliation and attack. The former possibility is unacceptable to a majority of Americans, I believe, because it would commit our forces to another major Asian war effort, with marginal possibilities of success, and to the postponement of our military disengagement from the Indochina area. The other alternative is unattractive because it would tend to increase the military risk to our own forces while they remain in Vietnam.

This dilemma and a consideration of the mounting, connected troubles in all of Indochina indicate that U.S. policy has erred in two respects. First, it has treated Vietnam as if it were separable from Laos and Cambodia. Second, it has continued to rely on military victory as the ultimate goal in Vietnam, public pronouncements to the contrary notwithstanding.

The clear choice in Indochina is between area political settlement and area military conflict. An independent settlement for one part of the area alone will ultimately disintegrate, just as has begun to occur with the fragile Laotian neutrality established in 1962.

Area political settlement must be negotiated, rather than sought by military means. The use of sanctuaries and secure supply routes in Laos and Cambodia by the North Vietnamese and the Vietcong has been one obvious reason why attempts at military victory in Vietnam have been so fruitless and so tragically costly. Widening the war to eliminate these sanctuaries might push them a greater distance away from the Vietnam borders, but would not otherwise appreciably change the situation unless both Cambodia and Laos could be completely cleared of the other side's forces. But there is little reason to believe that such a victory could be gained on the thus-widened battlefield except at great cost and against increased aid to the other side by China and perhaps Russia.

In his November 3 television address on Vietnam, President Nixon laid down three conditions for further and continued withdrawal of American troops from South Vietnam: Progress in the Paris peace talks; forbearance by Hanoi from escalating the war in South Vietnam; and the increased ability of the Saigon Government to take over the war.

There has been no progress in the Paris peace talks. We, ourselves, have failed, for more than 3 months, to appoint to head our delegation there a man of the stature of former Ambassador Henry Cabot Lodge. In the eyes of the other side, therefore, we have downgraded the talks and have signaled a slackened interest in them. I believe that this has been a serious mistake on our part, the rectification of which is urgently required and long overdue. I believe that it is time for a new effort toward peaceful negotiations, and that this effort could take on a needed freshness and new promise if it was directed toward settlement of the South Vietnam war as a part of a wider, area political settlement.

The other two conditions President Nixon laid down for continued U.S. troop withdrawals from Vietnam indicate the basic difficulty I and others have always had in accepting the policy or in believing that it would work—U.S. disengagement has depended upon what others, Hanoi and Saigon, might decide, rather than upon our own decisions. Now, with the widened hostilities throughout Indochina, and also involved Thailand, this flaw in the Vietnamization policy becomes increasingly obvious. Hanoi, by heightening the military pressure in Laos and Cambodia, has called into greater question our ability to withdraw our troops from South Vietnam under the

terms of our announced policy. And Saigon, by sending troops outside its own borders to take part in a widened war, has to that degree become less able to fully take over the conduct of the war in its own country.

Further, the administration seems still to be committed to military victory in South Vietnam. By tying the rate of withdrawal of American troops to the ability of the South Vietnamese Army to replace them, the administration seems only to have been saying that the military victory will be achieved, it hopes, by South Vietnamese rather than by Americans. Lastly, a good part of the difficulty in beginning meaningful negotiation—and a barrier to future stability—comes from our continued support of a government in South Vietnam which believes that it has more to gain from the current situation than from any possible negotiations.

The pressure has already begun to postpone the next withdrawal of American forces from South Vietnam because of the expanded threat in Laos and Cambodia. Reports are circulating that American military leaders believe that promised April U.S. troop withdrawals should now be delayed. The President apparently is now hearing renewed advocacy of military victory in South Vietnam, under the argument that without sanctuaries in Laos and Cambodia the North Vietnamese and Vietcong will be easier to defeat. This argument would only increase the turmoils of war for the unfortunate people of Indochina, and, indeed, put the United States "neck deep in the Big Muddy." Instead, as noted columnist Joseph Kraft has recently written, the President should look for another course of action, before it becomes obvious to everyone that Vietnamization is not working.

The time has come to attempt negotiations with the parties in Indochina and the major interested powers, toward the end of effectively neutralizing the whole area. A comprehensive conference along the lines of the earlier Geneva conference would provide the only real possibility for a complete solution. For that reason it has been suggested by a large number of people in recent days. Since the administration has not yet indicated its position on this alternative way of restoring peace, the proposal needs to be aired again. New support has come for it today from the French; I think the United States should respond positively and at once.

Such area negotiations would no doubt be long and difficult, but I believe they would offer considerable promise if the United States were to indicate that it sincerely wanted a full and negotiated area settlement.

The United States has held itself open for negotiations only in Vietnam, where it is apparently believed that military power can be brought directly to bear to achieve a favorable settlement. Even there, we have not pressed toward a broadened popular base for the South Vietnamese Government which might be acceptable to the other side. On Laos, the United States has asked the Russians to arrange consultations under the 1962 Geneva accords which dealt with that country, but we have stated that our purpose in making such a request was limited only to trying to get the North Vietnamese to cease their military activities in Laos. Given the relationship of the events in Laos to the Vietnamese war itself, there has been little incentive for the Russians to try to get Hanoi to agree to such consultations, particularly since the Russians are competing for influence in North Vietnam with the more hardline Chinese. In short, we have appeared to want concessions rather than negotiations.

Reversal of this policy, as indicated by an announcement of intention to work for a Geneva conference, which would have the objective of taking up all related issues and achieving true neutrality for all of Indochina, might bring some short-range benefits, even before such a conference. It might help persuade the Russians to cooperate with the British in reactivating the International Control Commission in Laos, and it might make it possible for the U.N. inquiry requested by the Cambodian Government to be effective in determining the facts in Cambodia. It is at least worth making the attempt.

The Indochinese Gordian knot can be cut only by a full and new initiative to confront all of the interrelated problems of the area. The time for such negotiations is now. For, as was recently stated in an editorial in the New York Times, while both sides have achieved some temporary advantages in recent weeks, both have reason to fear that allowing the Indochina conflict to spread further may have unfortunate future consequences for all. In prior times, all of the major parties have shown an interest in preserving Laos and Cambodia as neutral buffer states. In spite of the current spillover, this is probably still true. It will not be possible, however, to restore the status quo ante without at the same time taking up the source of the current problems, the war in Vietnam.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. HARRIS. I ask unanimous consent that I may have 2 additional minutes.

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

Mr. HARRIS. Mr. President, the United States, by facing up forthrightly to the existence of past mistakes, can turn this dangerous period into an opportunity to bring the hostilities in all Indochina to an end and can help establish a viable peace. But time is short, and positive action is needed at once. It should be clear by now that our overriding national interest in Southeast Asia has become immediate peace. A failure to strongly support a new conference on Indochina can only lead to a deeper involvement in the area, with the consequent tragic loss of many additional lives, continued and rising internal opposition to national policy, and continued and injurious failure to meet our own domestic problems which so urgently cry out for attention.

Accordingly, Mr. President, for myself and the distinguished senior Senator from Kansas (Mr. PEARSON), I send to the desk a resolution and ask that it be printed at this point in the RECORD and that it be received and appropriately referred.

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

The resolution (S. Res. 383), which reads as follows, was referred to the Committee on Foreign Relations:

S. RES. 383

Whereas a grave danger exists of a substantial widening of hostilities in Indochina: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States should take affirmative steps to prevent such an expansion of conflict; and be it further

Resolved, That it is further the sense of the Senate that the most promising approach to limiting and ending these hostilities is to convene a multinational conference of all interested parties to consider at one time a comprehensive settlement for all of Indochina, directed toward a true neutralization of Vietnam, Laos, and Cambodia.

Mr. HARRIS. Mr. President, I call the attention of Senators to an editorial which appeared in the New York Times of March 26, 1970, entitled "Time for 'A Whole Solution,'" which stated, in part:

But if the developments in Laos and Cambodia pose an imminent danger of wider war, they also offer a unique opportunity for fresh diplomatic initiatives to achieve a wider peace.

I refer Senators next to an editorial which appeared in the Washington Post for Sunday, March 29, 1970, entitled "Another Geneva Conference," which begins:

The recent unravelling in Laos and Cambodia has reminded everyone that the struggle for the succession to French colonial rule in Indochina—which is what the continuing violence is all about—must be seen as a whole, not country by country.

I also refer Senators to a letter to the editor which appeared in the New York Times dated Sunday, March 29, 1970, from Lord Avon—Anthony Eden—in which he stated:

Admittedly the difficulties are formidable, but the alternative of a widening conflict is a warning signal which every influential capital should heed before it is too late.

Those were words which Lord Avon expressed in support of the New York Times editorial urging a conference on Southeast Asia.

Lastly, I call attention to a column by Joseph Kraft entitled "General Diplomatic Accord Needed To Prevent Asia War," which concludes by saying:

But Vietnamization only creates conditions that work to widen the war. Wisdom lies not in holding tight to that policy, but in shifting to another before everybody comes to understand the Vietnamization line won't work.

I ask unanimous consent that the editorials, letter, and column be printed in the RECORD at this point in my remarks.

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

[From the New York Times, Mar. 26, 1970]

TIME FOR "A WHOLE SOLUTION"

Rapidly moving developments in Cambodia and Laos threaten to engulf the whole of Indochina in a war from which the United States would find it difficult, if not impossible, to extricate itself. These developments necessitate prompt and vigorous efforts to find a new peace settlement for the entire region.

The overthrow of Prince Sihanouk in Cambodia and the renewed Communist drive in Laos are inescapably linked to the continuing war in Vietnam. The Vietnam conflict has persistently threatened to undermine the precarious neutrality of those bordering states as established in the Geneva Accords of 1954 and 1962. That neutrality—often more fiction than fact—is now perilously close to utter collapse.

Although the new government in Pnompenh has proclaimed adherence to Prince Sihanouk's policy of neutrality, the new leadership appears determined to increase pressure on North Vietnamese and Vietcong troops in their Cambodian sanctuaries. Such a course may hold short-run advantages for American and allied forces in Vietnam, but in the long run it could pose a terrible dilemma.

Since the Cambodia army probably cannot begin to cope with the estimated 40,000 to 60,000 Communist troops now in Cambodian territory, the United States may be called upon to save the new regime or to face another turnabout in Pnompenh—possibly the return of Prince Sihanouk with Communist backing—which would give the Communist forces even greater freedom of action than they now enjoy. In either case, President Nixon's plans for withdrawal from Southeast Asia would be seriously set back.

The renewed Communist drive in Laos greatly increases the threat to the neutralist government of Prince Souvanna Phouma. It could lead to a request from the Prince, or a successor, for the cessation of American bombing of the Ho Chi Minh trail, a request that might seriously embarrass Washington.

The Communist advance in Laos close to its borders also threatens the Thais who have demonstrated their concern by the reported dispatch of two battalions to aid in the defense of an American-Meo base. Deeper Thai involvement in the Laotian struggle has grave implications for the United States, already committed to Thailand's defense.

But if the developments in Laos and Cambodia pose an imminent danger of wider war, they also offer a unique opportunity for fresh diplomatic initiatives to achieve a wider peace. Both sides have gained some temporary advantages in the recent flare-ups. Both have reason to fear the consequences of allowing the conflict to spread further.

In the past all parties, including the big powers, have shown an interest in the neutrality of the buffer states of Laos and Cambodia. Even Peking has a stake in preserving the integrity of these countries as a bar to the expansion of Vietnam, which has traditionally stood up to the Chinese.

It is futile, however, to seek piecemeal restoration of neutralization in Cambodia and Laos under the Geneva accords, as Secretary of State Rogers has suggested, without dealing at the same time with the source of the current troubles, which is in Vietnam. The time has come to consider a broader, high-level Geneva-style meeting to seek a comprehensive settlement, as at the 1954 conference. South Vietnamese President Thieu made a point of sorts the other day when he observed, "It's better that it all explodes at once because we can find a whole solution."

[From the Washington Post, Mar. 29, 1970]

ANOTHER GENEVA CONFERENCE

The recent unravelling in Laos and Cambodia has reminded everyone that the struggle for the succession to French colonial rule in Indochina—which is what the continuing violence is all about—must be seen as a whole, not country by country. This has always been plain to the North Vietnamese, who from the beginning asserted their claim to succeed the French everywhere in Indochina, not just in Vietnam. It was clear, also, to the international community in 1954, the year the French fell apart: a conference to deal with the whole of Indochina was quickly called in Geneva. In more recent years the focus on Vietnam and the relative quiet in Laos and Cambodia may have obscured the regional nature of the struggle. But events of the past month or two have restored an appropriate perspective.

One consequence of this turn is the renewed flurry of interest in another Geneva conference in which the major powers, the parties of the area and assorted others would work out a compromise political settlement and—in the process—end the war. The essential argument for a conference is that this is a good moment—before the United States gets sucked deeper into Laos or Cambodia—for it to trade in its military momentum in Vietnam for a comprehensive regional deal. Such a settlement, since it would have to go down with Moscow and Peking as well as Washington, would require some formula for "neutralizing" Indochina.

The Nixon administration has shown no interest in the Geneva idea and, unfortunately, has chosen not to explain the basis of its disinterest. Its position seems to be, however, that "neutralization" of Indochina would leave anti-Communist elements worse off than will its hoped-for success in Vietnamizing the Vietnam war. The administration has shied from the broader concept. It holds itself open for negotiations only in the one part of Indochina, Vietnam, where its military power can be brought directly to bear. On Laos it has appealed to the Russians for consultations under the 1962 Geneva Accords dealing with that country alone, but its stated purpose is limited to getting the North Vietnamese to halt their military activity there. There has been no acknowledgement of any possible requirement to reshuffle the political cards.

If the 16 years since the first Geneva conference (and the eight years since the second) have proved one thing, it is that the settlement laid out then was faulty. That first conference ratified the French defeat and departure while providing the appearance—and only the appearance—of a durable political structure. The foreign powers conceived of "neutralization" essentially as a rationale for their own disengagement. The local parties, including Ho in Hanoi and Diem in Saigon, conceived of it as an assurance that the outside powers would not impede what were their very different plans for the future of Vietnam. Neither set of expectations, of course, was rewarded.

What another Geneva conference would involve is something that needs a lot of discussion. "Neutralization" is an attractive phrase; it would hold out the promise to Americans of both the end of most of their own cares in Vietnam and a certain guarantee that "the other side" will not reap a major advantage there. But is it achievable? Is the best way to achieve it by means of a big conference? Could a President on record as rejecting an "elegant bugout" swallow it, and sell it? Does it offer a better prospect to the United States than Mr. Nixon's current policy of gradually cranking the American presence in Vietnam down to a level that can be indefinitely sustained? It would be useful to hear the administration's considered views.

[From the New York Times, Mar. 29, 1970]

EDEN URGES CONFERENCE ON SOUTHEAST ASIA

To the EDITOR:

I write to express agreement with the suggestion in your March 26 editorial that the time has come for "a broader, high-level Geneva-style meeting to seek a comprehensive settlement, as at the 1954 conference."

Laos and Cambodia are sincere in their search for neutrality. And it is to the long-term advantage of the great powers concerned in the future of Indochina, United States, China and the Soviet Russia, that this neutrality should be respected and upheld.

They should therefore meet now with the other members of the 1954 conference to re-establish the neutrality of the two countries before these are finally eroded by the fighting in Vietnam. This last should, of course, also form part of the conference agenda and a supreme effort be made to secure a comprehensive and guaranteed solution of the Indochina war.

Admittedly the difficulties are formidable, but the alternative of a widening conflict is a warning signal which every influential capital should heed before it is too late.

AVON.

BOSTON, *March 26, 1970.*

(NOTE.—Lord Avon (Anthony Eden), former Prime Minister of Great Britain, was co-chairman of the 1954 Geneva Conference on Far Eastern Affairs.)

GENERAL DIPLOMATIC ACCORD NEEDED TO PREVENT ASIA WAR

(By Joseph Kraft)

You can't beat something with nothing even in Southeast Asia. So the myriad local forces working to widen the war there will win the day again unless there is developed an alternate course of events.

The obvious alternative is to move in the Geneva conference for a general diplomatic settlement covering Vietnam, Laos and Cambodia. And fortunately that approach is now being pushed in Washington.

Of the forces working to widen the war, the most important are the North Vietnamese. Their central political purpose is to create in South Vietnam a friendly regime, free of support by outside troops and disposed toward eventual unification. Hanoi is not making any progress in that direction at the Paris peace talks. Opinion in this country has ceased to generate irresistible pressure for peace. And Gen. Creighton Abrams' spoiler tactics impose on Communist military action in South Vietnam a cost Hanoi is not prepared to pay.

Instead the North Vietnamese have found cheaper ways to maintain military momentum and keep pressure on the United States. They moved thousands of troops into Laos and mounted a major attack there. More recently another cheap shot became available when a right-wing coup overthrew Prince Norodom Sihanouk in Cambodia. So the North Vietnamese, who had long used Cambodia as a base, went on the attack there too.

Hanoi's instinct for widening the war is shared with a vengeance by the regime of President Nguyen Van Thieu in Saigon. President Thieu's first interest is to try to deal the Communists a crushing military blow. His second is to keep American troops on the scene as long as possible. His third is to maintain the state of tension that justifies the repression he uses to keep the regime in power.

All three of these interests are served by military engagement with the North Vietnamese. And the best place for fighting the North Vietnamese is to hit them at their bases in Cambodia. Indeed the most prestigious military man in South Vietnam, Gen. Cao Van Vien, has long claimed he could win the war if he was allowed to take a bit of Cambodian territory.

So it was no surprise that the South Vietnamese stepped up their Cambodian border operations immediately after the coup in Pnom Penh ousted Prince Sihanouk. Indeed,

suspicious persons pleased to believe that coup was arranged from the outside would do far better to direct their inquiries to the Saigon government than to the Central Intelligence Agency.

Not that all Americans are so opposed to a little widening of the war. Ambassador Ellsworth Bunker and some American military commanders on the spot conceive that their mission is to put in place a pro-American, anti-Communist regime. As part of that mission, they have long itched to cross over into Cambodia and hit the Communist bases there. They are not even particularly bothered by the prospect of slowing down the rate of American troop withdrawal from Vietnam, if that is necessary to help the Saigon government.

So it is natural, not surprising, that American forces aided South Vietnamese troops in some of their recent forays into Cambodia. And it is equally natural, not surprising that American officials in Saigon should be talking, in the light of recent events, about stretching out the schedule for winding down American force levels.

With all these forces promoting a wider and deeper war it takes some doing to contain the conflict. After all what led to the deep American involvement in the first place was these very same local conditions. American leaders did not, as sometimes alleged, want to get into the war. They were backed in by the thrust of events. They didn't have the wit and political courage to take the decisive steps necessary for staying out.

That is roughly the position of the Nixon administration at this time. Unless the President takes decisive steps to contain the war, the force of events will push him into a wider conflict.

Exactly what steps to take are not in doubt. The central fact is that there is now serious military action in Vietnam, in Laos and in Cambodia. The Geneva conference, set up in 1954 and reconvened in 1962, offers a forum that covers all three countries. It should plainly be called again to seek a general regional settlement. The more so as it offers a way to move beyond the Paris peace talks that are now deadlocked, and subject to revival only if this country abandons its past position by sending a new, high-level negotiator.

Suggestions that this country follow the Geneva route have been pushed inside the State Department and the Defense Department at the assistant secretary level. They have apparently been blocked by a political consideration—namely that to go to Geneva is to deviate from the Vietnamization line to which the administrtaion has wedded itself.

But Vietnamization only creates conditions that work to widen the war. Wisdom lies not in holding tight to that policy, but in shifting to another before everybody comes to understand the Vietnamization line won't work.

Mr. PEARSON. Mr. President, I ask unanimous consent that the distinguished Senator from Oklahoma may be allowed an additional 5 minutes, so he may yield to me.

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

Mr. HARRIS. Mr. President, I am pleased to yield to the distinguished senior Senator from Kansas (Mr. PEARSON), cosponsor of the resolution calling for an Indochina-wide peace conference.

Mr. PEARSON. Mr. President, I join in this resolution, because it is my persuasion that efforts involving the interests of all of Indochina are necessary for a peaceful solution of the conflict there. Efforts made by Congress in this regard should be on a bipartisan basis. The conflict, which has cost so much of our treasure and our blood, the conflict, which has been such a burden upon the consciences of so many of our people, the conflict, which at times has confused the American role in world affairs and American purposes, is not only a war in Vietnam, but a conflict in all of Southeast Asia.

In offering this resolution, without any partisan motives, I do want to applaud the role of this administration. Since this administration has taken office, there has been a complete reversal in South Vietnam; 110,000 troops have been withdrawn. Approximately 12,000 are being withdrawn every month.

The anxiety was so great, the bitterness so deep, that when the President first took office there was a demand upon him to first renounce a military victory, and, second, to set forth a plan for withdrawal; to make that plan public and to implement it immediately.

The President did renounce a military victory. The President did have a plan for withdrawal. The withdrawal did proceed. But because of the necessity for flexibility and maneuverability not only in the military field but in the diplomatic corridors, that plan had to be conditioned on the stability of the Saigon government and its capacity to provide for their own defense and also the level of violence by North Vietnam.

In Laos, it seems to me, the administration has acted responsibly, in a condition where that nation is threatened and the neutrality of that nation hangs most precariously.

I think, as the majority leader said earlier, the low profile of the administration in Cambodia is one which merits our support.

So, indeed, as the distinguished Senator from Oklahoma pointed out, the past policy is one of frustration. It is in the interest of so many people, it is in the interest of so many nations, it is in the interest of the world, that we move to new and higher levels of efforts to achieve peace. I think the proposals made, not only by the French Government, but by the resolution under the leadership of the distinguished Senator from Oklahoma, would represent a forward step and indeed a new hope for peace.

Given the experience of Vietnam, the United States and other interested nations of the world will be judged by history as grossly delinquent and lacking in vision if we do not, at this time, take new initiatives to restore and then maintain the balance of peace in Laos and Cambodia.

Mr. HARRIS. Mr. President, I thank the distinguished Senator from Kansas for his statement and for his cosponsorship of the resolution.

Mr. MURPHY. Mr. President, I am particularly pleased to be in the Chamber at this time and to congratulate the Senator from Oklahoma and the Senator from Kansas for their cosponsorship of a resolution hopefully designed to find a solution to our problems in the Far East.

I spoke in this Chamber the other day about this subject. I spoke on the subject of the new war in Laos, and I pointed out that a reading of history will show that this is not a new war, but it is the same war, and always has been.

There is no great mystery to it. There is not secret about it. The information is there in the press for all to read. In Indochina it is the same war.

I hope as much as anybody that we could find a solution to it, but I am disturbed as we make the same approaches that were made time and time and time again: We will have another conference, we will sit down and talk, and, unfortunately, some people seem to point the finger of blame not at the troublemakers, not at those responsible for the war, but at those who are the victims of it. The people of Cambodia and Thailand and Laos and Vietnam did not want the war. It was forced upon them.

Then again, America is declared to be an imperialistic nation. We know this is Communist propaganda, but who answers it? Who permits the troublemakers in Moscow and Peking to continue? They are the ones responsible for the war.

The day they say, "We want peace," peace can be accomplished—an equitable peace. As I recited the other day, starting back with the great President John F. Kennedy, he and President Johnson carried on the commitments which we have made. We cannot walk away from those commitments. We have promised to protect those small nations from having the atheistic communism imposed upon them. We are properly there.

I have listened for a couple of years to discussions by some of my colleagues who maintain that we have no right to be in Vietnam. This is nonsense. We have every right to be in Vietnam. Our complete and total national honor is at stake, and we cannot walk away from that obligation, any more than we can walk away from the other treaties we have made. There is a point of national honor involved.

I have heard repeatedly the suggestion of a broad based government for South Vietnam. Mr. President, I was in South Vietnam when the present government was elected.

The ACTING PRESIDENT pro tempore. The Senator's 3 minutes have expired.

Mr. MURPHY. I ask unanimous consent to proceed for 2 additional minutes.

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

Mr. MURPHY. I went there at the request of President Johnson. I was permitted to go wherever I wanted, and look at the election. I can assure the Senate that more than 80 percent of the people who properly could vote in that election, in spite of the fact that the week before the election there were more than 1,000 atrocities committed to frighten the people away from the polls. I have told the story in this Chamber of the bomb that was set for another observer and myself in the town of Tuy Hoa, where 37 people were injured and three were killed. Of the 37 injured, 29 went to the hospital, had their injuries dressed, came back, and voted.

Let us press for further negotiations, but let us negotiate from the standpoint of fact and reality. Let us give up the

ridiculous theory that the people who caused the trouble are just going to go away spontaneously. Let us point the finger of accusation at those who started the trouble and those who can stop it any time they decide to.

I believe firmly, Mr. President, that the day that those in Moscow and Peiping understand that we are serious, that we are in dead earnest on this matter, will be the day when meaningful negotiations will be started.

I sincerly hope that those who propose this resolution—and I shall support it—do not intend to talk again about a so-called coalition government. That is not a new one. That has been a Communist tactic for 30 years—a coalition government, a troika: "you get two and we get one. Pretty soon we will have two and you have one, and then a little later we will have the entire government."

Mr. President, these people are determined to have a democracy, and they are entitled to it. I would suggest that we have meetings, and have further conferences, but let us not do what we did at Paris, and permit the ridiculous performance of an 8-week discussion, or longer, as to the shape of the table. Let us let the adversaries and those responsible know we are going to negotiate seriously, that we intend to come to the point, that we are going to talk about the issues and do it immediately, that there will be no more providing of a springboard or a forum for world propaganda to be used against us and against the people of Laos, South Vietnam, and the rest.

It is all part of the same war, Mr. President, and the Ho Chi Minh Trail is an integral part of it. I say again, as I have stated before: On November 1, 1968, we had almost interdicted that entire supply line. Then the bombing was stopped—I opposed it—and now the supply line is filled to brimming with supplies and materiel going down that road to kill American troops.

So, Mr. President, I am sorry to hear it said by a distinguished commentator in the New York Times that Vietnamization is not working. That is not in keeping with the facts that we on the Committee on Armed Services have been given by those who have the responsibility for the security of this Nation. They told us less than a week ago that it is working, and working well.

Mr. President, I am grateful for the opportunity to respond, and will support the resolution, but I intend to talk further about it, in the hope that we may finally approach this matter in the proper way.

Mr. President, I yield the floor.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF THE OFFICE OF STATE TECHNICAL SERVICES

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report of the activities of the Office of State Technical Services, for the fiscal year 1969 (with an accompanying report); to the Committee on Commerce.

REPORT OF THE MARITIME ADMINISTRATION

A letter from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Maritime Administration for fiscal year 1969 (with an accompanying report); to the Committee on Commerce.

TYPICAL ELECTRIC BILLS, 1969

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Senate, a copy of the publication "Typical Electric Bills, 1969" (with an accompanying document); to the Committee on Commerce.

STEAM-ELECTRIC PLANT CONSTRUCTION COST AND ANNUAL PRODUCTION EXPENSES, 1968

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Senate, a copy of the publication "Steam-Electric Plant Construction Cost and Annual Production Expenses, 1969" (with an accompanying document); to the Committee on Commerce.

REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND

A letter from the Board of Trustees of the Federal Hospital Insurance Trust Fund, transmitting, pursuant to law, the 1970 report of the fund (with an accompanying report); to the Committee on Finance.

REPORT OF BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND

A letter from the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, transmitting, pursuant to law, a report of the funds for 1970 (with an accompanying report); to the Committee on Finance.

REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

A letter from the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund, transmitting, pursuant to law, a report of the fund for 1970 (with an accompanying report); to the Committee on Finance.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on reductions achieved in the cost of transporting military mail from Okinawa to points in Southeast Asia, Department of Defense, dated March 31, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on overpayments to Army personnel resulting from weaknesses in payroll procedures, Department of the Army, dated April 1, 1970 (with an accompanying report); to the Committee on Government Operations.

PROPOSED EX GRATIA CONTRIBUTIONS FOR THE WELFARE OF THE INHABITANTS OF MICRONESIA

A letter from the Secretary of the Interior, transmitting a draft of proposed legislation to authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages during the Second World War, and to establish a Micronesian Claims Commission (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED PUBLIC LANDS LEGISLATION

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to amend the Act of September 19, 1964 (78 Stat. 986), as amended (43 U.S.C. sec. 1411–18), and the Act of September 19, 1964 (78 Stat. 988), as amended (43 U.S.C. 1421–27) (with an accompanying paper); to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION TO TRANSFER CHARLOTTE AND LEE COUNTIES FROM THE MIDDLE TO THE SOUTHERN DISTRICT OF FLORIDA AND HIGHLANDS COUNTY FROM THE SOUTHERN TO THE MIDDLE DISTRICT OF FLORIDA

A letter from the Acting Director, Administrative Office of the U.S. Courts, transmitting a draft of proposed legislation to amend title 28, United States Code, to transfer Charlotte and Lee Counties from the middle to the southern district of Florida and Highlands County from the southern to the middle district of Florida (with an accompanying paper); to the Committee on the Judiciary.

PROPOSED LEGISLATION TO AMEND THE COMMUNITY MENTAL HEALTH CENTERS ACT

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Community Mental Health Centers Act to repeal the requirement of grant approval by the National Advisory Mental Health Council (with an accompanying paper); to the Committee on Labor and Public Welfare.

PROPOSED HEALTH PROFESSIONS TRAINING AMENDMENTS OF 1970

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Public Health Service Act to extend for 1 year the programs of assistance for training in the allied health professions, and for other purposes (with an accompanying paper); to the Committee on Labor and Public Welfare.

FEASIBILITY STUDY, VISITOR PARKING FACILITIES AND PEDESTRIAN BRIDGE, WASHINGTON CHANNEL AREA

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a feasibility study for visitor parking facilities and pedestrian bridge in the Washington Channel area, dated March, 1970, (with an accompanying document); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. BYRD of Virginia):

A concurrent resolution of the Legislature of the State of Hawaii; to the Committee on Agriculture and Forestry:

"HOUSE CONCURRENT RESOLUTION NO. 24 REQUESTING ACTION TO PROVIDE ASSISTANCE TO THE UNITED STATES DEPARTMENT OF AGRICULTURE FRUIT FLY LABORATORY IN HAWAII FOR THE ERADICATION OF FRUIT FLIES IN HAWAII

"Whereas, fruit flies, including melon flies, cause considerable damage to crops in Hawaii, necessitating substantial costs to farmers for their control; and

"Whereas, the several types of fruit flies have been inadvertently introduced into California on more than one occasion, causing a threat to the agricultural industry of that state and other states; and

"Whereas, the problem is of concern to more than one state; and

"Whereas, the eradication of the fruit fly and other pests would result in benefits to producers in Hawaii and other states, to Hawaii-Mainland travelers, to agricultural inspection services, and to consumers; now, therefore,

"Be it resolved by the House of Representatives of the Fifth Legislature of the State of Hawaii, Regular Session of 1970, the Senate concurring, that the President of the United States, the Vice-President of the United

States, the Speaker of the United States House of Representatives, United States Senator Hiram L. Fong, United States Senator Daniel K. Inouye, United States Representative Spark M. Matsunaga, United States Representative Patsy T. Mink, and Mr. Clifford M. Hardin, Secretary of Agricultural, be, and hereby are, requested to promulgate any necessary administrative policies or enact any necessary legislation in order to increase the amount of federal assistance to the United States Department of Agriculture Fruit Fly Laboratory in Hawaii for the purposes of eradicating the several species of fruit flies in Hawaii; and

"Be it further resolved that duly certified copies of this Concurrent Resolution be transmitted to Richard M. Nixon, President of the United States; to Spiro T. Agnew, Vice-President of the United States; to John W. McCormack, Speaker of the United States House of Representatives, to each member of Hawaii's delegation to the United States Congress; to Mr. Clifford M. Hardin, Secretary of the United States Department of Agriculture; and to Dr. Derrel L. Chambers, Investigation Leader of the United States Department of Agriculture Hawaii Fruit Fly Laboratory at the University of Hawaii."

Resolutions of the General Court of the Commonwealth of Massachusetts; to the Committee on Commerce:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION ESTABLISHING A REGIONAL OCEAN INDUSTRY DEVELOPMENT COUNCIL

"*Whereas*, There exists an immediate need to coordinate all New England state authorities for the formation of development programs relative to commercial and sport fisheries and marine-related manufacturing, commerce, research, sport and education; and

"*Whereas*, The establishment of a Regional Ocean Industry Development Council, consisting of the New England Regional Council, the six New England States and area ocean industry organizations is essential for the long-range preservation and survival of the fishing industry; now, therefore, be it

"*Resolved*, That the General Court of Massachusetts hereby urges the Congress of the United States to enact legislation establishing a Regional Ocean Industry Development Council; and be it further

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

"Senate, adopted, March 9, 1970.

"NORMAN L. PIDGEON,
"Clerk.

"House of Representatives, adopted in concurrence, March 11, 1970.

"WALLACE C. MILLS,
"Clerk."

Resolutions of the General Court of the Commonwealth of Massachusetts; to the Committee on Commerce:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION FOR THE PROTECTION OF AND ASSISTANCE TO THE FISHING INDUSTRY OF THE COMMONWEALTH

"*Whereas*, The fishing industry of the commonwealth is rapidly deteriorating because of the ever increasing competition of fishing fleets from foreign nations; and

"*Whereas*, These foreign fleets are indiscriminately disregarding the preservation and normal existence of the fishing grounds which have heretofore been the natural source of supply for the fishing fleets of the commonwealth; now, therefore, be it

"*Resolved*, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation to assist and protect the fishing industry of the commonwealth and to eliminate unfair and destructive fishing operations and practices of foreign fishing fleets; and be it further

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

"House of Representatives, adopted, March 5, 1970.

"WALLACE C. MILLS,
"Clerk.

"Senate, adopted in concurrence, March 10, 1970.

"NORMAN L. PIDGEON,
"Clerk."

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

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION PROVIDING FOR THE FINANCING OF MASS TRANSIT COSTS BY USING THE FEDERAL HIGHWAY FUND

"*Whereas*, In view of rising mass transit costs, the determination of a source best suited to meet such costs throughout the United States has become essential; now, therefore, be it

"*Resolved*, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation providing for the financing of mass transit costs by using the federal highway fund; and be it further

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

"Senate, adopted, March 5, 1970.

"NORMAN L. PIDGEON,
"Clerk.

"House of Representatives, adopted in concurrence, March 10, 1970.

"WALLACE C. MILLS,
"Clerk."

Resolutions of the General Court of the Commonwealth of Massachusetts; to the Committee on Government Operations:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ESTABLISH A DEPARTMENT OF CONSUMERS AFFAIRS ADMINISTERED BY A SECRETARY WHO SHALL BE A MEMBER OF THE PRESIDENT'S CABINET

"*Resolved*, That the General Court of Massachusetts respectfully urges the President of the United States and the Congress to take such legislative action as may be necessary to establish a new department which shall be known as the Department of Consumers Affairs, to be administered by a Secretary of Consumers Affairs who shall be a member of the President's Cabinet; and be it further

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

"Senate, adopted, March 10, 1970.

"NORMAN L. PIDGEON,
"Clerk.

"House of Representatives, adopted in concurrence, March 12, 1970.

"WALLACE C. MILLS,
"Clerk."

Resolutions of the General Court of the Commonwealth of Massachusetts; to the Committee on the Judiciary:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO APPROVE THE PROPOSED CONSTITUTIONAL AMENDMENT ABOLISHING THE ELECTORAL COLLEGE AND PROVIDING FOR THE ELECTION OF THE PRESIDENT AND VICE PRESIDENT BY POPULAR VOTE

"*Whereas*, The United States House of Representatives has, on September 18, 1969, approved overwhelmingly the proposed constitutional amendment abolishing the Electoral College and making the total popular vote decisive in the election of the President and Vice President; and

"*Whereas*, This proposed amendment must be ratified by the state legislatures of three quarters of the states to become effective, which requires the immediate attention and affirmative action of the states in order to affect the 1972 Presidential election; and

"*Whereas*, It is urged that the members of the Senate join their colleagues in the House of Representatives in approving this much needed electoral reform program in order that each Presidential election more closely reflects the popular outcome; now, therefore, be it

"*Resolved*, That the Massachusetts Senate respectfully urges the Congress of the United States to approve the proposed constitutional amendment abolishing the Electoral College and providing for the election of the President and Vice President by popular vote; and be it further

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

"Senate, adopted, March 18, 1970.

"NORMAN L. PIDGEON,
"Clerk."

A resolution adopted by the Baltimore City Council, Baltimore, Md., praying for the enactment of legislation relating to stemming the flow into this country of men's clothing manufactured in countries under extremely substandard wage conditions; to the Committee on Finance.

PETITIONS

Mr. PASTORE. Mr. President, I ask unanimous consent that certain resolutions adopted by the Senate of the State of Rhode Island, be printed in the RECORD and referred to the appropriate committees.

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

The resolutions presented by Mr. PASTORE were referred, as follows:

To the Committee on Armed Services:

REQUESTING THE RETENTION OF THE SEABEES AT DAVISVILLE, NORTH KINGSTOWN, R.I.

Whereas, The State of Rhode Island has, since their inception during World War II, been the home of the Atlantic Seabees and since the people of Rhode Island have great admiration and respect for the families and men that comprise the Seabee forces, the government and the people of Rhode Island would be most unhappy should the Navy Department decide to move existing Seabee forces out of this State and sharply reduce operations at the Davisville Seabee center, now therefore be it

Resolved, That the State of Rhode Island does strongly object to any move on the part of the United States Navy to shift any Seabee operations from the Seabee center at Davisville to Gulfport, Mississippi, or to any other Seabee center presently constituted, and be it further

Resolved, That the United States Navy completely utilize the outstanding facilities already existing at the Davisville Seabee center and not expend millions of sorely needed defense dollars in rebuilding a hurricane demolished facility at the Gulfport center in Mississippi, and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit to the senators and representatives from Rhode Island in the Congress of the United States and the Secretary of the Navy duly certified copies of this resolution.

To the Committee on Commerce:

MEMORIALIZING CONGRESS TO MAKE EVERY EFFORT TO PREVENT THE OCCURRENCE OF ATTACKS ON PILOTS OF AIRLINES WHILE IN FLIGHT

Whereas, Captain Robert Wilbur and Copilot James E. Hartley were attacked by an armed passenger while making a landing of an Eastern Airlines flight with seventy-three passengers aboard on Tuesday evening, March 17, 1970, at Logan International Airport and such attack resulted in the wounding of the captain and the death of the copilot,

Resolved, That Congress be respectfully requested to take appropriate steps to recognize the brave and gallant action taken by these pilots in performance of their duty in making a safe landing while under such attack, and

Resolved, Further, that Congress be respectfully requested to enact appropriate legislation or take other action to seek to prevent the occurrence of attacks on pilots of airlines while in flight, and,

Resolved, That the Secretary of State be and he hereby is authorized to transmit duly certified copies of this resolution to the Rhode Island delegation in Congress.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. HOLLAND, from the Committee on Agriculture and Forestry, with an amendment:

S. 2484. A bill to amend the Agriculture Marketing Agreement Act of 1937 to authorize marketing agreements providing for the advertising of Hawaiian papayas (Rept. No. 91–755).

By Mr. AIKEN, from the Committee on Agriculture and Forestry, with amendments:

S. 3598. A bill to amend section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended, to authorize the Secretary of Agriculture to furnish financial assistance in carrying out plans for works of improvement for land conservation and utilization, and for other purposes (Rept. No. 91–754).

BILLS INTRODUCED

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

By Mr. HARRIS:

S. 3666. A bill to modify the project for Kaw Reservoir, Arkansas River, Okla., to provide for the construction of power generating facilities; to the Committee on Public Works.

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

By Mr. CRANSTON (for himself and Mr. MURPHY):

S. 3667. A bill to provide for the establishment of the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park; to the Committee on Interior and Insular Affairs.

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

By Mr. HART:

S. 3668. A bill to amend the Interstate Commerce Act in order to prohibit for a 1-year period any discontinuance or change in the operation or service of trains providing passenger service; to the Committee on Commerce.

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

By Mr. HRUSKA:

S. 3669. A bill for the relief of Robert Jean Yves LeBars; to the Committee on the Judiciary.

By Mr. MURPHY:

S. 3670. A bill for the relief of Man Fong Chan Cheung; to the Committee on the Judiciary.

S. 3666—INTRODUCTION OF A BILL TO MODIFY THE PROJECT FOR THE KAW RESERVOIR, ARKANSAS RIVER, OKLA.

Mr. HARRIS. Mr. President, I introduce for appropriate reference, a bill to modify the project for the Kaw Reservoir, Arkansas River, Okla., to provide for the construction of power generating facilities.

This legislation was introduced in 1968 and referred to the Committee on Public Works. It is recommended by the Department of the Army, and is intended to modify the Kaw Reservoir project which is currently under construction on the Arkansas River. The Kaw Reservoir was authorized by Public Law 87–074 substantially in accordance with the recommendations of the Chief of Engineers as set forth in Senate Document No. 143, 87th Congress. Initial construction funds were appropriated in fiscal year 1966.

The installation of generation facilities in the Kaw Project is not authorized at this time. The project document (S. Doc. No. 143, 87th Cong.), however, indicated that further study of the power aspects would be concurrently with preconstruction planning of the project. In addition, the authorizing act provides:

That penstocks and other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam authorized in this Act for construction by the Department of the Army when approved by the Secretary of the Army on the recommendation of the Chief of Engineers and the Federal Power Commission.

Studies made by the Corps of Engineers under the authority indicated above show that inclusion of power generating facilities during the initial construction of the project is fully justified. Power revenues from the project will be sufficient to cover all costs of marketing and production and will amortize the investment allocated to power within 50 years. If the inclusion of generation facilities is authorized at this time the costs will amount to $7,300,000. If not, if no authority is given to the Corps of Engineers to include generation facilities during the initial construction phase of the project, the cost to add generation facilities at some future time will be in the neighborhood of $8,200,000. Thus, the enactment of the bill I introduce today will bring about an initial savings of some $900,000.

The Corps of Engineers has recommended that a 25,000-kilowatt power installation be included in the initial construction of this project. The authority granted under the bill I introduce today would enable the Corps of Engineers to proceed with the construction of this generation facility. As I said earlier, authorization is urged by the Department of the Army. I, therefore, urge the enactment of this legislation.

The ACTING PRESIDENT pro tempore (Mr. BYRD of Virginia). The bill will be received and appropriately referred.

The bill (S. 3666) to modify the project for Kaw Reservoir, Arkansas River, Okla., to provide for the construction of power generating facilities, introduced by Mr. HARRIS, was received, read twice by its title, and referred to the Committee on Public Works.

S. 3667—INTRODUCTION OF A BILL TO ESTABLISH THE EUGENE O'NEILL NATIONAL HISTORIC SITE

Mr. CRANSTON. Mr. President, I introduce, for appropriate reference, a bill to establish the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park. I am pleased to have my distinguished colleague, the senior Senator from California (Mr. MURPHY) join me as a cosponsor.

Tao House in Danville, Calif., was the residence of Eugene O'Neill from 1937 to early 1944. It was at Tao House that O'Neill wrote all of his last and probably best plays including "The Iceman Cometh," 1939; "Long Day's Journey Into Night," 1940; "Hughie," 1941; and his final play, "Moon for the Misbegotten," 1943. While at Tao House, he also wrote scenarios for a number of plays and revised "A Touch of Poet."

O'Neill lived at Tao House for more than 6 years—longer than he lived anywhere else. He called Tao House his "final home and harbor." With his wife, Carlotta Monterey, O'Neill designed the house. It was built with the cash award of $40,000 which O'Neill received when he won the Nobel Prize for Literature in 1936. The house contains 22 rooms and the estate covers 158 acres. The O'Neills called the residence "Tao House" after the Chinese philosophy, Taoism, which stresses the natural life of harmony, simplicity, and peace. Not only in its name does the Tao House invoke a kind of oriental magic. The architecture also revears a strong Chinese influence.

In addition, the house emphasized the Taoist sense of inwardness, which O'Neill felt himself. Although the house faced east across the valley toward Mount Diablo, its hall was so designed that the mountain could only be seen reflected in darkened mirrors. In this setting, O'Neill turned inward to interpret the tragedies of his own early life and create his own tragic drama, "Long Day's Journey Into Night."

There is always some danger in proclaiming an artist's greatness too soon after his death. The ages have a way of discovering the genius overlooked by his peers and, conversely, of deflating the overblown excesses of a period's adulation for its passing heroes.

But regardless of where time eventually ranks Eugene O'Neill in the hierarchy of American literary giants, there is no question that he is a solid literary figure of great creativity and that his works will remain an important study in the field of American letters.

Mr. President, an excellent article, "The California Years of Eugene O'Neill," appeared in the December 1966 issue of California Monthly. I ask unanimous consent that it be printed at this point in the RECORD.

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

THE CALIFORNIA YEARS OF EUGENE O'NEILL

(By James Schevill)

The California years of Eugene O'Neill are little known, partly because of the playwright's passion for privacy, and partly because all of the books about O'Neill to date have been written by easterners who have not visited the house that O'Neill and his wife built near Danville. In this house he wrote all of his last and best plays, including his greatest work, *Long Day's Journey Into Night*.

O'Neill and his wife, Carlotta, left their home in Georgia toward the end of 1936 and traveled to Seattle. The damp climate in the north-west did not suit O'Neill's precarious health. In 1937 they moved to the San Francisco Bay Area. After living in the East Bay in Lafayette, they planned and built a house near Danville, facing Mount Diablo. They called it Tao House, after the Chinese *Tao* meaning *the right way of life*, which the O'Neills had inscribed on the gate to their new home. Disillusioned with Western civilization, O'Neill had become more and more interested in Oriental culture. The beautiful house that he and his wife built embodied the sympathy that they felt for the traditions of the Far East.

Several years ago I visited Tao House with Travis Bogard, one of the most perceptive critics of O'Neill's work and the current chairman of the Drama Department at the Berkeley campus. Tao House was then called Corduroy Hills Ranch. The owners, Mr. and Mrs. Hugh G. Miller, had bought it from the O'Neills. In homage to O'Neill, they kept in the name of their ranch some of the playwright's feeling for the landscape. O'Neill had spoken to them of the "corduroy quality of these hills."

The Millers had refurnished the house mostly in Nineteenth Century French style, but traces of the original Chinese conception remained. Although the exterior was designed in the familiar California-Spanish style, the roof tiles were shaped to resemble oriental tiles. Behind the house O'Neill had constructed a twisting, curved walk in the spirit of the Chinese proverb that evil travels only in a straight line. The interior revealed the strongest Chinese influence. During the O'Neills' occupancy, the house was decorated mostly with Chinese furnishings from Gumps in San Francisco. In his bedroom O'Neill slept in a high Chinese opium bed. Downstairs the walls were painted white to contrast with brilliant blue ceilings. Stone tiles in the front hall led to wooden floors painted black in imitation of teakwood. Two old Chinese dragons carved in teakwood guarded the foot of the staircases leading to the second floor.

Since the O'Neills had traveled widely, the house of course reflected other interests when they lived there. Along with the Chinese furnishings, they had several pieces of French furniture, a Mexican tin chandelier in the hall, and some Mexican tin masks on the wall. In a small downstairs room, which O'Neill called "Rosie's Room," was an old nickelodeon piano (given to him by his wife) with a bowl of nickels beside it. Almost every room had at least two sets of bookshelves crammed with an immense variety of books that revealed the playwright's wide interests. Due to their fame, their desire for privacy, and their introspective interests, the O'Neills kept the house singularly enclosed for a California house. On the wall of the living room, which the Millers opened into a window facing the extraordinary view of Mount Diablo across the valley, the O'Neills hung a large, Navy-blue mirror. They placed many mirrors throughout the house and put up venetian blinds to add to their sense of enclosed privacy. Some of the inevitably curious townspeople spied on O'Neill; there was even a report of an eager hairdresser focusing a spyglass on the house. Mrs. O'Neill's eyes bothered her at time and this added to their desire for seclusion. In his comfortable, panelled study on the second floor, O'Neill began to write his final series of plays in a swivel chair at a high desk, facing a window through which he could see the towering shape of Mount Diablo. The irony of the end of his career was that all of his last plays were written in a house decorated with images of the Chinese search for tranquility, but staring at a mountain haunted by Spanish-American legends of his early Catholic faith, a mountain called Diablo. It is no wonder that these plays reflect an unresolved conflict of opposites so representative of the melting pot of American experiences.

The Chinese influence in O'Neill's last plays has been almost ignored by the critics. Many writers have pointed out the central theme in the late plays, the contrast between reality and fantasy, the idea that man through his "pipedreams" of fantasy creates an imaginary world that enables him to endure the tragedies of existence. Tom F. Driver, in a sensitive article in the December, 1958, issue of The Tulane Drama Review says: "O'Neill's question, which in the late plays became sharper and more accurately perceived, was simply how man, bereft of faith and divine assistance, might confront the inevitability of death . . . The mood of the late O'Neill combines Romanticism and Stoicism." Driver's view, as with many O'Neill critics, is that although the late plays are O'Neill's best work, they represent a philosophical nihilism that rejects the Christian sources of Western civilization. Many critics add their belief that the slow failure of O'Neill's health was the major cause of the nihilism in these final plays. The truth is more complex.

In 1932 and 1933 at his home on Sea Island, Georgia, O'Neill wrote *Days Without End*. It was produced by the Theatre Guild in New York in January, 1934, and was a critical and financial failure. However, some critics were pleased because they felt the play revealed a return to O'Neill's boyhood Catholicism. The final scene shows Jo Loving standing in a church "with his arms stretched up to the Cross, an expression of mystic exultation on his face." He has become whole and the corpse of his other dead self lies "at the foot of the Cross, like a cured cripple's testimonial offering in a shrine." Later, according to Barrett H. Clark, O'Neill changed his mind and said to George Jean Nathan that the "Hero's final gesture called for alteration." O'Neill's search for a faith still rooted in Christianity had been unsuccessful. In his new California home, Tao House, his work began to reflect another influence.

Alan W. Watts says in the opening chapter of his book, *The Way of Zen*:

"Taoism is generally a pursuit of older men, especially of men who are retiring from active life in the community. Their retirement from society is a kind of outward symbol of an inward liberation from the bounds of conventional patterns of thought and conduct. For Taoism concerns itself with unconventional knowledge, with the understanding of life directly, instead of in the abstract, linear terms of representational thinking."

As an older man at Tao House, O'Neill had retired from the Broadway "show shop," as he called it with contempt. He had begun the most ambitious project of his life, an immense cycle of plays called *A Tale of Possessors Self-Possessed*. At first he thought of five plays, then eight, nine, and, at last in 1941, eleven.

The cycle was to trace the progress of an American family, and through its various descendants the rise and collapse of the dream of democracy. In 1946 at a press conference, speaking of the cycle, O'Neill said:

"I'm going on the theory that the United States, instead of being the most successful country in the world, is the greatest failure . . . because it was given everything, more than any other country. Though moving as rapidly as it has, it hasn't acquired any real roots. Its main idea is that everlasting game of trying to possess your own soul by the possession of something outside of it, too. America is the prime example of this because it happened so quickly and with such immense resources. This was really said in the Bible much better. We are the greatest example of 'For what shall it profit a man, if he shall gain the whole world, and lose his own soul?' "

Although the interviewers seized on the Biblical quotation, shortly after this statement O'Neill told his friend, Barrett H. Clark, that the same philosophy could also be found in the teachings of Buddha, Lao Tzu, and Mohammed, as if to emphasize his turning away from purely western concepts. In his enormous cycle, *A Tale of Possessors Self-Possessed*, O'Neill, as the title indicates, was handling a theme of the opposites. This theme represented to him not only the tragic conflict of western thought, but also the lure of eastern Taoism in which the opposites are presented as complementary, not irreconcilable. In the *Tao-te ching*, which O'Neill valued so highly, Lao Tzu wrote:

"When the people of the world all know
beauty as beauty,
There arises the recognition of ugliness.
When they all know the good as good,
There arises the recognition of evil.
"Therefore:
Being and non-being produce each other;
Difficult and easy complete each other;
Long and short contrast each other;
High and low distinguish each other;
Sound and voice harmonize each other;
Front and behind accompany each
other . . . ."
(Translated by Wing-tsit Chan.)

In Tao House, O'Neill hoped that he had created a sanctuary where his new blending of eastern and western thought would enable him to create his most important work. The tension was too great. The advent of World War II and his increasingly poor health shattered in his struggle to unify his sympathy towards Taoism with the conflicts of American society. Yet in this impossible struggle for a synthesis of eastern and western thought, O'Neill achieved a new dimension in his plays. This new dimension is the sense of learning to balance good and evil, to endure the raging polarities of existence, to reconcile pipe dream and reality. If the surface theme in these plays always seems to be the gap between pipe dream and reality, the deeper theme is always the necessity of reconciling them. Erie Smith, the small-time gambler in O'Neill's last, brilliant one-act play, *Hughie*, written in Tao House in 1941, describes the peace that he found with the dead night clerk:

"Yeah, Hughie lapped up my stories like they was duck soup, or a beakful of heroin. I sure took him around with me in tales and showed him one hell of a time. And, d'you know, it done me good, too, in a way. Sure, I'd get to seein' myself like he seen me. Some nights I'd come back here without a buck, feeling lower than a snake's belly, and first thing you know I'd be lousy with jack, bettin' a grand a race. Oh, I was wise I was kiddin' myself. I ain't a sap. But what the hell, Hughie loved it, and it didn't cost nobody nothin', and if every guy along Broadway who kids himself was to drop dead there wouldn't be nobody left. Ain't it the truth, Charlie?"

Edwin A. Engel, in his sumulating book, *The Haunted Heroes of Eugene O'Neill*, writes that "The abiding theme of his plays

was the struggle between life and death." This is much truer of the earlier plays than the later ones. In the last plays there is far more acceptance of the energy of the world, in the Tao sense, as being impersonal and eternal.

Behind the uneasy, western conscience of the characters who still cry for individual salvation, lies a world where the conflict between reality and fantasy can be resolved only if selfishness and worldly power are suppressed in favor of a simpler, more objective, Taoist way of life. It is no accident that most of the characters in the late plays live in a relatively timeless world of desire and imagination. They are cut off from the world of time by their inability or their unwillingness to fit into the practical materialistic nature of American society. One of the stages of Taoism is to find the source of power which reconciles a man with the Tao, the universal energy which unites the opposites and permits one to escape the earthly limitations of time and environment.

Consequently, the major characters in the late plays turn away from the practical demands of time, but they are unable to fit into the timeless world of spiritual values because they are still part of a dissolving western society rooted in the search for material possessions and a self-centered salvation.

I do not mean to imply that the Chinese Taoist influence is dominant in the last plays, merely that it is strongly there. It is mixed particularly with the sense of "fate," which O'Neill derived from Greek tragedy, and with the sense of "pity," which came from his Catholic background. The striking interest of O'Neill's final plays is their widening out beyond national barriers into an area where various religions and philosophies flow together.

As opposed to existentialist drama, God is still present as a shaping force, but a strangely different complex God composed of many different international influences.

The true condition of O'Neill's health while he wrote these late plays in Tao House has never been told, but it needs to be known to appreciate the remarkable courage and dedication of purpose with which these plays were written. Too often the pessimism and nihilism of the late plays have been stressed; a viewpoint that ignores the extraordinary courage and determined work schedule that he could not have maintained without his new philosophical perspective.

His father, James O'Neill, was a famous actor, constantly on the road. O'Neill complained of an abnormal diet during childhood. He claimed that he even had rickets at one time. The endless traveling from one city to another became intolerable. At one school in New England, where his parents placed him for several terms, he hated the passing of each day because it brought him closer to the end of the term and the loss of a secure school routine. As a result of his childhood, he developed poor eating habits and suffered from attacks of gastritis. Coming from a family of hearty drinkers, he began to drink heavily. This resulted finally in continuous liver attacks symptomized by a toxic feeling, yellow eyes and depression. By 1943 these attacks were coming every two or three weeks. He also suffered at times from bladder irritation. His weight in 1943 was down to 138 pounds—this for a man who was five feet eleven inches tall. The tremor in his hands, which he had suffered for many years, had grown increasingly severe. This affliction bothered him most of all because it interfered with his writing. For many years it was called a "Parkinsonian tremor," or "a sign of Parkinson's Disease," although his doctors decided finally that it was not Parkinson's but a rare, similar disease.

In 1943 O'Neill's doctor was the highly regarded Oakland physician, Dr. Fletcher Taylor. Dr. Taylor, who became a friend of O'Neill's and admired him greatly, did everything possible to ease the play-wright's suffering so that he could work. At night O'Neill had to take sedatives constantly. He still had trouble sleeping. Often he would wake early in the morning, depressed. His wife would make coffee for him. Mrs. O'Neill has been criticized for keeping O'Neill in extreme seclusion during these years. The fact remains that she served as a devoted nurse, performing many unpleasant tasks for a sick man who required isolation if he was to manage any work. In 1943, the last real year of O'Neill's career, he was still writing determinedly three to three and a half hours every morning. His handwriting had grown smaller and smaller in a vain attempt to control the tremor, but his great courage kept him at his desk.

Already by 1939 he was afraid of a complete collapse and wrote to his friend, Clayton Hamilton: "I felt a sudden necessity to write plays I'd wanted to write for a long time and that I knew could be finished." These plays were *The Iceman Cometh* (1939); *Long Day's Journey Into Night* (1941); *Hughie* (1941), the only one-act play he finished from a contemplated group of one-act plays to be called *By Way of Obit;* and *A Moon for the Misbegotten* (1943). What has not been noticed sufficiently is that these final plays have their own cyclical unity. Discarding the impossible task of creating an American epic by tracing the tangled history of one family. O'Neill took his own family and wrote the stories of their misfortunes. The result is a far more moving and valid representation of American destiny than he could ever have accomplished in his projected cycle. Some day it would be revealing for an American theater to produce five of the last plays in the following sequence: *A Touch of the Poet, More Stately Mansions, The Iceman Cometh, Long Day's Journey Into Night,* and *A Moon for the Misbegotten. A Touch of the Poet* and *More Stately Mansions,* written in 1936 and 1938–39, are the only two plays left from the projected long cycle, *A Tale of Possessors Self-Possessed.* The other three plays follow naturally because of the family theme. Such a sequence progresses from a more objective, historical view of the nature of the American family to a subjective, contemporary view of family ties and illusions. In *A Touch of the Poet* and *More Stately Mansions,* the European tradition of class differences creates an agonizing conflict in early Nineteenth Century America between the public dream of democratic equality and the private desire of materialistic wealth and power. The other three plays reveal the contemporary collapse of the family, its retreat into the pipe dreams of security that make the members of a family cling together despite their increasing separation from any essential connections with society. Together all of these plays are a powerful indictment of American family life presented with mature insight and a rare compassion.

Driving today to Danville, one travels on the new freeway past Walnut Creek. In the short time since the O'Neills left Tao House in 1943, because of O'Neill's poor health and their inability during the war to hire adequate help, everything has changed. Many of the old ranches and orchards have been leveled. The six-lane, divided freeway stretches like a giant, moving chain-belt through new, hastily built communities. Everywhere real estate is the dominant force, selling and shaping the land to the illusion of materialistic security against which O'Neill warned. Where are the roosts in these tract homes, the traditions that make a real family life possible? In this rapidly changing area everything seems restless, temporary, exposed to the family pipe dreams which O'Neill examined so thoroughly in his last plays written here. From the rooftops countless television antennae proclaim a new kind of "show-shop." Visiting the lost sanctuary that O'Neill hoped he and his wife had created in Tao House, a sanctuary that vanished under the pressure of ill-health and war. I felt a new understanding of O'Neill's attempts to come to terms with the American past and the family pipe dreams of our society. In an ideal home, at the peak of his career, he hoped that he had found the peace of maturity that would enable him to write the impossible American epic, to reconcile the . . . contradicting stands of American experience. This proved to be impossible, but what he did accomplish was to find the extraordinary compassion of his last plays which enabled him to write about the disasters of his own family with such forgiveness, a forgiveness for his own guilt as much as for the guilt of his family. These Christian ideals, forgiveness and pity, combined, as I have tired to point out, with an eastern acceptance of the Taoist balance of good and evil to create his last and greatest plays.

As I left O'Neill's lost home, I thought that every American playwright today must still measure himself against the depth and ambition of O'Neill. All of the recent, familiar critical warnings about O'Neill's limitations are of little consequence. Ponderous, sentimental at times, an awkward prose writer who tended to bathos rather than the incisive metaphorical insight that marks the great writer—these faults cannot disguise the achievement. Driving away from Tao House, I thought it is relatively easy to be clever and entertaining on the television screen or stage, to decorate surface feelings, but who is willing to make the sacrifices that O'Neill made to bring a sense of grandeur to the American theater? What playwright, or artist in any field, has the will to ignore commercial pressures and carry out a continuous series of experiments come what may over a period of many years? To be sure O'Neill was fortunate in winning financial success early in his career so that he had time to work freely and ignore commercial projects. Nevertheless he was able to survive financial success and to continue with his experiments, good and bad. His work remains with all of its flaws and merits to remind every young, ambitious American artist of the essential ideals and perils of ambition.

As O'Neill said: "It is the Furies within that seek to destroy us."

What redeems us, as he reveals in his last plays, is the rare quality of compassion and the attempt to understand and live with the mingled nature of good and evil. If we admire in O'Neill his unique, final explorations of family pipe dreams, we honor in him also his contempt for the cynical, degraded standards of the "show-shop," his respect for the art of theater that can transform and exalt man.

Mr. CRANSTON. Mr. President, Tao House is a significant element in the American literary heritage of the 20th century. I believe we have a responsibility to preserve it for future generations. Therefore, I am proposing that there be established a Eugene O'Neill National Historic Site.

There is another aspect of the O'Neill estate which argues that we should legislate its preservation. The house sits high on the eastern slope of Las Trampas Ridge. Behind the house and over the ridge into the watershed of Bollinger Canyon, there lies a primitive area of several thousand acres which, I believe, should be maintained as open space both for conservation and for recreational purposes. Here within 15 miles of the urban core of Oakland and Alameda can be found open hills of oak and mountain laurel.

Unless this area is set aside for the benefits of the general public, its attractiveness as a site for California's ubiquitous subdivisions will soon lead to its residential development. Therefore, I propose that the Secretary of the Interior be instructed to establish a Las Trampas Ridge National Park, which will include the Eugene O'Neill National Historic Site.

It seems to me that this proposal is particularly appropriate in light of President Nixon's program to develop national parks and other recreation areas in close proximity to large urban populations.

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

The bill (S. 3667) to provide for the establishment of the Eugene O'Neill National Historic Site and the Las Trampas Ridge National Park, introduced by Mr. CRANSTON (for himself and Mr. MURPHY), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

S. 3668—INTRODUCTION OF A BILL RELATING TO CHANGE IN THE OPERATION OR SERVICE OF CERTAIN TRAINS

Mr. HART. Mr. President, the Senate Commerce Committee on March 12 ordered favorably reported a bill which would authorize the establishment of a national rail passenger system and would provide Federal subsidies to help maintain the passenger trains required adequately to provide such a service. Today that bill has been reported to the Senate.

It seems to me not only desirable but imperative that pending congressional action on this remedial legislation, we place a moratorium on further discontinuance of passenger train service.

Accordingly, I am today introducing a bill to bar passenger train discontinuance for 1 year. This would give the Congress an opportunity to act on the rail passenger service legislation.

The bill I am introducing today would cover applications now pending at the Interstate Commerce Commission or proposed during the next year.

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

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

The bill (S. 3668) to amend the Interstate Commerce Act in order to prohibit for a 1-year period any discontinuance or change in the operation or service of trains providing passenger service, introduced by Mr. HART, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13(a) of the Interstate Commerce Act is amended by inserting at the end thereof the following:

"(3) No carrier subject to this part shall discontinue or change the operation or service of any train providing passenger service during the one year period beginning on the effective date of this paragraph. The elapse of any period of time for the purpose of paragraph (1) and (2) of this section shall be suspended during such year but shall continue thereafter."

ADDITIONAL COSPONSORS OF BILLS

S. 1631

Mr. HANSEN. Mr. President, on behalf of the Senator from California (Mr. MURPHY), I ask unanimous consent that, at the next printing, the name of the Senator from Idaho (Mr. JORDAN) be added as a cosponsor of S. 1631, to amend and supplement the Federal reclamation laws relating to the furnishing of water service to excess lands.

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

S. 3418

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Texas (Mr. YARBOROUGH) I ask unanimous consent that, at the next printing, the name of the junior Senator from Maine (Mr. MUSKIE) be added as a cosponsor of S. 3418, to amend the Public Health Service Act to provide for the making of grants to medical schools and hospitals to assist them in establishing special departments and programs in the field of family practice, and otherwise encourage and promote the training of medical and paramedical personnel in the field of family medicine.

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

S. 3522

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

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

S. 3616

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Maryland (Mr. TYDINGS), I ask unanimous consent that, at the next printing, the name of the Senator from Texas (Mr. YARBOROUGH) be added as a cosponsor of the bill (S. 3616), a bill to amend title I of the Omnibus Crime Control and Safe Streets Act to provide direct financial assistance to units of local government upon which the presence of the Federal Government has produced additional law enforcement burdens.

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

SENATE RESOLUTION 383—RESOLUTION SUBMITTED TO EXPRESS THE SENSE OF THE SENATE FOR AN INDOCHINA CONFERENCE

Mr. HARRIS (for himself and Mr. PEARSON) submitted a resolution (S. Res. 383) to express the sense of the Senate for an Indochina Conference, which was referred to the Committee on Foreign Relations.

(The remarks of Mr. HARRIS when he submitted the resolution appear earlier in the RECORD under the appropriate heading.)

ADDITIONAL COSPONSOR OF RESOLUTION

S. RES. 376

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Texas (Mr. YARBOROUGH) I ask unanimous consent that, at the next printing, the Senator from Maryland (Mr. TYDINGS) be added as a cosponsor of Senate Resolution 376, authorizing the Committee on Labor and Public Welfare to study research activities conducted to ascertain the causes and develop cures to eliminate cancer.

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

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

S. CON. RES. 58

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Missouri (Mr. EAGLETON) I ask unanimous consent that, at the next printing, the name of the Senator from Texas (Mr. YARBOROUGH) be added as a cosponsor of Senate Concurrent Resolution 58, expressing the sense of Congress that the administration should reverse its high interest rate policy, and that the Federal Reserve Board should take steps to gradually roll back the prime interest rate to 6 percent.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, April 2, 1970, he presented to the President of the United States the enrolled bill (S. 227) to provide for loans to Indian tribes and tribal corporations, and for other purposes.

AMENDMENT OF PUBLIC HEALTH SERVICE ACT RELATING TO MODERNIZATION OF CERTAIN HOSPITALS AND OTHER MEDICAL FACILITIES—AMENDMENT

AMENDMENT NO. 576

Mr. COTTON. Mr. President, I send to the desk, to be laid on the table, to be printed, an amendment to H.R. 11102, to amend the provisions of the Public Health Service Act relating to the construction and modernization of hospitals and other medical facilities by providing separate authorizations of appropriations for new construction and for modernization of facilities, authorizing Federal guarantees of loans for such construction and modernization and Federal payment of part of the interest thereon, authorizing grants for modernization of emergency rooms of general hospitals, and extending and making other improvements in the program

authorized by these provisions, and ask that it be printed.

The ACTING PRESIDENT pro tempore (Mr. BYRD of Virginia). Without objection, the amendment will be received and printed and will be on the table.

EXTENSION AND IMPROVEMENT OF CERTAIN AGRICULTURAL COMMODITY PROGRAMS—AMENDMENT

AMENDMENT NO. 577

Mr. BURDICK submitted an amendment, intended to be proposed by him, to the bill (S. 3068) to improve farm income and insure adequate supplies of agricultural commodities by extending and improving certain commodity programs, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

NOTICE OF HEARINGS ON JUDICIAL REFORM ACT BILLS

Mr. TYDINGS. Mr. President, as chairman of the Judiciary Committee's Subcommittee on Improvements in Judicial Machinery, I wish to announce hearings for the consideration of S. 1506, 1509, 1510, 1511, 1512, 1513, 1514, 1515 and 1516. These bills would provide for improvements in the administration of the courts of the United States, and for other purposes.

The hearings will be held on April 9, 1970, at 10 a.m., and on April 13, 1970, at 3 p.m., in the District of Columbia Committee hearing room, 6226, New Senate Office Building.

Any person who wishes to testify or submit a statement for inclusion in the record should communicate as soon as possible with the Subcommittee on Improvements in Judicial Machinery, room 6306, New Senate Office Building.

NOTICE OF HEARINGS ON NOMINATION OF FRED J. RUSSELL

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Washington (Mr. JACKSON), I ask unanimous consent that a statement by Mr. Jackson, together with a biographical sketch of Mr. Fred J. Russell, be printed at this point in the RECORD. Mr. Jackson's remarks have to do with the Russell nomination hearings set for Monday, April 6.

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

STATEMENT OF SENATOR JACKSON

As Chairman of the Committee on Interior and Insular Affairs, I would like to announce that the Committee will conduct an open public hearing Monday, April 6, on the nomination of Fred J. Russell to be Under Secretary of the Department of the Interior.

As you know, the President has nominated Mr. Russell, a California businessman, to succeed Russel E. Train. Mr. Train has been appointed Chairman of the recently established Council on Environmental Quality.

The hearing will start at 10 a.m. in our Committee hearing room, 3110 of the New Senate Office Building.

BIOGRAPHY OF FRED J. RUSSELL, UNDER SECRETARY-DESIGNATE, DEPARTMENT OF THE INTERIOR

Residence: 143 North Arnaz Drive (Apartment 4), Beverly Hills, California 90211.

Born: June 9, 1916 at Edmonton, Alberta, Canada of U.S. citizen parents.

Marital status: Single.

Education: Graduated from Monrovia-Arcadia-Duarte High School, Monrovia, California. College credits from University of California Extension Division in Economics, General and Advanced Accountnig, Cost Accounting, Auditing, Commercial Law.

Military service: Private in U.S. Marine Corps Reserve, 13th Battalion, Fleet Marine Corps Reserve, from November 4, 1935 to expiration of enlistment and honorable discharge on October 22, 1939.

Employment: 1935. Apprentice—South Pacific Company (railroad), Los Angeles, California.

1936–43. Many jobs—Douglas Aircraft Co., Inc. (aircraft), Santa Monica, California.

1943–45. Assistant Works manager, Plant Manager—Timm Aircraft Corp. (aircraft), Van Nuys, California.

1946–68. President and General Manager—Weiser Co. and several subsidiaries (door locks, builders' hardware), Southgate, California; Burnaby, British Columbia, Canada; Mexico City, Mexico.

1949–58. Builder—various companies (individual houses, apartments, and 571-unit Wherry Act military housing project), Southern California.

1956–58. President—Gabriel Steel Co. (steel joists, basement construction products, industrial racks and tote boxes), Detroit, Michigan.

1949–present. Developer, Operator—Southland Water Co., Mira Loma Water Co., Mira Loma Farms (public utility water production and distribution; irrigation water production and distribution), Norwalk and Mira Loma, California.

1949-present. Own, expand, operate for rent—various companies or individual entities (industrial properties, apartments, individual houses, shopping centers), Southern California; Fresno, California; Wichita, Kansas.

1969-present. Deputy Director, Office of Emergency Preparedness, Executive Office of the President, Washington, D.C. (Presidential Appointee).

ADDITIONAL STATEMENTS OF SENATORS

THE CARDINAL'S MESSAGE

Mr. BROOKE. Mr. President, on Easter Sunday this year Richard Cardinal Cushing, an outstanding theologian and spiritual leader not only of New England but of the world, delivered a particularly moving and beautiful Easter message.

Cardinal Cushing has a rare gift for taking a Christian message and making it meaningful for all mankind. This year, the Cardinal spoke of reconciliation and rebirth. Far from being cast down in spirit by the divisions which plague our land, Cardinal Cushing sees these times as offering a rare opportunity to show mercy and to forgive. He speaks of reaching out to those in need, of expanding the horizons of human experience, and giving more fully of ourselves.

This is an Easter sermon which should be read by all Americans. I ask unanimous consent that it be printed in the RECORD.

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

THE CARDINAL'S MESSAGE

Following is the text of the Eastern sermon by Richard Cardinal Cushing prepared for delivery at Holy Cross Cathedral at the 10 a.m. Mass today:

We are accustomed to speak of Easter as the Third Day. It is an ancient phrase but one full of meaning. Without Friday, the day of death, and Saturday, the day of darkness, Sunday, the day of the resurrection would be without meaning. It is out of death and darkness that the risen Lord comes to us, having defeated death and dispersed the darkness. As we stand in the midst of the splendor of Easter morning we celebrate the end of three days during which our redemption was won through the cross, the tomb and the resurrected Jesus.

We cannot fail to think of this day in terms of new life, for Jesus Christ truly died, and on the third day was raised up. It is in this spirit that we celebrate at this season the sacrament of baptism, for in this sacred rite we are, in the Lord's own words, "born again of water and the Spirit." In baptism, we enter, as it were, the tomb and emerge from it reborn. This theme of "new life" has implications for all of us, for Easter is not an event of man's distant past but a recurring mystery that must continue to challenge every Christian.

There is, first of all, the fact of the resurrection itself. We do not often recall how the disciples themselves scoffed at the women's stories that they had seen the Lord. St. Luke tells us, quite simply, "they could not believe them." Peter himself who hastened to the tomb and saw the empty shroud could only register dismay. We all know that Thomas doubted the direct testimony of his fellow apostles after Jesus appeared to them. It was not easy even then to accept the awesome fact that life had conquered death, that the Lord's promises concerning himself had been fulfilled. From the beginning it required men of faith who could see here at work God redeeming the creatures of his own hand. No less today is it true that the empty tomb does no more than confound us, unless we look upon it with eyes of faith and come to believe the holy women when they say, "We have seen the Lord!"

But even belief is not enough if a new life does not transform us and make us new men. Just as the cross may be said to have been the end of a road, so the resurrection is the beginning of a new one. "Putting on Christ," in St. Paul's phrase, is a good deal more than wearing the livery of the Master, much more than assuming the uniform of the church militant. There must be an inner transformation that must actually make us Christ-like, make us live as Christ did. The resurrection by which man's redemption was sealed calls for a new life in all of us, not just a new way of life, but a real rebirth in Christ.

Perhaps this year we should dramatize this notion of beginning, of newness, by doing something unprecedented in our life as a nation. These are troubled times, we know, times that in another age would have been called "out of joint." I think especially this morning of the problems of the young: they are bewildered, confused, protesters against a world they are reluctant to inherit. They want peace but they are caught up in violence; they seek beauty but find it only in rags and drugs; they search for love and all they can discover is sex. So very badly they need the "new life" of which we have been speaking, so desperately driven they should have the chance to make a new beginning.

Would it be too much to suggest this Easter that we empty out our jails of all the protesters—the guilty and the innocent—without judging them; call back from over the border and around the world the young men who are called "deserters," drop

the cases that are still awaiting judgment on our college youth? Could we not do all of this in the name of life, and with life hope, both of which we celebrate at Easter? Wherever our young people, even for reasons we do not know, stand in need of mercy let us reach out to them. The fruit of Easter is reconciliation and so much of our world remains unreconciled; the hope of Easter is our salvation and so many are waiting to be saved.

I call upon all those who hear these words to seek and find new life for their weary souls, and to offer new life to others in the spirit of this great feast. When we believe and hope in Christ we cannot any longer stand still; we heard the good news and must follow Jesus. How good for us to know that He goes before us into Galilee!

EXPLANATION FOR PROBABLE ABSENCE FROM SENATE ON CARSWELL VOTE

Mr. BENNETT. Mr. President, everyonce in a while a very efficient staff moves too fast for the Senator it serves.

Senator PELL, of Rhode Island and I have been appointed by the Vice President to represent the Senate as advisers to the U.S. Delegation to the Third Annual Meeting of the Board of Governors of the Asian Development Bank.

In order to fill this assignment, we have been invited to leave with the Secretary of the Treasury on Saturday, April 4. The vote or votes on the Carswell nomination will come after that date. Since Senator PELL and I, if we remained in Washington, would cancel each other's vote and thus not affect the final outcome, we have planned to go, if possible. We had planned to make a joint statement to the Senate, either today or tomorrow and I prepared my statement for that joint appearance. My staff decided that, since the statement was ready for today, it should be released to the press, which has been done.

In the meantime Senator PELL expressed to me his feeling that we should wait until at least 3 p.m. tomorrow—Friday—to guard against any unforseen contingency which would require one of us to cancel the trip, which would automatically keep the other home also.

I regret that this natural mistake occurred, but it did. Under the circumstances, it seems necessary for me to validate the release by getting it into the RECORD today but with the clear understanding that our final joint decision will still be held up until tomorrow afternoon at which time it will be jointly announced, as planned.

I ask unanimous consent to have the text of the statement printed in the RECORD.

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

EXPLANATION OF ABSENCE

Mr. President, the Secretary of Treasury and the Vice President of the United States have designated me as official Congressional Adviser to the United States Delegation to the Third Annual Meeting of the Board of Governors of the Asian Development Bank.

As the ranking Republican member of the Senate Banking and Currency Committee and also as a member of the Senate Finance Committee, I have accepted this gracious request to represent the United States Government at this important meeting which will be held in Seoul, Korea, next week.

In order to get to the meetings on time and in order to make some necessary stops to meet with members of the Japanese Government, the official party—including some six or eight members of the other body—must necessarily leave Washington, D.C., on Saturday, April 4.

This, of course, will necessitate my being absent from the Senate on Monday when the first votes are held on the nomination of G. Harrold Carswell. My position in favor of Mr. Carswell is perfectly clear and on the record. Had I been able to be here Monday, I would cast my vote against the recommittal attempt by Mr. Carswell's opponents; and if this fails, then had I been able to be here on Wednesday when the final vote would be taken, I would have voted for confirmation.

Knowing, of course, how close this vote might be, I would like to make it clear to the Senate that I am not leaving myself uncovered, so to speak, on this vote. The Senator from Rhode Island, Senator Pell, has also been invited to attend these important meetings in the Far East, and he will be on the same aircraft with us.

I have discussed this matter with Senator Pell, and we have an agreement that if present he would vote for the recommittal motion and against the Carswell nomination. I, as I have said, am on the other side of this issue. Consequently, we have agreed on a "pair" since our votes will cancel each other out.

I should also point out to the Senate that if, for some unforeseen reason, either Senator Pell or I find it impossible to join the Secretary of Treasury on Saturday and if either of us cannot go then the other Senator, most certainly, will remain behind as well.

I have discussed this arrangement with the White House, with the proponents of Mr. Carswell, with the opponents and with the Senate leadership, and all of us have agreed that this arrangement is satisfactory with all concerned.

I wanted to make this matter clear for the record and to explain my necessary absence on Monday and Wednesday of next week.

YARBOROUGH CALLS FOR ADDITIONAL FUNDS FOR VETERANS HOSPITAL AND MEDICAL CARE

Mr. YARBOROUGH. Mr. President, I commend the President for his request of an increase of $50 million in the 1971 Veterans' Administration budget for veterans medical care. I was also gratified by his decision to seek an additional $15 million for veterans medical care during this fiscal year. Never have such increases been more needed. Every week more than 500 men are wounded in Vietnam. About 12½ percent of these wounded veterans are permanently and totally disabled. Many more require long periods of hospitalization and intensive medical treatment. To meet this increasing demand for first-class medical and hospital care, it is imperative that we provide sufficient funds to increase the number of hospital beds in our Veterans' Administration hospitals and to hire the medical staff necessary to treat the wounds of these veterans.

Although an increase of $50 million is certainly a step in the right direction, I believe that the hearings that have been conducted by the Subcommittee on Veterans' Affairs of the Labor and Public Welfare Committee clearly show the need for larger appropriations to meet the current need of wounded Vietnam veterans.

I also urge the President to reinstate the 5,000 hospital beds that were recently closed by the Veterans' Administration and also to go forward with the construction of new Veterans' Administration hospitals, such as the 760-bed Veterans Hospital in San Antonio, Tex., for which construction funds were appropriated in the 1970 budget but which have been frozen by the administration. That hospital is badly needed; its delay is tragic for the veterans.

VETERANS' MEDICAL CARE

Mr. HANSEN. Mr. President, a matter of deep concern for all of us is that our sick and disabled war veterans should receive adequate medical care.

As many of us know, the Veterans' Administration hospital system has been confronted with many difficulties in carrying out that commitment, and its ability to meet future needs has been seriously impaired.

So I am sure we all will welcome President Nixon's announcement today that he has approved an increase of $50 million in the VA's medical budget for the 1971 fiscal year and authorized the VA to seek an additional $15 million in funds for the remainder of this fiscal year.

In a statement announcing this, the President said:

To those who have been injured in the service of the United States we owe a special obligation. I am determined that no American serviceman returning with injuries from Vietnam will fail to receive the immediate and total medical care he requires.

I applaud that statement of a full commitment for the care of our veterans and I am sure that Congress will respond in a similar fashion.

Mr. President, I ask unanimous consent that the President's statement appear at this point in the RECORD.

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

STATEMENT BY THE PRESIDENT ON VETERANS MEDICAL CARE

For a number of years, the Veterans Administration hospital system has been experiencing increasing difficulties in providing a full range of services for the care of sick and disabled veterans. As a result of past decisions, the ability of the VA hospital system to meet future needs has been seriously impaired.

Action must now be taken now to insure that eligible veterans will receive the medical care they require.

When I appointed Donald E. Johnson to be Administrator of Veterans Affairs last June, I directed him to make a thorough review of the veterans medical care program; to identify the problems, analyze the causes, take such immediate corrective steps as appropriate, and recommend a total medical care program appropriate for future needs. He has completed that review, and today he reported his findings.

I am pleased that the Administrator and his new management team have taken a number of immediate administrative steps to improve the quality of the veterans medical care program. However, his review shows that additional funds are required immediately if the VA is to meet its obligations

to veterans requiring medical attention. *Therefore, I have approved an increase of $50 million in the VA's medical care budget request for fiscal year 1971—which makes it $210 million more than the approved appropriations for fiscal year 1970—and have authorized the VA to seek from Congress an additional appropriation of $15 million for the remainder of this fiscal year.* These requests will enable the VA to improve medical care for all eligible veterans, particularly for those suffering from battle injuries.

This Administration is committed to providing quality medical care for every eligible veteran.

BACKGROUND OF THE PROBLEM

A 1968 law required the Veterans Administration to reduce its staff to the mid-1966 level. This deprived the VA's medical care program of several thousand workers in all categories of the health services professions at a time when the VA requirements for such personnel were growing steadily.

Last September, to meet this problem, I raised VA's personnel ceiling by 1,500, even though employment authorizations for other Federal agencies were then being reduced by 51,000. I also approved the VA's fiscal 1971 appropriations request for an additional 2,100 medical care employees.

Even more health services personnel will be required in the immediate future to meet the special problems presented by an increasing number of Vietnam Era dischargees and the increasing scope and complexity of health care delivery systems.

THE VIETNAM ERA VETERAN

Men and women with service in the Armed Forces since the onset of the Vietnam conflict are being discharged in steadily increasing numbers. The annual rate of separations grew gradually from 531,000 in calendar 1965 to 958,000 in 1969. In 1970 and 1971, the annual rate will climb well above one million.

Many of those now leaving the Service suffer from wounds received in combat and are discharged directly into VA hospitals. Currently 7% of the patients in VA hospitals and 9% of VA out-patient treatment cases are Vietnam Era veterans. These percentages are expected to rise during the next few years. Also, all Vietnam Era veterans are entitled to VA dental care in the year following separation from service. Due to the increasing discharge rate, the demands for such treatment have led to an abnormally high backlog. Additional funds are required to correct this situation.

Better battlefield care and faster evacuation of the war wounded have resulted in a high incidence of patients with multiple amputations and spinal cord injuries in VA hospitals. Special hospital centers, with more staff than usual, are required for the care and rehabilitation of these patients.

These new developments combine to impose greater than normal demands upon the professional staffs of VA hospitals and clinics and require both more personnel and and an increased range of specialized skills.

SPECIALIZED MEDICAL PROGRAMS

As medical knowledge expands, the techniques for saving lives becomes more complex, more specialized, and more expensive. For several years, the VA has identified for separate funding and control a group of 23 "Specialized Medical Programs," including Coronary/Intensive Care Units, Hemodialysis Centers, Organ Replacement Centers, and Pulmonary Emphysema Units. These innovations in VA hospitals and clinics pioneer the latest advances in diagnosis and treatment.

The VA's efforts to make these programs available throughout its hospital system have been constrained by lack of funds. For example, there is presently an insufficient number of Coronary/Intensive Care Units in the VA hospital system. Such units reduce mortality in heart attack cases by 15 to 30 percent; every eligible veteran should have access to these life-saving facilities.

Administrator Johnson also has found that the VA has not had the funds to open and operate a sufficient number of Prosthetics Treatment Centers and Spinal Cord Injury Centers for severely wounded veterans from Vietnam.

These Specialized Medical Programs are not only important to the veterans who benefit directly from them, they are also important to America because the veterans medical care program consistently has been a leader in the development of innovations of great importance to our total health delivery system.

Concern for the nation's older veterans is an integral part of the VA's specialized medical care mission. These patients will require greater number of chronic care and nursing care beds as the veteran population continues to age.

OTHER PROBLEMS

Administrator Johnson has identified a number of other problems affecting the veterans medical care program. Most of these have been brought on by a combination of inflationary pressures and budgetary restrictions. These include a reduction in supporting services available in VA hospitals as compared to many non-governmental hospitals; deferrals in the purchase of replacement equipment; stretch outs of maintenance and rehabilitation projects; and curtailment of the construction program to modernize or replace outdated VA hospitals.

The VA's potential as a clinical training resource has been neglected. Fuller reliance on the VA's system of 166 hospitals for medical education purposes would not only improve the VA's position—as a consumer of health services personnel—but would also help the entire nation meet its requirements in the health manpower area.

THE STEPS WE ARE TAKING

Solution of many problems related to the veterans medical care program will take time—even if we had all the necessary funds immediately.

We must, however, find early solutions to the more pressing problems which directly involve patient care. These include—

The need for increased staffs to serve existing Specialized Medical Programs, especially those concerned with care of wounded Vietnam veterans;

The need to open and adequately staff and equip more centers under these programs;

The need to bring the backlog of Vietnam veteran dental care cases within normal operating levels;

The need to provide additional nursing care beds for older veterans.

The $15 million supplemental appropriation which I have authorized would be expended in April, May and June to clear up the excessive backlog in Vietnam veterans dental claims; improve the staffing of existing Specialized Medical Programs, especially the Spinal Cord Injury Centers and the Coronary/Intensive Care Units; carry out plans for taking hemodialysis units into the homes of veterans suffering from serious kidney ailments; and help meet increased costs of needed drugs and medicines.

The VA's budget request already submitted to Congress for the fiscal year to commence in July would provide extra staff to activate 121 additional bed units for Specialized Medical Programs and to open an additional 1,155 nursing care beds, a 28% increase in this program.

The new request for $50 million would be used to increase the staffs of VA hospitals and clinics; to improve further the staffing of the Spinal Cord Injury Centers and other important Specialized Medical Programs; to purchase seriously needed operating equipment; and to absorb rising drug and medical costs.

OTHER STEPS TO IMPROVE MEDICAL CARE

Beyond these requirements for additional funds, a number of steps have been taken to improve the veterans medical care programs.

New Management Team—An entirely new top management team for the VA's Department of Medicine and Surgery, headed by Dr. Marc J. Musser has been appointed. This group has the talent, the initiative, and the outlook to develop and carry out needed improvements in veterans medical care.

Improved Management Controls—Streamlined management controls over the widespread operations of the VA, including its system of 166 hospitals have been established. By merging the fiscal audit, internal audit and investigation services, more frequent audits and faster investigations into complaints will be possible.

Improved Management of Hospitals.—The management at each VA hospital is being evaluated and, a number of replacments in hospital directors, assistant directors, and chiefs of staff have already been made. Other personnel changes will be made as the need is demonstrated. A new program to upgrade the managerial skills of those in charge of the hospitals will make possible greater decentralization of appropriate authority to hospital directors. An executive recruitment and development program to provide for future hospital leaders will be undertaken and a program for simplification of paperwork procedures and other hospital administrative practices is underway.

Study of Future Needs.—A comprehensive study of the future needs of the veterans medical care is continuing to insure that developing problems will be identified early and analyzed as to their significance to the program.

Closing Health Manpower Gap.—The VA, in coordination with other interested agencies, will explore new approaches to the problem of closing the gap in the nation's critical health manpower situation. This will include studies to improve techniques of training health services personnel, improvements in health delivery systems, increased sharing of expensive and short-supply medical equipment by hospitals in the same community, and the potential for the establishment of new medical schools in conjunction with VA hospitals.

COMMITMENTS TO FULFILL

To those who have been injured in the service of the United States, we owe a special obligation. I am determined that no American serviceman returning with injuries from Vietnam will fail to receive the immediate and total medical care he requires. This commitment will require more than dollars to redeem; it will require sound management of existing VA facilities, wise use of existing personnel and equipment, and—most importantly—a sensitivity to the needs of our veterans, personal as well as medical. Administrator Johnson and his staff have a keen appreciation of these requirements. We, as a people, have commitments to our veterans, and we shall fulfill them.

ERVIN CITES NEED FOR ACTION ON CRIMINAL JUSTICE ACT AMENDMENTS

Mr. ERVIN. Mr. President, in 1964 Congress exhibited commendable foresight and good judgment by enacting the Criminal Justice Act to make meaningful and effective assistance of counsel a reality for the poor. The preamble to that law states the act's laudable purpose in these words:

To promote the cause of criminal justice by providing for the representation of defendants who are financially unable to ob-

tain an adequate defense in criminal cases in the courts of the United States.

Unquestionably, substantial progress has been made toward that goal since the act became effective on August 20, 1965. However, unless we act promptly on pending legislation, we shall soon find ourselves in the embarrassing position of undermining that worthy objective by our own inertia.

Notwithstanding the success of the 1964 act, it has become increasingly apparent that refinements and changes are required. S. 1461, a bill which the Senator from Nebraska (Mr. HRUSKA) introduced for himself and for the Senator from Arizona (Mr. GOLDWATER), the Senator from Massachusetts (Mr. KENNEDY), and myself, would alter the act to meet today's demands and the requirements of the foreseeable future in the field of criminal justice. It would change the Criminal Justice Act by expanding its coverage, by permitting use of defender organizations in areas with a heavy caseload and by increasing compensation for appointed counsel.

While all three of those changes are essential, the second and third are of particular concern to the National Legal Aid and Defender Association at the present time. That organization has worked at the forefront for many years in the struggle to achieve the same objective we are striving to attain through the Criminal Justice Act and S. 1461. The association's national defender project has funded a number of pilot criminal defender organizations which have not only rendered meaningful and effective legal representation to poor criminal suspects in busy judicial districts but which have also been vitally important allies in our study of the Criminal Justice Act of 1964 and the need to amend it. Moreover, the national defender project and the organizations it has sponsored have provided a solid foundation on which similar organizations can build.

National defender project funds have now been almost completely exhausted, and these highly successful pilot programs must soon close their doors to the financially disadvantaged unless Congress acts on S. 1461. Directors of several of these organizations provided informed and essential testimony at our hearings in June of last year as did the president of the National Legal Aid and Defender Association, Maynard J. Toll. It is quite plain that the vital work of these organizations can continue if S. 1461 is passed.

There are many persuasive reasons why we should consider and adopt S. 1461. However, I feel that the predicament of our pioneer defender organizations should be brought to the attention of the Senate immediately in light of a recent letter from President Toll to the Senator from Mississippi (Mr. EASTLAND), chairman of the Senate Judiciary Committee, who has in turn showed the letter to me. That letter enclosed a National Legal Aid and Defender Association Executive Committee resolution citing the urgent need for passage of S. 1461. I ask unanimous consent to have printed in the RECORD both the letter and the resolution. S. 1461 is now pending before the full Judiciary Committee, and I am hopeful that committee action is imminent so that the Senate can consider this important legislation without delay.

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

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION,
Chicago, Ill., February 6, 1970.

Re S. 1461—Amendments to the Criminal Justice Act of 1964.

Hon. JAMES O. EASTLAND,
Chairman, U.S. Senate Judiciary Committee, Washington, D.C.

DEAR SENATOR EASTLAND: On January 26, 1970, the Executive Committee of the National Legal Aid and Defender Association adopted a Resolution urging prompt Congressional action on the above-reference bill co-sponsored by Senators Ervin and Hruska. A copy is enclosed for your information.

In adopting this Resolution, the NLADA responded to reports of serious financial crises facing several criminal defender programs initially founded by the National Defender Project of NLADA which expired in December 1969.

As you may know, the NLADA and the American Bar Association have strongly endorsed the purposes of this important legislation and it was my privilege to appear with a representative of the ABA to present testimony at hearings of the Subcommittee on Constitutional Rights on S. 1461 in June 1969. No opposition to the bill has come to my attention and the arguments for its enactment as developed in the Subcommitee hearings are most compelling.

On behalf of the National Legal Aid and Defender Association and its member organizations throughout the country, I respectfully request your support in securing prompt and favorable action on this legislation by the Judiciary Committee and the United States Senate.

Sincerely,

MAYNARD J. TOLL,
President.

RESOLUTION ADOPTED BY NLADA EXECUTIVE COMMITTEE JANUARY 26, 1970

Whereas, the National Legal Aid and Defender Association has heretofore endorsed Senate Bill 1461 and House Bill 9856; and

Whereas, the beneficial objectives of these bills are being frustrated by the failure to adopt same; and

Whereas, a number of existing criminal defender programs initially funded by the National Defender Project (including three of the most outstanding ones) are in serious jeopardy because of such failure;

Now, Therefore, Be It Resolved by the Executive Committee of the National Legal Aid and Defender Association that this Association respectfully calls this grave situation to the attention of the Congress and urges that the pending legislation be adopted as speedily as possible.

SOCIAL SECURITY BENEFITS TENNESSEE

Mr. GORE. Mr. President, tomorrow will mark a significant day for thousands of Tennesseans as they receive their first social security check reflecting the 15-percent increase that Congress voted last December. I was pleased to be a cosponsor of that measure to assist our retired citizens in combating ever-rising prices on food, clothing, and housing.

The 15-percent increase in social security benefits was, of course, retroactive to January 1, 1970, and later this month, social security recipients will be mailed a separate check to reflect the extra payments due for January and February.

This 15-percent increase in these benefits is of great significance to the State of Tennessee. It means millions of dollars per year in badly needed funds to the over 500,000 Tennesseans who are social security beneficiaries. In 1970, Tennesseans will receive almost $500 million in social security benefits, $65 million of which represents the new 15-percent increase. In 1971, Tennesseans will receive $74 million more than they would have received had the Congress not acted to increase social security benefits. Mr. President, this is an increase of over $6 million per month that will go into the hands of Tennesseans and will buttress the economy in the State of Tennessee. In a time when we may be witnessing a recession in the midst of inflation these social security funds provide a needed and welcome stabilizing economic force in my State.

But as important as the increase in social security benefits is from an economic standpoint, the true importance of this increase is even better understood in the lives of individual people. In Tennessee each person receiving social security benefits will get an average increase of $130 per year as a result of the 15-percent boost. This means that each social security beneficiary will have $10.83 per month more with which he can provide the necessities of life. In 1971, the 15-percent increase will mean an increase of $148 per year on the average, or $12.33 per month.

These figures represent funds badly needed by over 500,000 Tennesseans who are struggling to live on a fixed budget in times of rising costs. More important, these funds will enable elderly Tennesseans and widows raising children to live in the dignity they have all earned.

As pleased as I am that April 3 will mark a day of happiness for so many thousands of Tennesseans, I must also urge that Congress not rest in its effort to provide social justice. I will be working in the weeks ahead to increase the minimum social security benefits to $100 per month as provided in my bill S. 3658. And I will be calling on the Senate to take a permanent step to provide cost of living adjustments in social security benefits as provided in my bill S. 1739.

But these are steps for the future, and today, I am pleased to note the advances that we have made. As my fellow Tennesseans rejoice in the increased benefits to which they are entitled, I pledge my continued efforts to make the social security system in this country a model for all the world.

THE NOMINATION OF G. HARROLD CARSWELL TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. SMITH of Illinois. Mr. President, I rise to inform my colleagues of my position on the nomination of G. Harrold Carswell to be Associate Justice of the Supreme Court of the United States.

Before I do that, however, I would like to reflect briefly upon the whole course of Senate consideration of this nomination. That course engenders some seri-

ous doubts about our handling of the confirmation process at least in the mind of this Senator. I fear that the conduct of proceedings in the Carswell matter, just after similar conduct in the Haynsworth matter, may leave our President, and our Nation, hard pressed to find any man of stature willing to have his name submitted for appointment to the Court. The detractions, vilifications, and untruths scattered across the public record about these two men give their opposition, in and out of the Senate, little to be proud of and leave their supporters, in and out of the Senate, little to gain in a victory.

Do not mistake what I say. Every man who aspires to an office at the pinnacle of responsibility and public confidence ought to be able to stand inspection in the white light that informed public opinion and careful Senate investigation generate. But the objective should be a positive one: building a Supreme Court of high-quality jurists worthy of the trust and confidence of the entire American people. In recent months, that objective has been blurred. It may have been erased completely. Such terms as "stopping Carswell" and "beating the President at his own game" have become common. Accusations of bad faith have bounced around the Senate Chamber and across the headlines of the Nation's press. To what end? The basic facts about Judge Carswell were developed in the Judiciary Committee's hearings. Little of value has been added to the public's or the Senate's knowledge about the nominee since.

Whatever the outcome of the votes we take next week, I hope we can look back over the rubble of these past months and resolve that we shall not again see such bloodletting on a matter as fundamental as a Supreme Court nomination.

Now let me turn to the question of the Carswell nomination itself. I have no brief for Judge Carswell, except my vote, which I shall cast in favor of confirming him. I shall vote against the motion to recommit the question to the Judiciary Committee.

I have never met Judge Carswell. I have read only so much of his published opinions and writings as was necessary to conscientiously prepare for the exercise of my responsibility to vote on the question.

He is not my selection. But he is the selection of the President of the United States, who has the constitutional duty to make the selection. The President was recently elected by the American people, elected after a campaign in which he promised to restore stability and dignity in the law of our land. His constitutional power to appoint is broad and clear. Ours to advise and consent is less so. If our duties were as broad as some of our colleagues have suggested, we might never advise and consent to a nomination. On the question of our duty, I join with those Senators who believe that it is rather narrow. We should vote to advise and consent to the President's nominee unless some good and sufficient reason arises to move us otherwise. No such reason has arisen in this case, in my judgment, despite the petty and unfair efforts of some to conjure it up.

Mr. President, it is one thing to say that you have not heard of a man, or that you do not agree with him. It is quite another to argue from your failure to have met a person, or to have seen him published in scholarly journals, or to have read of him as a champion of one cause or the other, that he lacks distinction. This is especially true of a Federal judge, whose time and principal attention should belong to the work of his court, not to socializing, or writing for the journals, or leading public crusades. It is one thing to say that you do not agree with a man or that some others you deeply respect do not, but it is quite another to conclude that he is insensitive to an issue, simply because you disagree with him philosophically.

Two principal charges have been leveled against Judge Carswell: First, he is not distinguished and, second, he is a racist.

The question of distinction is an interesting one, going to the very heart of one's views of a judge's role. In my mind, Judge Carswell is certainly not a part of the establishment of the bench and bar. Members of that establishment, I think, tend to measure distinction in jurists by the number of lectures they give or roundtables they attend, by their writings on a variety of issues in scholarly journals, by a certain style of judicial opinion that renders it quoteworthy, by an interest in public affairs that prompts one to extrajudicial associations with public officers or national figures. Each of these activities is in itself good, and many distinguished judges participate in one or more of them. Judge Carswell is not a distinguished jurist in this narrow, limited sense.

I believe, and the great majority of his colleagues on the courts that he has served believe, the Committee on the Federal Judiciary of the American Bar Association believes, attorneys across the Nation believe, and the President of the United States believes, that Judge Carswell is qualified for appointment as an Associate Justice of the Supreme Court of the United States. That in itself is no mean distinction.

Only one other important question has been raised about Judge Carswell's fitness for the Supreme Court; whether he is or is not a racist or one insensitive to racial justice. As a youthful candidate for office, some 22 years ago, Harrold Carswell uttered clearly racist statements. They were sentiments that ill-befitted a man seeking public office at that time or at any time. I do not condone them. He has repudiated them.

Between that time and this he is alleged to have linked his name to an organization formed for the purpose of circumventing the desegregation of a public facility. Yet Judge Carswell has testified that his purpose in joining the founders of the golf club was innocent and not motivated by personal desire to exclude black men from the club. When hearsay and speculation and no direct evidence are weighed in the balance against the word of a public officer who has candidly submitted to cross-examination on a question, he must indeed be given full credibility. The opposition has clearly failed to sustain its burden on this issue.

Finally, it appears to me, as the newest Member of this body, that new and different issues have recently been added to the advise and consent process. In the Haynsworth matter, the alleged issue was conflicts of interest. In the Carswell matter the alleged issue was ability and capacity for growth. Many of my constituents have asked me whether all public officials should be as carefully screened on these qualifications. And I wonder about that.

I intend to support the nomination of Judge Carswell.

PAY RAISE FOR POSTAL EMPLOYEES MUST NOT BE TIED TO POSTAL REORGANIZATION BILLS

Mr. YARBOROUGH. Mr. President, it should now be apparent to everyone, even the highest officials in the Post Office Department, that the only way to solve the dispute with the postal employees is to separate the matters of pay raise and the attempts to impose on this country a postal corporation, or a Post Office Department reorganization.

The present crisis came about simply because the administration tried to blackjack the postal employees into giving up their status as Federal employees and help the administration set up a corporate post office instead of a Government post office as the price of an earned pay raise.

Last fall, the House of Representatives voted a postal pay increase. Last December, the Senate voted a pay increase for postal workers. Our dedicated postal workers are grossly under paid. A pay raise is long overdue. I believe that recent events have dramatized to the American people just how unfair the pay scales for postal employees are.

The American postal workers handle more pieces of mail per day and handle it more efficiently than any other postal employees in the world. America sends and receives more than 84 billion pieces of mail a year—more mail than all the rest of the world combined sends and receives in 1 year. With this fabulous record of quantity and quality of service, why were the postal employees not granted a pay raise last year?

These people did not get their pay raise because the administration had the mistaken idea it would bludgeon its postal corporation into law by tying it to the very badly needed postal pay raise.

The postal employees have earned their pay raise. It is long overdue. In all honor and honesty, the administration ought to stop its efforts to blackmail the postal employees into supporting administration's corporation scheme or a substitute reorganization scheme as a condition for receiving the pay raise the employees have earned by their hard work.

Except for the unjustifiable demands by the administration, the postal employees would have had their pay increase long ago. Both Houses of the Congress voted it. This administration blocked the pay raise and brought on the walkouts. It caused the suffering to

the postal employees and inconvenience to the American people.

Mr. President, I believe the matter of a postal pay raise should be settled quickly and fairly. It should be settled separately from any other issue.

After the pay raise question is settled, Congress can then examine—and examine thoroughly and not in a crisis or panic situation—the matter of any changes in the postal system.

There is need for improvement of our postal system. No one denies it. But let us look at this matter carefully. Let us not be tricked by the public relations gimmick of substituting the term "postal reform" for "postal corporation." Anyone who believes this corporation proposal will bring about any of the needed reforms in our postal system has been sold a bill of goods. If this corporation idea was a solid reform measure as its proponents claim, they would not have tried the tactic of holding up pay raises as ransom for support by the postal employees of the corporation. Postal improvements includes automation and new equipment and buildings and the failure to have them is due to no fault of the postal workers.

Mr. President, on March 25, 1970, in an editorial, the Houston Post clearly spelled out the need for separating the issue of the postal corporation from the issue of the needed pay raise.

The Houston Post quite correctly said:

There is not, never has been and should not be any direct connection between the two matters. They should be dealt with separately. It is generally conceded that the workers are entitled to a substantial pay increase, and their need is urgent. There is no urgency about the reform proposals. They can be weighed, debated and considered on their merits for as long as Congress, the Administration and the people wish. Yet, Mr. Nixon, as a political maneuver, tied the two matters together.

The Houston Post editorial concluded:

Although Mr. Nixon may have ended up in a situation where he had no choice but to order out the troops, it was a situation of his own making, not that of the postal workers.

The Houston Post generally supports the administration. It is a paper which is very, very friendly to the administration. Here is a clarion call, by one of the best friends of the administration in the newspaper publishing field, to give the postal workers their deserved pay raise, and quit trying to beat them into supporting, on a crash basis, a long time permanent basic change in governmental reorganization, as a price for a wage increase they have already earned by their dedicated hard work. I commend the Houston Post on its well reasoned editorial.

Mr. President, I believe the Houston Post editorial of March 25, 1970, to be one of the best statements on the recent events involving the Post Office Department. 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:

AN UNFORTUNATE ACTION

President Nixon undoubtedly has the good will and the good wishes of most Americans in his efforts to restore normal postal service to the nation, unsatisfactory as that service may be in the eyes of some people. Quick settlement of the spreading mail strike was absolutely essential to prevent national chaos.

But his decision to use troops to handle mail in New York City, with a threat to use them elsewhere, was most regrettable, and there are a good many who will say that his handling of the whole postal matter was unfortunate, not to say ill-advised.

Coercion, threats and, above all, the guns of the military are not the way to win the co-operation, loyalty and good will of employees.

Although the wildcat work stoppages in New York City and elsewhere in the country technically were illegal, in that there was a law on the books saying that governmental employees should not do things like this, the fact remains that Mr. Nixon will be recorded in the history books as the President who used the Army in an effort to force civilians to work for the government against their will.

After all, the President did have another course of action open to him. That was to ask Congress to enact quickly for his signature a reasonable and equitable pay increase for all postal employees, giving them whatever they might be entitled to as a matter of justice and right, taking into account increases in the cost of living and the continuing price inflation for which the Nixon administration must accept at least some responsibility.

But the President had foreclosed this option by saying that he would not "negotiate" with the workers until they returned to work. Setting of that condition may or may not have been wise, but he still was free to negotiate with members of Congress. It is true that the work stoppage was illegal in that it violated a statute, but there are grave doubts about the power of government to force people to work against their will. In any case, Mr. Nixon was confronted with a practical situation and not a legalistic one.

It can be said that if he had given in to the strikers other federal employees would be able to extort similar pay increases, but this gets back to the question of whether or not it was wise for the President to set a condition for negotiation with the postal employees in the first place.

Basically, the President's dilemma sprang from his insistance upon linking a pay increase with his proposals for reform of the postal system. That plan calls for turning operation over to a private or semi-public agency. Under that plan, the postal employees would lose their civil service status and would be, presumably, free to strike against their new employer.

There is not, never has been and should not be any direct connection between the two matters. They should be dealt with separately. It is generally conceded that the workers are entitled to a substantial pay increase, and their need is urgent. There is no urgency about the reform proposals. They can be weighed, debated and considered on their merits for as long as Congress, the administration and the people wish. Yet Mr. Nixon, as a political maneuver, tied the two matters together.

He told the postal unions, which opposed his reform scheme, that they would get no pay raises for their people unless they ceased their opposition. He let it be known that he would veto any separate pay increase voted by the Democrats in Congress.

This may be a legitimate form of political pressure, but what the postal workers wanted was assurance of a pay increase regardless of what happened to the reform scheme, and they need it at once.

Although Mr. Nixon may have ended up in a situation where he had no choice but to order out the troops, it was a situation of his own making, not that of the postal workers.

THE CARSWELL NOMINATION

Mr. WILLIAMS of New Jersey. Mr. President, it is my intention to vote against the appointment of Judge G. Harrold Carswell to the Supreme Court of the United States.

My opposition is based on a review of all the evidence available to me—the testimony which was presented to the Judiciary Committee, the record of Judge Carswell's decisions, and all of the arguments which have been advanced over the past 2 months by both his supporters and his opponents.

In my judgment, the evidence fails to suggest any positive contributions which would single out this particular man for appointment to one of nine seats on the highest court of the land. However, it does raise serious questions as to his judicial temperament, the quality of his performance on the bench, and his commitment to the civil rights guaranteed by the Constitution and affirmed by the Court.

I defend the right of the President to seek balance on the Court—balance in terms of judicial philosophy, and even, perhaps, in terms of geography. But I cannot agree that we need settle for mediocrity to achieve that balance, nor that we need include apparent philosophies which strike at the very basis of our constitutional system.

Confirmation of Judge Carswell by the Senate would be an affront to every black American, and to every citizen of any color who believes in equal justice under law. It would be an affront to every southern and conservative judge whom Judge Carswell has been cast—improperly—to represent. And it would be an affront to the Court itself.

A decision to vote against a Presidential nominee is a serious one, to be made only when overwhelming arguments can be presented to demonstrate that such an appointment would have an adverse effect on the Court and our entire legal system. For that reason, I have taken this time to explain in some detail the reasons for my opposition.

Judge Carswell's 1948 campaign speech proclaiming principles of white supremacy and segregation of the races as "proper and the only correct way of life in our State," raises justifiable concern. That concern might have been sufficiently alleviated by a record of positive efforts toward equal rights over the ensuing 22 years.

But this has not been the case. Neither the public nor the private actions of Harrold Carswell, from that speech in 1948 until his nomination to the Supreme Court in 1970, have indicated any repudiation of these beliefs. On the contrary, they have confirmed them.

The speech itself is explained away by his supporters as "expeditious" in the context of a political campaign. His only effort to repudiate the speech—22 years later, when it might jeopardize his appointment to a higher office—might be explained similarly as "expeditious" in the context of the Senate consideration of his nomination.

In 1965, Harrold Carswell was no longer a 28-year-old campaigner for public office. He was a U.S. district attorney, charged with the responsibility

for eliminating the very prejudices and principles which he had earlier espoused. Yet, in that year he participated in the incorporation of a private golf club, and the leasing of a public golf course to that private club, for the purpose of evading the Constitution and excluding blacks from the facility.

This was a common practice in the South at that time, understood by all, to circumvent the Supreme Court's declaration that it was unconstitutional for a city or State to segregate any of its public recreational facilities. By April of 1956 when Judge Carswell signed his name to a certificate of incorporation as a director of the Capitol City Country Club, cases were already in the courts, seeking to invalidate such subterfuges in other southern cities.

There was a little doubt as to the purpose of the corporation among the citizens of Tallahassee. On February 15, 1956, the Tallahassee Democrat had reported the city commission's decision to lease the municipal golf course, raising questions about the possible racial motivations of such action. The wife of a Tallahassee banker has filed an affidavit with the Senate Judiciary Committee stating that she and her husband refused to join the new club "because of the obvious racial subterfuge which was evident to the general public."

According to Hansel Tookes, the golf coach at predominantly black Florida A. & M., when the course was turned over to the Tallahassee private club, the varsity golf team was totally excluded from it, even though they had had the most limited use of the course when it was controlled by the city—from 6 a.m. until 8 a.m., if they agreed to leave when the first white golfers reached the course.

It is difficult to believe that any knowledgeable resident of Tallahassee could have been ignorant of the reasons behind the formation of the Capitol City Country Club and the transfer of the municipal golf course. I find it nearly impossible to understand how a U.S. attorney in a State where five suits against segregation of municipal golf courses had already been filed—an attorney sworn to uphold the Constitution of the United States—could have been blind to what was happening, especially when he himself was involved in the incorporation of the club.

Judge Carswell's own explanation to the committee is confusing at best. Even if, as he suggests, he was not aware of any racial motivations and did act in good faith, the indictment against his involvement stands. For only the most insensitive and callous individual could have participated in such subterfuge at that point in time, without realizing its full import.

Granting all of the benefit of the doubt, and recognizing the situation in the South at the time, there are other examples of Judge Carswell's actions outside the courtroom which demonstrate the same insensitivity and suggest his continued commitment to the fundamental beliefs he advanced in 1948.

In 1953, 5 months after he became a U.S. attorney, he chartered an all-white booster club for Florida State University. According to the charter of the Seminole Boosters, Inc., the qualifications of members "shall be any white person interested in the purposes and objectives for which this corporation is created."

As late as 1966, he and his wife sold land using a deed which specified that "ownership, occupancy, and use shall be restricted to members of the Caucasian race"—even though such racial covenants had been outlawed by the Supreme Court as early in 1948. Such actions by any American are reprehensible; by a Federal judge, they are inexcusable.

But if his private activities raise doubts about his personal commitment to constitutional principles, his action on the bench leaves little room for question.

That record is marked by delay, resistance, and frequent and unanimous reversals. In its testimony before the Senate Judiciary Committee, the Leadership Conference on Civil Rights described 15 civil rights and individual rights cases on which Judge Carswell was unanimously reversed. The efforts of Judge Carswell's supporters to negate that testimony only serve to demonstrate that there were 17 such cases rather than 15.

That five of these decisions occurred as late as 1968 suggests that there has been no shift in his opinions in later years.

The details of those cases have been presented to the Senate and need not be repeated in full here. I would only cite several as examples, in response to the President's statement at a press conference on January 30, that Judge Carswell's was "a record which is impeccable and without any taint of racism."

In the case of *Augustus* v. *Board of Public Instruction of Escambia County, Florida,* volume 185 of the Federal Supplement, page 450, on June 24, 1960, Judge Carswell dismissed the portions of a school desegregation case seeking desegregation of teachers and principals, without even holding a hearing to examine the effects of faculty segregation on the rights of black students to an integrated education. His supporters uphold his decision on the grounds that it involved a point of law allegedly not settled by the Supreme Court until 1965—*Bradley* v. *School Board of the City of Richmond, Virginia,* volume 382 of the United States Reports, 103. They further defend his position by citing his school desegregation decree 18 months later, at a further stage in his litigation.

However, both of his decisions in this case were reversed by the fifth circuit, and no efforts to rationalize his handling of the case can overlook the facts that—

He clearly violated normal procedures in dismissing a serious constitutional claim without a hearing; or

That his later desegregation order clearly violated controlling precedents—allowing the school board to continue using the pupil assignment law to preserve segregation, in clear violation of standards set by the fifth circuit and agreed upon by other circuits, including Judge Haynsworth's circuit.

Further, by protracted delays in his handling of the case, Judge Carswell effectively barred implementation of the desegregation requirement for 2 full school years.

In spite of the fact that the fifth circuit had unanimously reversed his 1961 order in Augustus, Judge Carswell subsequently approved similar plans which were clearly unconstitutional and violated controlling precedents at the time the orders were given—*Steele* v. *Board of Public Instruction of Leon County, Florida,* 8 Race Relations Law Reporter at page 934; *Youngblood* v. *Board of Public Instruction of Bay County, Florida,* 9 Race Relations Law Reporter at page 1206, 1208–09.

In all three school desegregation cases, Judge Carswell disobeyed controlling precedents by ordering desegregation at the rate of one grade a year—in spite of third circuit, fourth circuit, fifth circuit, and eighth circuit, and Supreme Court decisions holding that a grade-a-year plan was impermissible. Had his orders not been reversed, desegregation would not have been completed in Escambia County until the 1973–74 school year; in Leon County, until 1974–75; and in Bay County, until 1975–76.

On the basis of these decisions, the National Education Association urged that Carswell's nomination be withdrawn.

Judge Carswell's supporters cite *Brooks* v. *City of Tallahassee,* volume 202 of the Federal Supplement at page 56, October 17, 1961, as a pro-civil-rights decision, because he found that the city and the operator of a segregated restaurant in the city airport had violated the plaintiff's civil rights, and issued an injunction against the city.

Such an interpretation is wholly misleading. Judge Carswell had no choice but to find that racial discrimination was taking place. The evidence was so clear—city erected signs separating black and white waiting rooms, lunch counters, and rest rooms—that any other finding would have been impossible.

Under the circumstances, an injunction against the city government was the minimum action he could take and still comply with controlling precedents. However, in the last paragraph of his opinion, he went out of his way to suggest that the city could legally avoid integration of the airport restaurant—by closing it down.

In 1963, in the case of Due against Tallahassee Theatres, Inc., Judge Carswell summarily dismissed a case against theater owners, city officials, and a county sheriff, alleging a conspiracy to enforce a policy of segregated operation of theaters. In doing so, he violated clear standards of law and procedure, and in 1964 he was unanimously reversed by the fifth circuit.

Speaking for the panel, Chief Judge Tuttle stated that Carswell's orders were "clearly in error" and that the case appeared to be "a classical allegation of a civil rights cause of action." It is rare that an appellate judge so openly rebukes a district judge.

In *Singleton* v. *Board of Commissioners of State Institutions,* 11 Race Relations Law Reporter at page 903, August 7, 1964, a class action to desegregate Florida State reform schools, Judge Carswell dismissed

the suit because the plaintiffs had been released on conditional probation while the suit was pending.

Mr. President, if Judge Carswell's standards had applied, it would have been virtually impossible for a black citizen to sue to desegregate an interstate busline, unless he was on the bus when the suit was brought and stayed on it while the case was pending.

As a footnote to the Singleton case, it should be noted that the plaintiffs were committed to the reform school for trespass, for sitting in at a segregated lunch counter, and that their parole was conditioned on an agreement to avoid any future demonstrating. Judge Carswell's decision was overruled.

The nominee's bias against civil rights is otherwise demonstrated by his affirmative efforts to frustrate the rights of plaintiffs who sought relief in his court.

For example, when nine clergymen freedom riders were arrested in the Tallahassee airport restaurant, Judge Carswell refused to grant them a hearing, and denied their petition for habeas corpus. The ministers appealed and the fifth circuit ordered an immediate hearing. At that point, Judge Carswell advised the city attorney that, if the sentences were reduced to the time already served, the case would be moot, and the court could avoid any decision which might limit this kind of activity by local officials in the future. Furthermore, the clergymen left with no opportunity to show that their arrests were illegal, and they are unfairly left with criminal records.

There is perhaps no better evidence of Judge Carswell's efforts to nullify the rights he was sworn to uphold than the case of *Wechsler* v. *County of Gadsden*, volume 351 of the Federal Reporter, second series, at page 311, 1965, as documented by testimony before the Judiciary Committee and by the Leadership Conference on Civil Rights. In that case, an illegal filing fee was first demanded before the petition for habeas corpus by a group of voting registration volunteers would be accepted. The proceeding was then delayed by requiring that the petition be resubmitted on a special form designed for a totally different class of cases. It was delayed further to secure the signatures of the prisoners, although the attorney's signature was all that could be required under rule 11 of the Federal Rules of Civil Procedure.

Judge Carswell told the attorneys representing the civil rights workers that he would try, if at all possible, to deny the petition; and when he finally did grant it, as the law explicity required, he violated Federal law by refusing to have his marshal serve the writ.

Then, with no request from the State, and without affording the civil rights workers any hearing, he remanded the case to the State court and made possible their immediate rearrest. Then he refused to postpone the remand order until the issues could be settled.

The fifth circuit reversed that decision and subsequently reversed him on the merits.

This record of decisions demonstrates beyond question a total disregard for civil rights. That image is reinforced by the testimony of a number of witnesses before the Judiciary Committee, that Judge Carswell completely lacked a sense of judicial temperament, as reflected in his hostility toward civil rights attorneys appearing in his court.

Norman Knopf, an attorney in the Civil Division of the Justice Department who had worked in Florida as a volunteer in 1964, told of Judge Carswell's "extreme hostility" toward northern volunteer attorneys, whom he denounced as coming south to "rouse" the local people.

Prof. Leroy Clark of New York University, who supervised the NAACP legal defense fund litigation in Florida between 1962 and 1968, described Judge Carswell as "insulting" and "probably the most hostile judge I've ever appeared before; he would rarely let me finish a sentence."

Prof. John Lowenthal of Rutgers University testified that when he appeared before Judge Carswell to seek habeas corpus for civil rights workers, the judge expressed dislike at northern lawyers because they were not members of the Florida bar. Members of the Florida bar were, of course, unwilling to represent civil rights workers, and Judge Carswell never offered to appoint local counsel. Indeed, in several habeas corpus cases involving constitutional rights, he was asked to do so and refused.

If any further evidence is needed to confirm Judge Carswell's attitude toward valid civil rights claims, we can look to the plan which he adopted in 1968 to select persons for jury service in the northern district of Florida, a plan which resulted in gross racial discrimination in every one of the four divisions in his district. His failure to take action to correct that discrimination was in clear violation of the Jury Selection and Service Act which this Senate passed in 1968, several months before his plan was adopted.

Carswell's plan uses only registered voter lists, even though the law stipulates that when use of such lists alone results in disproportionate exclusion of minorities, other sources of names must be included to achieve a reasonable cross section.

Available statistics show disproportionately fewer registered blacks in each of the four divisions of the northern district. Futhermore, a tabulation of the responses to official questionnaires sent by the clerk of Judge Carswell's court to the persons on the jury lists in late 1968 demonstrated that the plan was grossly discriminatory.

On January 7, 1970, the U.S. Commission on Civil Rights had recommended loose, temporary standards for measuring the fairness of jury lists until 1970 census data becomes available. Even under those loose standards, the jury lists were discriminatory in three of the four divisions of Judge Carswell's district.

Judge Carswell's positions on civil rights directly confront the positions which the Senate took earlier this month at the conclusion of extensive debate on voting rights and school desegregation. His record in this area should be sufficient to convince this body to reject his nomination—as a contradiction of the fundamental principles we have just upheld.

Setting aside his record on civil rights for the moment, I would still have the most serious reservations about appointing a man who can be distinguished best perhaps by his singular lack of unique achievement or accomplishment.

The most persuasive testimony to this point was presented by Prof. William van Alstyne of the Duke University Law School, who had been a strong supporter of the earlier nomination of Judge Haynsworth. Opposing Judge Carswell, Professor van Alstyne told the committee that his decisions reflected "a lack of reasoning, care, or judicial sensitivity overall. There is, in candor, 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."

The position was reinforced by Dean Louis Pollak of Yale University Law School, who concluded that "the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century"; and by Dean Derek Bok of Harvard University Law School who described him as a man with "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the Court."

Perhaps the most damaging signal has been the failure of his colleagues on the fifth circuit court to come forward with a solid, unanimous endorsement of his nomination—as they had done in the case of Judge Thornberry's nomination 18 months ago, as the fourth circuit had done in Judge Haynsworth's behalf, and the District of Columbia circuit for Judge Burger.

We have learned that two of the fifth circuit judges—Judge Elbert Tuttle and Judge John Minor Wisdom—have taken the almost unprecedented step of publicly announcing that they are strongly opposed to the nomination.

These are not northern "knee-jerk" liberals, as Judge Carswell's opponents have sometimes been described by his friends, but respected southern judges, who are, perhaps, more qualified than any other men in the country to judge the ability and the record of G. Harrold Carswell.

According to his own testimony, Judge Carswell has never made a contribution to the hundreds of law journals in this country; his decisions have been rated as "pedestrian" by highly regarded legal scholars; and a comparison of his record with a random sampling of district judges finds him clearly lacking.

The New York Law Association documented his competence in relation to 150 other judges, and found that 24 percent of all cases he heard were reversed, as compared with an average of 6 percent; 59 percent of his opinions that were appealed were reversed; and the average was 17 percent. He used an average of 1.8 citations and secondary source material per opinion; the average for the entire sample was 3.5. The length of his opinions averages 1.9 pages; as opposed to 4.2 pages for all judges considered.

Finally, in addition to his record on civil rights and his obvious mediocrity, I

am persuaded to vote against Judge Carswell by his own lack of candor before the Senate Judiciary Committee. I have already mentioned his confusion and misstatements with regard to the Capitol City Country Club in Tallahassee.

I am equally disturbed by his failure to respond adequately to the committee's requests for explanations of his decision which permitted civil rights workers to be rejailed, of his avoidance of a decision on the petition for habeas corpus by the nine freedom riders, or of other charges brought against him in the committee by civil rights lawyers.

The evidence revealed 2 weeks ago the continued use of Judge Tuttle's initial supporting letter, in spite of Judge Tuttle's later withdrawal of that support, this only contributes to the impression which was created by these earlier evasions.

Judge Carswell's opponents represent a broad segment of our society—including the most respected members of the legal profession, some of whom I have already mentioned, and some of his own, most distinguished colleagues on the Fifth Circuit Court. It encompasses the Republican Ripon Society, and the Americans for Democratic Action; former Attorney General Ramsey Clark, and New York Mayor John Lindsay; the National Education Association and the AFL–CIO; the Leadership Conference on Civil Rights which represents 122 national organizations.

No Member of this body can ignore the persuasive letter which each of us received from a most distinguished group of more than 450 practicing lawyers, and law professors, including the dean of at least 23 law schools. That letter argued that—

> The testimony indicates quite clearly that the nominee possesses a mental attitude which would deny to the black citizens of the United States—and to their lawyers, black or white—the privileges and immunities which the Constitution guarantees. It has shown, also, that quite apart from any ideas of white supremacy and ugly racism, he does not have the legal or mental qualifications essential for service on the Supreme Court or on any high court in the land, including the one where he now sits.

In conclusion, they have emphasized to us that—

> The future decisions of the Supreme Court will affect the lives, welfare and happiness of every man, woman and child in the United States, the effectiveness of every institution of education or health or research, the prosperity of every trade, profession and industry. Those decisions will continue to be a decisive factor in determining whether or not ours will, in the days to come, truly be "a more perfect union," where we can "establish justice, insure domestic transquility . . . promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

There are more than 300,000 attorneys, 439 Federal judges, and thousands of State court judges in this country. Surely, there are other more highly qualified jurists who can meet any legitimate requirements for balance which the President might hold, and who can bring to the court unique talents and abilities, without creating the suspicion, division and justifiable opposition which this nomination has brought.

If there was ever a period in our history when we might have settled for less than the best that our judicial system could bring to the Supreme Court, it is long past. At no time would an appointment such as this be more dangerous or more detrimental.

Every institution in our society is being challenged today—not just by extremists who would destroy them; not only by minorities who have not been fully served by them; not simply by the young who seek to change them; but also by that so-called "silent majority" who increasingly question their credibility of our institutions.

If we approve this nomination, we will have cast new shadows, new doubts, on the most fundamental institutions of our democracy—the President, who appointed him; the Congress, who confirmed him; and the Court, who must receive him.

Just yesterday the President sent a letter to the Senator from Ohio (Mr. SAXBE) in which he complained that Senate opposition to the President's Supreme Court nominees was threatening the appointive powers of the Presidency. He stated that "those who wish to substitute their own philosophy or their own subjective judgment" for his choice are jeopardizing the Constitution's division of powers between the legislative and executive branches of government.

I beg to disagree.

The fact he has won election does not entitle the President to put anyone he wants on the Supreme Court. The President is only empowered to nominate. He shares the power to appoint with the Senate which is constitutionally mandated to advise and consent to the President's nomination. I think that the editorial in today's Washington Post best sums up my position on this point. I shall not abdicate my responsibilities as a Member of the Senate and I would hope that other Senators will not abdicate theirs.

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

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

JUDGE CARSWELL: THE PRESIDENT'S "RIGHT OF CHOICE"

("As the President has a right to nominate without giving his reasons, so has the Senate a right to dissent without giving theirs."—George Washington, Aug. 8, 1789.)

President Nixon's claim that the Senate must vote to confirm Judge Carswell or place in jeopardy the constitutional balance between the Executive and the Legislature is an arrogant assertion of power that attacks the constitutional responsibilities of the Senate and is based on a false reading of history. It is, indeed, a presidential endorsement of the argument made recently in the Senate that since Mr. Nixon won the election he is entitled to put anyone he wants on the Supreme Court.

The President, of course, qualifies this claim by saying that "if the charges against Judge Carswell were supportable, the issue would be wholly different." But what he really means is that since *he* finds those charges—of mediocrity, of racial bias, and of a lack of candor—unsupportable, the Senate must accept his judgment and confirm his choice. He leaves a senator, who is given the constitutional responsibility of consenting to nominations, no latitude in making his own independent judgment of the fitness of the man for the office.

The President makes no attempt to square this hold assertion of the right to fill offices with this nation's constitutional or political history except to claim that his predecessors have been freely given the "right of choice in naming Supreme Court justices." He seems to overlook the fact that one out of every five presidential nominations of men to sit on the Supreme Court has not been confirmed by the Senate. He does not mention that the Senate failed to consent to nominations to that court made by Washington, Madison, John Q. Adams, Tyler, Polk, Fillmore, Buchanan, Johnson, Grant, Hayes, Cleveland, Hoover and Johnson.

It might be well, since the President has brought it up, to recall why the Senate was given the power to approve or reject presidential nominations to high office. It came about as a compromise in the Constitutional Convention between those who wanted the President to have absolute power to fill those offices and those who wanted to give that power to Congress. Alexander Hamilton explained the compromise in The Federalist:

"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 connections, from personal attachment, or from a view of popularity."

That this was intended to be a substantial check on the President's power was made clear in the first Congress. Arguing in favor of a secret ballot in the Senate on questions of confirmation, William Maclay said, "I would not say, in European language, that there would be court favor and court resentment, but there would be about the President a kind of sunshine that people in general would be well pleased to enjoy the warmth of. Openly voting against the nominations of the President would be the sure mode of losing this sunshine." And arguing in favor of an open vote, Robert Morris said it would be beneath the dignity of the Senate to vote in secret since a Senator, in passing on a nomination, ought to be "open, bold and unawed by any consideration whatever."

It is against that background—an attempt by the men who wrote the Constitution to keep the President from filling offices with anyone he might choose and a history in which the Senate has approved 108 nominations to the Supreme Court while failing to approve 26—that Mr. Nixon pleads the case for Judge Carswell. A vote against confirmation, he says, is to vote to strip the President of the power to appoint. No opponent of confirmation that we know of has suggested that the Senate, not the President, nominate prospective justices. No opponent has suggested that Mr. Nixon not make a third choice to fill the existing vacancy if his second choice fails. No opponent has suggested—as did some Republicans at the time Chief Justice Warren offered his resignation—that the President not choose at all. Some, for that matter, have even jested that the Senate ought to confirm this nomination since the next one might be worse.

What Mr. Nixon is attempting to do is to turn an attack on his judgment into an attack on the prerogatives of the office he holds. Those who oppose confirmation are, indeed, questioning the judgment of the President. But the impact of a rejection by the Senate would not be on the powers of the presidency but on the personal power of this President.

The irony of all this is clear. The current vacancy on the court exists solely because the Senate did not act on the principle stated by Mr. Nixon yesterday when it received the nominations of Justice Fortas and Judge Thornberry. It refused to be a rubber stamp then and it refused again when it rejected Mr. Nixon's nomination of Judge Haynsworth. Surely this should have put the President on notice that the Senate was not to be trifled with. Yet he came back after that defeat with a nomination that is an insult to both the Senate and the Supreme Court, a nomination of a man who is substantially inferior to Judge Haynsworth. Although this put many senators who wish to support the leader of their party in extremely embarrassing positions, the argument has now been turned on its head. Some of them are now saying that they cannot reject Judge Carswell without insulting the President. It is important to be clear in our minds about who is insulting whom in this matter. The answer is in yesterday's presidential letter to Senator Saxbe, for what the President is saying is nothing less than that he alone is entrusted "with the power of appointment." He is not so entrusted; he has only the power to nominate. The power to appoint is one he shares with the Senate. The Senate's best response to this attack—this insult, if you will—on its constitutionally given prerogatives in the appointments process would be outright rejection of the nomination of Judge Carswell.

REPORT ON AMERICAN POW'S

Mr. GRIFFIN. Mr. President, the February, 1970, issue of Army magazine contains an excellent article devoted to the plight of American servicemen held captive by the enemy in the Vietnam war.

The article, written by Associate Editor Eric Ludvigsen, lays bare the enemy's unconscionable disregard of basic standards of human decency.

The same issue includes an article by Mr. Ludvigsen on Maj. James Rowe, who escaped from Viet Cong hands after being held their prisoner for 5 years.

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

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

[From the Army Magazine, February 1970]

MISSING, DEAD, OR CAPTURED?: A REPORT ON THE PLIGHT OF AMERICAN PRISONERS OF THE WAR IN VIETNAM

(By Eric C. Ludvigsen)

The welfare of untold hundreds of American soldiers, sailors, airmen and marines suffering in Hanoi prisons and Viet Cong base camps is of no concern to a regime which systematically flouts provisions of the Geneva Convention, in search of even the slightest propaganda advantage. It is cynical, deplorable, barbarous—and straight out of the textbooks of "revolutionary people's war." With normal channels closed by the enemy's intransigence, there is a growing belief that forceful, united protest is needed to make North Vietnam's shameful treatment of U.S. prisoners a political liability in the eyes of world opinion.

The end of American innocence concerning international standards for the treatment of battlefield captives arrived sometime during the Korean War. To be sure, American prisoners had suffered horribly in earlier wars, through local instances of wanton murder—Malmédy and, through gross mismanagement and casual brutality, Bataan.

But it was that first large-scale conflict with a communist power that witnessed the cynical, systematic use of men no longer able to defend themselves as instruments of propaganda value in political warfare.

It seemed to work out all right, however. After 15 months of hasseling at Panmunjom over the POW issue, there was an armistice and a prisoner exchange. Our men, so most people think, came home.

Not quite. At the close of hostilities, 944 U.S. servicemen whom we had reason to think had been alive in enemy hands remained unaccounted for. Despite repeated inquiries by the U.S. government and international bodies, not one word has ever been officially received about the fate of these men. Graves registration work in Korea has reduced the number, but well over a third of the 944 have never been heard from—17 years later!

So that is the kind of record we have to contemplate in trying to arrange the ultimate return of U.S. fighting men held by the enemy in Southeast Asia, and to ensure even the minimally decent treatment to which they are entitled under international law while they are captives. At this writing, their immediate prospects are bleak.

In the first place, we—above all the anguished families of these men—have little fully reliable information on how many prisoners there actually are, who they are, where they are being held and by whom. This void is the result of the steadfast refusal of the government of North Vietnam to identify the men it holds, despite five years of appeals by the United States, its citizens and neutral authorities.

As of the first of the year, a theoretical number of 1,354 members of the four services could be in enemy hands. With varying degrees of certainty, 422 are known to be captured or interned in other countries. The rest—932—are listed as missing in action. Some of the missing have probably survived into captivity but no one knows how many. Of the total in both categories, well over half are pilots and air crew downed in the air war over North Vietnam during 1965–68. Air Force prisoners and missing number 750, Navy and Coast Guard 251.

Less understood is the plight of what one Department of State official calls "the forgotten of the forgotten," soldiers and marines missing and taken prisoner in infantry combat and forced by the circumstances of their Viet Cong captors to live a subhuman, itinerant existence in the jungle base camps of the South. Army prisoners and missing total 245 as of 1 January, with 108 marines in those two categories. The low proportion of known captured for these two services—54 and 21, respectively—reflect the relative obscurity of their condition.

As of last November, 70 prisoners were known to be held in the South, two in Laos and 341 in North Vietnam.

Hanoi's refusal to render a true accounting of the prisoners it holds is only one aspect of North Vietnam's total disregard of the letter or the spirit of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War, which it signed on 28 June 1957. The North Vietnamese have not even revealed the location of the prison camps, let alone permitted neutral inspection, and representatives of the International Committee of the Red Cross (ICRC) haven't been allowed to set foot in the country.

The convention's provision for regular mail communication between prisoners and their families has been perverted into a propaganda instrument, producing only a trickle of heavily censored mail from selected prisoners at times of Hanoi's own choosing. Barely more than a hundred prisoners have been allowed to write, and few families have ever received more than a couple of letters or cards.

Hanoi has made not even the smallest gesture toward regular repatriation of sick and wounded prisoners, despite several unilateral releases of North Vietnamese prisoners by South Vietnam. All told, nine American prisoners—in three groups of three—have been released from captivity in North Vietnam. A few others have been released by the National Liberation Front (NLF) in the South, usually through a neutral "airlock" such as Cambodia, but one time, last January, in a battlefield meeting near Tay Ninh.

The evidence they have brought back with them gives the lie to Hanoi's principal claim that prisoners are treated "humanely" under a "lenient" policy, despite their status as "major criminals" and "air pirates."

One of the last men to be released from the North, Navy Lt. Robert F. Frishman, publicly exploded these claims shortly after his return last August.

"My intentions are not to scare the wives and families," he told a press conference, "but Hanoi has given false impressions that all is wine and roses and it isn't so.

"I don't think solitary confinement, forced statements, living in a cage for three years, being put in straps, not being allowed to sleep or eat, removal of fingernails, being hung from a ceiling, having an infected arm which was almost lost, not receiving medical care, being dragged along the ground with a broken leg, or not allowing the exchange of mail to prisoners of war are humane.

"Certain prisoners of war have received publicity. Others are kept silent. Why aren't their names officially released? I feel as if I am speaking not only for myself, but for my buddies back in camp to whom I promised I would tell the truth."

And that in a permanent camp in Hanoi where the facilities for medical care, adequate housing and sanitation and decent food at least exist, even if the inclination to grant them does not. The testimony of Army Maj. James N. Rowe and other escapers from Viet Cong camps in the South shows the lot of a prisoner there to be semi-starvation, disease, beatings, mental coercion, utter loneliness and—frequently—death.

It isn't known precisely how many U.S. fighting men have died as a result of this barbarous treatment. Officially, 11 soldiers, three marines and an airman are carried on the rolls as having died in captivity. These are only those deaths painstakingly confirmed, largely by ex-prisoners whose knowledge of the fate of their countrymen was limited by isolation. But the experience of one man—Maj. Rowe—was so grim that we can only hope it is not typical. Of the seven Americans who accompanied him into captivity in the fall of 1963, three were released, three starved to death and one was executed. He himself escaped, after "five years, two months, two days and about six hours."

The execution was one of two of American prisoners announced by the NLF on 26 September 1965 as reprisals for the execution of Viet Cong terrorists by the South Vietnamese authorities. Another soldier was executed in June of that year, and in 1967 an Army sergeant and a Marine lieutenant were found to have been tortured and killed shortly after their capture when the enemy positions were overrun a few hours later.

There have been other such murders, though the circumstances are not always as clear. Last July, for example, U.S. and South Vietnamese troops attempted a heliborne prisoner recovery operation at a VC hospital in Quang Tin province.

Sp. 4 Larry D. Aikens, captured two months before, was found "lying just outside the door of a hut . . . bleeding profusely from a fresh wound on the left, top forefront of the skull," according to a Department of Defense summary of the incident.

Sp. 4 Aiken died two weeks later. In the opinion of the attending neurosurgeon, the wound was comparable to that "rendered by a blunt instrument . . . [and] it is un-

likely the wound resulted from a missile or shell fragment."

These murders, whether committed in the heat of battle or as deliberate reprisals, speak volumes about the enemy's "lenient" policy. One could not imagine a graver breach of the convention's prisoner of war articles which represent nothing more, really, than minimum standards of decency toward unarmed men who are no longer a military threat.

But if U.S. prisoners no longer threaten the enemy, they represent to him a political asset of great value, and that is what lies at the heart of the uncompromising attitude of the Hanoi government and the NLF on the prisoner issue.

For it is through the prisoners and the anguish of their families that the enemy can hope to reinforce anti-war opinion in this country.

William H. Sullivan, deputy assistant secretary of state for East Asian and Pacific Affairs, told a House Foreign Affairs subcommittee last November that "one of the motivations the North Vietnamese have is political, an effort to use the understandable sympathy and concern and worry in this country about these men in a way that will bring pressure to bear on the administration with respect to actual conduct of military and diplomatic negotiations. . . ."

From the enemy's point of view, there is also the chance that the carefully orchestrated program of coercion and indoctrination in the camps will produce men who can be released to do his propaganda bidding in this country. The effort has so far failed, even with those who have signed "confessions" before release, mostly because of the enemy's inability to understand, as Maj. Rowe puts it, "that the U.S. POW is the most insincere person in the world when it comes to signing their ridiculous statements."

In any case, the entire system depends on the isolation of the individual prisoner and on attempts to make him and his family believe that the government that put him in his predicament is now powerless to do anything for him.

Naturally, it is quite logical (or at least correct dialectics) to believe that the communist prisoner policy is "lenient" once you accept the premise that the captives are "political criminals" taken in an undeclared war, and therefore have no rights beyond those afforded them by Vietnamese law.

This argument is, of course, sheer nonsense and the U.S. and international Red Cross authorities have not ceased saying so at every opportunity since June 1965, when ICRC President Jacques Freymond reminded all parties to the conflict that the Geneva Convention clearly applied. The NLF has contended from time to time that it is not a signatory, but the ICRC has consistently argued that the Front is bound by the accession of both North and South Vietnam.

Raising the prisoner issue before the United Nations General Assembly last November, Mrs. Rita E. Hauser, of the U.S. delegation, noted that "North Vietnam, even by the terms of its own arguments, cannot escape its obligations."

"The United States understands that every country believes that it is right and its enemy wrong. North Vietnam has said that it is inconceivable that the captured military personnel of the 'wrong side should be given equal status to its own soldiers. But . . . the Geneva Convention was designed specifically to meet this problem.

"It imposes upon all combatant powers the obligation to treat military personnel made helpless by their captivity in accordance with a single objective and verifiable standard."

As if there could be any doubt at this late stage, the 21st international conference of the Red Cross in Istanbul last September adopted without dissent a resolution calling upon the combatants once again to respect the convention. The resolution did not name any specific country, but it was sponsored by the United States and its allies and the context was such that it was clearly aimed at North Vietnam. There were a few abstentions in the show-of-hands vote, but both the governments and the national Red Cross societies of the Soviet Union, Czechoslovakia, Poland and Yugoslavia, among Hanoi's sympathizers, voted for it.

The Istanbul resolution is only one of the latest of many unavailing appeals over the past five years from many quarters—governments, the Vatican, Red Cross authorities, the secretary general of the United Nations. Hanoi continues on its course, unwilling to separate the prisoner issue from its political aims in the Paris talks; unwilling, in fact, to concede that the U.S. government even has a role in discussions on captive American fighting men.

If Hanoi waits long enough, the reasoning goes, the anxiety and frustration of the prisoners' families will turn into bitterness and resentment against their own government. As time goes on and the issue heats up, the enemy counts on gradual acceptance of the notion that Washington's obstinacy—and not Hanoi's—over the settlement of a war in which it had no business in the first place, is responsible for the plight of the prisoners.

This approach, we must now recognize, has worked many times in the past, but there are a couple of good reasons why it probably won't in this case.

It is doubtful, for instance, whether Hanoi's political strategists really comprehend the courage and understanding displayed by these American military families at a time when they could be forgiven for ceasing to care about anything but the return of their husbands, fathers, sons and brothers.

Take, for example, Mrs. Donald J. Rander, of Dundalk, Md., who has made two trips to Paris to meet with representatives of North Vietnam and the NLF in search of news of her husband, an Army sergeant captured during the 1968 Tet offensive.

She was one of three wives who met with North Vietnamese representatives on Christmas Day, speaking for a group of 58 who travelled to Paris on a whirlwind trip financed by Texas industrialist H. Ross Perot.

"We were told to go home and join the peace movement," she said with obvious disgust. "Where our government is concerned, they are completely noncommittal—they don't want to deal with it at all. They stated that to us definitely."

When she and other wives discussed their husbands' plight with President Nixon in November, Mrs. Rander recalled, the point that stuck in her mind was "that the issue of the POWs and the political negotiations would be separated in the Paris talks."

But what she learned from Hanoi's delegation on Christmas was "exactly the opposite of what the President had told us—it was weird."

The atmosphere of the meeting was "cordial," she said in an interview, but not as encouraging as the friendly face the communist diplomats had put on during her first trip to Paris last August.

"There was a much colder feeling in there this time. We sensed no interest in our problems or in why we were there—they just launched into their speeches about the history of Vietnam, the illegality of our position, et cetera.

"For 25 minutes we sat there and listened to that, trying to break in. When we did manage to get a question or two in, they brushed them aside and started on the speeches again—like a broken record."

Nor did the women have any idea of who, specifically, they were talking to. "They wouldn't identify themselves," Mrs. Rander said, "and I recognized only one familiar face from the first trip—the waiter for the tea-and-cigarettes portion of the meeting. We found out who some of the others were later, by reading the papers."

Yet Andrea Rander and the other wives of prisoners and missing men who have organized themselves are willing to endure this sort of frustration if their efforts help only the least bit to focus public attention on Hanoi's intransigence.

"It's a small step," she says, "but every step counts, and I think we are making some progress. It may not be visible to the naked eye, but I feel that we are."

St. Sgt. Donald J. Rander was reported missing in action with other members of his military intelligence team, near Hue in February 1968.

"That was the most tormenting time of all, those awful days," Mrs. Rander recalls. "It was during the Tet offensive, and there was so much of the fighting in Hue on television. I just sat there and watched, hoping that maybe I could catch a glimpse of his face."

That lasted for four weeks, until an escaped prisoner brought word that Sgt. Rander had been wounded and captured. In that respect alone, perhaps, Mrs. Rander is more fortunate than other families; some men have been missing in action for up to five years.

"When I got the letter reporting his capture," she said, "it was a great relief, but then I began to wonder about what it didn't tell." She has not heard a word from, or about her husband in the two years since then.

Between her efforts on behalf of the prisoners, her regular work as a staff member of the psychiatric "crisis" center at Baltimore City Hospital and her two daughters, Lisa, 10, and Donna Page, 4, Mr. Rander has few moments to be alone with her thoughts.

"The girls are such good company," she said, "I don't know what I'd do without them. Page really doesn't have that much memory of her father, but now she seems to be more aware of it—she talks about him all the time.

"In the beginning, especially, I was just wanting to give up the house and everything else and move back with my parents. But they told me, 'Look, Donald would want you to go on as before. Keep things as normal as possible and just wait.'

"Now the wait," she added, "has turned into years."

She has been putting her husband's pay and allotments aside, "because I know there's so much he wants to do, like getting a home of our own."

With a wry smile, she recalls now "how upset Donald was when he got his draft notice. He had a good job then and he sure didn't want to go. When he got in and got adjusted, he found he kind of liked military life—then he had to convince me."

In her work with such groups as the National League of Families of American Prisoners in Southeast Asia and the POW–MIA Action Committee, Mrs. Rander says she finds more interest now in efforts on behalf of prisoners held by the Viet Cong in South Vietnam.

"We've got to start opening doors to the South," she said, "and I heard much more of this on the last trip to Paris."

In the Christmas Day meeting, she said, the Hanoi delegation members "were sort of surprised that two of us had husbands who were prisoners in the South. I asked one member if prisoners taken in the South were detained there, or moved to North Vietnam. He said it was out of his competence, and that I would have to see the NLF."

Mrs. Rander tried that—fruitlessly—on both trips. The first attempt was particularly disconcerting.

She besieged the NLF mission in Paris with

telegrams and phone calls in an attempt to arrange a personal meeting with Mme. Nguyen Thi Binh, head of the delegation.

Nothing seemed to work, Mrs. Rander said, "but finally I got hold of a secretary who spoke some English, only to be told that 'Madame Binh is not receiving visitors today.'

"But she did say we could leave packages and mail for our husbands with them, and I left a package of medical supplies there. When I returned to the hotel, there were the packages, sitting in the room, opened and rewrapped."

Mrs. Rander's personal efforts and those of hundreds of others are part of a new, more militant stance on the prisoner question that has been gathering momentum over the past three months. The government must maintain a "hands off" attitude toward the private diplomatic efforts which North Vietnam already believes are officially inspired anyway.

But the administration, including the secretaries of State and Defense and President Nixon himself, has been speaking out much more forcefully on the issue since the middle of last year. The Department of State has given low-key encouragement to publicity campaigns designed to heighten public concern and has testified in favor of congressional resolutions calling upon North Vietnam to meet its obligations under the Geneva Convention.

One such resolution which, along with other similar measures, had the sponsorship of well over 300 members of Congress, has passed the House and is now before the Senate Foreign Relations Committee.

The Johnson administration was no less concerned with the welfare of U.S. prisoners, but the issue was soft-pedaled somewhat, partly out of fear of reprisals against the men and partly because it was believed that intergovernmental efforts might still prove successful.

But as Mr. Sullivan told the House Foreign Affairs subcommittee, U.S. diplomatic efforts have produced "a bleak record."

"Although we have pressed North Vietnam by every available means and channel, diplomatic and private, their responses have been uncompromising and negative."

The Department of State now believes, he added, that "vocal public concern about our prisoners may be the most effective way to bring pressure on the communist authorities to treat our men humanely."

Privately, U.S. officials concede that there is a large element of risk in cranking the issue up to fever pitch, but they know of nothing else to try.

For stirring up public outrage in effect encourages North Vietnam's hopes that it may be able to use the prisoners to influence U.S. domestic politics. Outrage is easily misdirected and could turn on the administration itself, creating a major demand for release of the prisoners at all costs. Albeit on a much smaller scale, there was such a backlash among the families of the imprisoned crew of the USS *Pueblo*, serious enough to hamper negotiations with the North Koreans.

Nevertheless, the record of unanimity on this issue has been impressive. Congressional action, most critically, has received the support of the most outspoken critics of the war in both houses.

Anti-war groups have attacked the American Red Cross for promoting a "letters-to-Hanoi" campaign on the grounds that it supports government war policy.

"But the point is," said an ARC official, "that these prisoners can't be held as whipping boys—they're not guilty of a damned thing. If any crimes were committed, they were committed by the governments who are party to the war not the men they sent into battle."

There is one aspect of the prisoner situation that could be used to divide the nation on this question as with nearly all others having to do with the Vietnam war. That is the treatment of the 31,500 prisoners of war held by the government of South Vietnam, a total which includes 6,500 North Vietnamese regulars.

There have been documented cases of maltreatment in the six POW camps run by the South Vietnamese, but the principal point of contrast with the North is that the complaints have been lodged by the ICRC which is fully established in Saigon.

"Let me be clear that we are not claiming a perfect record on this subject," Mrs. Hauser told the UN last fall. "War is ugly and brutal by nature, and violations by individuals have occurred. The point is, however, that the Allied command has made every effort to ensure that the convention is applied."

One reason why there appears to be no diplomatic leverage of the sort that produced prisoner exchanges in other wars is that North Vietnam has shown little or no interest in the repatriation of its own prisoners.

On the several occasions when South Vietnam has unilaterally released Northerners, Hanoi has gone to extraordinary lengths to avoid any appearance of responsibility for men who it maintained until recently were never there in the first place.

"Consequently," said one U.S. official, "there is no symmetry of interest that could form the basis for prisoner exchange."

When it comes to political advantage, Hanoi apparently regards its own fighting men to be as expendable as ours.

RESOLUTION

The actions of the Hanoi government in its treatment of prisoners of war are both shocking and disgraceful. Up to 1,400 members of our country's armed forces who are missing in action may be held prisoners under circumstances and conditions that are in grave violation of not only the Geneva Convention, but of the principles of human decency itself.

The government of North Vietnam and the Viet Cong have subjected these honorable fighting men to barbaric and cruel treatment. There is evidence that captives have been miserably fed, provided with inadequate or no medical care, ridiculed and reviled in public, subjected to such outrages as beatings and solitary confinement, and exploited for propaganda purposes.

Hanoi has repeatedly ignored entreaties by our government for the names of men held prisoner. This calculated and cruel omission has had the effect of extending the suffering of the prisoners to their anguished relatives, many of whom do not even know if men now listed as missing in action are alive.

Despite the fact that the government of North Vietnam is a party to the Geneva Convention on the Protection of Prisoners, its leaders have made a mockery of its provisions. They have not only mistreated prisoners but flagrantly violated such primary tenets as allowing neutral inspection of prisoners and permitting such basic amenities as the exchange with relatives at home of letters and packages.

Spokesmen for North Vietnam and the Viet Cong have sought to justify their despicable conduct by characterizing our troops as "criminals" while callously refusing to even acknowledge pleas for information and humane care by government officials, congressmen, the American public and the wives of missing men. Nor, apparently, has the fact that our side has treated fairly the some 30,000 North Vietnamese and Viet Cong prisoners of war influenced these cruel jailers to even partially reciprocate.

We condemn this barbaric treatment of American fighting men and their families and strongly endorse the efforts of our government and other organizations and individuals to persuade the government of North Vietnam to live up to the solemn promise it made when it became party to the Geneva Convention and to convince the Viet Cong to do likewise.

THE COUNCIL OF TRUSTEES, ASSOCIATION OF THE U.S. ARMY,
ELVIS J. STAHR,
Chairman.

MAJ. JAMES N. ROWE: SURVIVAL OF AN AMERICAN PRISONER: AN EXTRAORDINARY EXERCISE OF WILL

Maj. James N. Rowe, U.S. Army, is the holder of a dubious record: he was a prisoner of war for what is quite likely the longest period of time in American military history.

From 29 October 1963 until 31 December 1968, Maj. Rowe lived and moved with the Viet Cong 309th Battalion over perhaps no more than a 75-kilometer stretch of the fabled U Minh forest, deep in South Vietnam's Delta region. Five years, two months, two days and—he knows as precisely as a man can tell by the sun—"about six hours."

He is also one of a handful of long-term POWs who have managed to escape from this limbo of captivity in the jungle base camps of the South where most U.S. Army prisoners are believed to be held. Through an extraordinary exercise of will and self-reliance, Maj. Rowe managed to survive on the edge of starvation and to maintain his sense of balance in the face of relentless mental pressure. His story thus provides the best record we yet have of what most Army POWs must endure in the half-light world of their guerrilla captors.

Then a first lieutenant and an advisor to a company of Nung irregulars, Maj. Rowe was captured along with seven other Americans when a three-company South Vietnamese force was ambushed and overrun by the better part of a VC regiment.

Of those seven, three were released through Cambodia in October 1967, three died of malnutrition in 1966–67 and one—Capt. Humbert R. Versace—was executed in September 1965.

Of the three who starved, Maj. Rowe said that, in a sense, their deaths were "self-inflicted—they stopped eating rice. You keep pushing that stuff down until you puke. They simply couldn't do it any more, and one of these boys was a Filipino who had eaten rice all his life.

"After you stop eating, it doesn't take long for disease to take hold and you can't ever get enough fluids back in your body. Then major organs stop functioning—the kidneys are usually first to go because of the lack of fluids."

Disease and semi-starvation were constant companions for Maj. Rowe and he suffered from dysentery throughout his captivity. He said:

"Obviously, by American standards, the conditions are low—you are an animal.

"But in all fairness, they do have adequate food by their standards. But prisoners get less of it, because they figure they have more activity, in combat, and that you therefore need less.

"What they don't realize is that an American needs a much higher input—a higher protein diet—just to stay alive. It took me about two years to become a rice-burner."

So the diet was rice—of which Maj. Rowe estimates he consumed a ton—with *nuoc mam*, the ubiquitous rotten fish sauce, the only regular source of protein.

"They were concerned with keeping Americans alive, and they had a requirement from higher headquarters to do so," he added, "because you are valuable as a propaganda commodity."

In the last year, when Maj. Rowe was the last American prisoner the unit still held, he was furnished with gill nets and fish lines, and there might be vegetables "every three or four months." Anything else was the gift of ingenuity, such as the fried cakes he

learned to make from snake fat, snake eggs and rice flour.

"The one thing you think about most" he said, "is food. I often occupied myself mentally by planning menus—breakfast, lunch, dinner and even midnight snacks."

As for medical treatment, Maj. Rowe received none, other than a shot of vitamin B_1 and a bottle of weak merthiolate out of a session staged for a propaganda photographer shortly after the capture. The merthiolate was adequate for the light small arms wounds he suffered in the action, but he had to pick mortar fragments out of his arm himself.

Though American captives of the VC in other areas may move around more, Maj. Rowe spent the entire five years in only two different areas of the Ca Mau peninsula. From January 1965 on he was held in camps deep in the U Minh forest, which "up to that time," he said, "was pretty safe for the VC—the South Vietnamese were reluctant to go in there because of all the old legends about the place."

"Once they get an American, they want to move him around as little as possible," he said, because of the difficulty of guaranteeing prisoner security.

Typically, prisoners live in huts arranged in a semicircle around a central guard post 30 or 40 meters apart—just enough distance to make the prisoner aware of the presence of comrades, thus deepening an already profound sense of isolation. Attempts to communicate usually earn beatings from the guards.

Kept in leg irons at night, Maj. Rowe sat day after day, week after week and month after month in a cake about four feet wide, six feet long and four feet high.

"You don't go anywhere outside of that hooch," he said "except the 15 meters to the latrine in the company of a guard."

Air strikes were a constant threat. One of the camps was shot up by helicopter gunships two days before Christmas, 1964, and it was the confused aftermath of a B–52 strike that gave Maj. Rowe his opportunity to escape.

On the move after the raid, the unit was attacked by helipcopters, killing or scattering the guards. Maj. Rowe managed to isolate himself with a single, panicky guard and surreptitiously slipped the magazine out of his captor's submachine gun. After overpowering the guard, he moved to a nearby clearing and waved at a helicopter whose crew first took him to be a VC until the waist gunner noticed his beard. Twenty minutes later he was down on an Allied landing zone.

But physical survival was only one of the problems Maj. Rowe had to contend with, and in his own reflection perhaps not even the most trying one.

"I had had Special Forces training and I was used to living in the outdoors," he said, "and I at least had the trees, the sunlight, the birds. The pilot in North Vietnam might have a little better sanitation, a little better food, but if you put me in four walls, I think I'd crack right away."

In the last year, when he had a little more freedom of movement, he raised squirrels and two eagles, "which I got when they were fluffy little balls."

"But the only communication I had was with the animals. That's what you miss most—sincere human communication. The guards and the political cadre weren't communicating with you, they were just using you and that really tore me up."

Political indoctrination was constant, intense and sophisticated, with lessons, literature and lectures pitched at producing repentant "peace soldiers" for the domestic anti-war movement at home.

Immediately after his capture, Maj. Rowe was given a standard international Red Cross data card to fill out. Appended to it was a lengthy questionnaire, asking full details of personal and military history, military training, local tactical intelligence.

"I told them that, under the Code of Conduct, I couldn't give them any of this. But for the first six months, they aren't going to push too hard. They have all the time in the world and they convince you of this.

"I was told, 'Go back to your cage. Sit there for a week or two. Think about it, then we'll talk to you again. We'll tell you the truth of the situation in Vietnam. If you don't believe us today, we'll tell you again tomorrow, and the day after that.'"

Maj. Rowe found the political cadre, most of who were Hanoi-trained Southerners, to be "extremely sophisticated in everything they do."

"They keep you off balance, and there doesn't seem to be any pattern to their actions at first. I can begin to see the patterns now—every action has its reason or purpose."

The entire system, he said, depends on isolating the prisoner and convincing him that he is utterly alone and helpless, totally at the mercy of his captors and far beyond the protection of his own government.

"The prisoner is told that he is a political criminal taken in an undeclared war and that he is totally subject to the enemy's laws. He is told that, therefore, they can do anything they want with him, including killing him, and that anything that is done for him is the result of a "lenient policy."

Maj. Rowe and Capt. Versace "failed" an indoctrination lesson in March 1965 and were sent to a punishment camp where the diet was rice and salt—without water.

"He was chosen for execution," Maj. Rowe said, "and later we heard on Radio Hanoi that he and Sergeant [Kenneth M.] Roraback had been killed."

"I'm quite sure I was marked for execution too, because I knew by then that they would never release me."

Spurred on by that thought, Maj. Rowe and another prisoner took advantage of a rainy, mosquito-filled night and an especially dense guard to make an escape attempt.

"We wanted to follow the canals to a river and then float downstream," he recalls. "We got about six kilometers from camp and then left the canal system to go overland to another. That was our mistake—we completely lost direction, started going around in circles and wound up about 1½ kilometers from the camp."

This unsuccessful attempt earned Maj. Rowe seven days of "correction," of which he says only "I can't talk about it. They have a job to do and they do it."

In any case, he said, "it's very effective. It was a long time after that before I could even think of the word 'escape.'"

In 1967 and 1968, Maj. Rowe said, the political cadre threw all their old lesson plans away and started to quote from U.S. sources.

"You're in a news vacuum, of course, except for the stuff they choose to give you. I knew the extent of the anti-war movement and I knew it was larger than in '63, but it never really entered my mind that the senators and congressmen they were quoting against the war effort were actually saying these things.

"The thing that really got to me was when the cadre began to tell me, 'very soon, the people of the United States will decide this was all a mistake and you and all of your friends will have suffered and died in vain.'"

Last fall, Maj. Rowe created consternation in political Washington and was condemned on the Senate floor for publicly attacking some of the politicians and publications he had quoted to him in captivity.

About that he is entirely candid. "It's very difficult," he said simply, "not to be subjectively involved in something like this."

An artillery officer since graduating from the U.S. Military Academy in 1960, Maj. Rowe now hopes to be able to switch his branch to intelligence where he feels his hard-earned knowledge of the enemy could be particularly valuable. If successful, he would like to return to Vietnam in the early autumn "in time for the enemy's fall offensive." In the meantime, he is on extended leave writing a book about his experiences.

A native of McAllen, Texas, Maj. Rowe joined the Special Forces in 1961, serving first with Company D, 7th Group, at Fort Bragg, N.C. He studied Chinese at the Army Language School in 1961–62, returning to Fort Bragg and the 5th Special Forces Group before going to Vietnam in July 1963.

U.S. MEAT ANIMAL RESEARCH CENTER AT CLAY CENTER, NEBR.

Mr. HRUSKA. Mr. President, the Agricultural Research Service of the U.S. Department of Agriculture is presently developing a U.S. Meat Animal Research Center between Hastings and Clay Center, Nebr. This center is located on a tract of land formerly occupied by a naval ammunition depot.

What began as a farsighted idea for the improvement and advancement of meat animal research has become a 35,000-acre reality. The center, authorized by Congress on June 16, 1964, has been developed as a result of the active and enthusiastic cooperation between the Nebraska Agricultural Experiment Station and the Agricultural Research Service.

This center is becoming the working home for agricultural scientists seeking new discoveries in animal genetics, meat production, and marketing. It is the only center of its kind and is a matter of great pride to our research scientists, our livestock industry, and our farmers and ranchers who are served by its research.

Still not completed, the center has about 22,000 of its 35,000 acres seeded to grass and the current livestock inventory includes 3,000 sheep and 5,000 cattle. When it reaches its full research capability, the center will have a staff of 300, including some 80 leading agricultural scientists.

Mr. President, this site is excellently located. Nebraska is the heart of beef and sheep country and is an important contributor to both feed grain and meat production. Nebraska's location in the corn belt also makes the center suitable for swine research.

Phase I of the center is well along. Funds were appropriated by the Congress in 1966 for planning and in 1967 for construction. Construction is moving ahead on a major office-laboratory building, an animal metabolism building, a beef cattle operations headquarters building, animal barns, and other necessary work for site preparation, as well as on the center's feed preparation and processing plant.

This office-laboratory building and the adjacent animal metabolism building are designed to house 42 animal scientists working in the fields of nutrition, physiology, and genetics. The feed plant contract will be for a complete unit with equipment for grinding, mixing, and pelleting rations for all classes of animals.

Phase II of the center has been planned. It will include laboratory build-

ings for basic research and animal sheds and equipment shops. Construction funds have not yet been appropriated for this phase.

A phase III will also be needed. This phase would provide facilities for a comprehensive and integrated forage production, harvesting, handling, storage, and utilization research program. Primary research interests involved in this program would be crops, agricultural engineering, and animal husbandry. Funding for planning and construction of these facilities has not yet been requested by the Department of Agriculture.

Mr. President, when this center is completed and in full operation it will be one of the finest and most effective meat animal research centers in the world. It represents a propitious beginning for increased awareness on the part of the scientific community, the public research agencies, and the public bodies that provide the funds, of the need for advancing the technology of meat animal research.

This research is no idle pursuit. The potential benefits of improved reproduction rates and improved feeding efficiency amount to about $8 billion.

Moreover, the consumers in the United States are demanding and will pay for increasing quantities of a variety of high quality animal products. They should have them, and research, such as that at Clay Center, will help the animal producers meet that demand.

From time to time, questions arise regarding the entire Clay Center operation, such as:

Will the marketing of cattle compete harmfully with the farmers and ranchers in the area?

Will the research of the Center overemphasize large-scale operations?

Will the feeding operations have harmful effects?

Recently such questions were asked by a constituent in a thoughtful, constructive way, and were deserving of a thoughtful and complete reply. Accordingly, I consulted with Dr. George Irving, Administrator of the Agricultural Research of USDA.

Dr. Irving is thoroughly familiar with the origin and history of Clay Center. Through the years, he and I, in company with many other interested persons, have engaged in continuous and cooperative efforts to bring about the realization of this research facility.

Dr. Irving was kind enough to outline the appropriate response to my constituent's inquiry. He does it in a very clear and factual way in a letter to me.

A careful reading will convince the reader that the U.S. Meat Animal Research Center will be of outstanding value and benefit to all livestock producers, both near and far. Furthermore, Dr. Irving concludes that the operation of the facility will not be harmful to the neighboring farmers and ranchers. Quite the contrary, he believes that it will be of great help.

Mr. President, I ask unanimous consent that suitable parts of the letter I received from Dr. Irving discussing the U.S. Meat Animal Research Center be included in the RECORD at this point.

There being no objection, the selected portions of the letter were ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL RESEARCH SERVICE,
Washington, D.C., March 5, 1970.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: This is in reply to your letter of February 20, 1970.

On a long-range basis, USMARC livestock will be fed on the Center. Grain will be produced in amounts consistent with good land management. It is anticipated that grain needs will normally far exceed production. Thus, some grain will have to be purchased from local producers.

Projected livestock sales from USMARC have been studied carefully in relation to its competitive effect with sales by farmers and ranchers in the area and in the Nation.

The number of cattle marketed from the Center should have no noticeable impact on the overall price levels in either Nebraska or the Nation. When the Center is fully stocked, we estimate that approximately 4,500 head of cattle will go to market each year. These animals should average approximately 1,000 pounds live weight yielding a total production of 4.5 million pounds. This production will represent only about two-tenths of one percent of Nebraska's annual production of more than two and one-half billion pounds. It will be only slightly more than one-hundredth of one percent of the Nation's production of over 36 billion pounds.

The impact from the sale of carcass beef on local prices also would be negligible. As much as 10 percent of the total production of beef at the Center may be slaughtered in the Center's meat laboratory in order to obtain detailed carcass evaluations. The salable beef left from these evaluations will be sold at the Center using procedures designed to minimize impact on local market situations. We estimate that up to 22,500 pounds of carcass beef could be sold from the Center in this manner. Potential buyers would include commercial dealers in Clay County and in approximately nine nearby counties. These nine counties had a 1960 population of 128,840. If these people consume as much beef as the average person in the United States, the carcass beef sold directly from the Center would represent less than two-tenths of one percent of their needs.

The sale of bulls from the Center for breeding purposes will have an extremely small effect, if any, on the average bull prices in the area. Bulls produced at the Center will be sold to the extent that we consider them capable of making a real genetic contribution to the industry. Actual methods of selling have not been fully developed. However, the procedures used will be designed to have a minimum effect on sales in a given locality. These sales will always be made in limited numbers. If all those sold went to Nebraska breeders, we doubt that they would ever represent more than two and one-half percent of the 21,000 replacement bulls estimated as needed annually in that State. Furthermore, experience at Fort Robinson shows that experiment station bulls are bought by cattlemen in surrounding States as well as those in Nebraska. Nebraska and the immediately surrounding States have estimated bull replacement needs of over 107,000 annually. Thus, Center bulls would always represent less than one-half of one percent of these needs.

Without going into detail, the effect of selling swine and sheep and their products should be similarly slight.

Of course, the most important considerations are the benefits which the research information developed at the Center will have for the local livestock men. Because of their nearness to the Center and the local availability of the information, these producers should obtain even greater benefits from the research than other producers in the North Central region of the United States. The studies planned for the Center will be directed at those problems which presently are reducing the profitability of livestock production. The cost saving results of the research will offset many times any possible impact that the sale of Center animals or meat products might have on local markets.

Sincerely,

GEORGE W. IRVING, Jr.,
Administrator.

THE $85 MILLION POLLUTION FIGHT

Mr. SYMINGTON. Mr. President, ecology is the new work, and apprehension about the future of our environment has now become one of the top priorities in this land.

It is for that reason that we of Missouri are proud to note that the Monsanto Co., is spending $85 million for new pollution controls.

In that connection, I ask unanimous consent that an article entitled "The $85 Million Pollution Fight," published in the St. Louis Globe-Democrat of March 27, be printed in the RECORD.

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

[From the Globe Democrat, Mar. 27, 1970]

THE $85 MILLION POLLUTION FIGHT

(By Ted Schafers)

Monsanto Co. has announced that in the next three years it will spend about $55 million on new pollution controls in the United States.

Also, as part of its commitment to cleaner air and water, the St. Louis-based firm disclosed it will spend "a large amount" beyond the nation's borders. In addition, Monsanto will spend about $30 million through 1972 in maintaining the corporation's own present pollution-control equipment.

Charles H. Sommer, board chairman, speaking to shareholders at the annual meeting here Thursday, said only companies operating in the public interest deserve to progress and Monsanto long has been such a company.

A third area receiving top Monsanto attention is scientific disposal of solid waste matter.

Monsanto's President Edward J. Bock laid down a five-point program to insure, he said, that any internal pollution problems (within the company) are under proper control.

These include "hard-line" anti-pollution policies; top management for company wide coordination; a committee to monitor abatement efforts at all 47 U.S. Monsanto plants; a directive to each divisional manager to inspect all plants for pollution problems.

Finally, "all requests to build new production units must take pollution into account and provide for their solution before capital funds will be made available by the corporation," said Bock.

NASA GIVES VALUABLE ASSISTANCE TO FIGHT AGAINST POLLUTION

Mr. YARBOROUGH. Mr. President, the Houston Chronicle of March 22, 1970, contained an account of an encouraging example of cooperation between State, local, and Federal authorities to combat the destruction of our environment. The National Aeronautics

and Space Administration has agreed to furnish State and local governments with data from the NASA data bank in Houston. Information supplied will include remote sensor data derived from satellites and aircrafts over the coasts of Texas. I am convinced that this information will be of great assistance to those agencies which are charged with monitoring and controlling air and water pollution. This is a good example of the kind of cooperation between all levels of government which we must have if we are to clean up our environment.

Mr. President, I ask unanimous consent that the article, entitled "NASA Agrees To Aid State Pollution Fight," be printed in the RECORD.

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

NASA AGREES TO AID STATE POLLUTION FIGHT

AUSTIN.—The National Aeronautics and Space Administration will assist the state in dealing with the problems of pollution and preservation of the natural resources and environment of Texas, Gov. Preston Smith has announced.

The governor asked NASA administrator Dr. Thomas O. Paine in February to—give the state access to "the vast wealth of scientific information stored in the Earth Resources Data Bank at NASA's Manned Spacecraft Center in Houston."

In response to the governor's request, Paine said Dr. Robert Gilruth, director of MSC, and members of his staff "stand ready to meet with your staff to provide the appropriate data." Paine said the data would include "remote sensor data derived from aircraft and satellites over Texas and its coastline."

The Earth resources survey program is a cooperative undertaking of NASA and the Departments of Interior, Commerce, Agriculture and the Navy.

During this decade, Paine said, NASA will launch a series of Earth resources technology satellites to acquire remote sensor data.

The governor's division of planning coordination will work with the Earth Observations Division of NASA and assist in communicating pertinent data to the appropriate state and local agencies.

MAX WAYS' FORTUNE ARTICLE ON THE ENVIRONMENT

Mr. HRUSKA. Mr. President, several weeks ago the President sent to Congress a message on environmental quality. The program outlined in that message is the most comprehensive approach we have ever considered in this area. It is my earnest hope that the Senate will schedule for immediate attention the specific legislative enactments necessary to implement programs for the control and reduction of environmental pollutants.

Action is long overdue. We have embraced every technological advance, but we have not inquired sufficiently as to where those advances would take us. Almost too late we find that many of the things we have thought to be beneficial for convenience or efficiency actually produce side products that are extremely dangerous.

Mr. President, the environmental problem is not confined to the largest industrial areas, or to the oil-soaked seashores. The air in my beloved Nebraska is deteriorating and many of our rivers run heavy with filth and contaminants. Awareness is also remarkably prevalent in my State. Communications from my constituents—rich and poor, young and old—show a clear understanding of the danger we face. They also show an impatience with any undue delay for aggressive action. Mr. President, the time for rhetoric has passed. We must expedite the consideration of the President's proposed legislation and enact in this session a meaningful and ambitious program.

There can no longer be much excuse for ignorance on the subject. The President has sketched the dangers in his state of the Union message and in his special message on the environment. Major periodicals have devoted much space to the subject, analyzing the problem, reviewing the results of research and speculating about the prospects for improvement. One of the most thoughtful statements on the subject appears in the February issue of Fortune magazine, from which my good friend and colleague, the Senator from Colorado (Mr. ALLOTT) quoted in his remarks in this Chamber on March 11.

I believe that this article, which describes the problem of pollution in the context of technological development, should be read in its entirety by all those who are concerned with the degradation of our environment. Mr. President, I ask unanimous consent that the article entitled "How To Think About the Environment," written by Max Ways, be printed in the RECORD.

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

HOW TO THINK ABOUT THE ENVIRONMENT

(By Max Ways)

Slowly as a poisoned snail, public concern over the physical environment crept forward during the first half of this century. In the Fifties anxiety began to quicken. In the Sixties the environment became one of the major topics of American discussion. In the last few months it has been almost impossible to look at a newspaper or a TV set or to talk to a stranger on a plane without encountering some example of dismay over what we are doing to the world around us.

Yet snails, along with all the other species—notably including man—that live on or near this once fair land, continue to be poisoned or choked or pushed around or otherwise imperiled. If, as seems quite likely, public anxiety mounts to ten times its present level, we will not necessarily succeed in correcting our present lethal course. Alarm about the environment, fully justified by the facts and long overdue, is a required precondition of reform. But alarm, by itself, puts out no fires.

It is not hard to imagine how disgust with our mishandling of the environment could become, as in some quarters it already has, just one more taunt against "the sick society," one more whip in the orgy of self-flagellation that has seduced so many professional observers of this pseudo-penitential time. Unless guilt over what we have been doing is accompanied by a stronger sense of what to do instead, U.S. morale may sink to the point where we will be unable to cope properly with the environment—or anything else.

This fortieth anniversary issue of FORTUNE is devoted to the grave challenge that arises from American abuse of the natural resources of air, water, and land, from our failure to honor the terms of partnership in which men coexist with other forms of life, and from our neglect of order and design in our artifacts, especially our cities. FORTUNE's primary intent is not breast-beating or doom-saving. Our readers are already aware that progress has, somehow, been ambushed by its misbegotten children, the unintended by-blows of the modern lust to know and to do.

American business, since it organizes and channels a high proportion of the total action of this society, has been and still is deeply implicated in depredations against the environment. Any way out of the present mess will have to reply heavily upon business for resources, for innovation, and for leadership. The political and social ground rules within which business is conducted will have to be drastically amended. Important corrections will have to be made in the terms of economic calculations that now skew business decisions in destructive directions. In short, business, along with all other major functions of society, will have to change if Americans are to achieve a better environment.

Other articles in this issue of Fortune deal with specific aspects of environmental problems. But a successful reform of our patterns of action will require much more than piecemeal dosage of technical antidotes for one environmental poison after another. This article essays to view the challenge in the round, to probe for the root common cause of such disparate symptoms as traffic jams and vanishing lakes, to establish a perspective between material blight and material progress, to sketch the character of new moral, intellectual, political, legal, social, and economic patterns that must soon be evolved. And beyond this tall order lies the inescapable question of how an effective social program of cherishing the environment might fit with the future of the long march toward individual freedom, and whatever else we mean when we speak of "the quality of life."

THE HOUSES THAT SHAPE US

Winston Churchill in October, 1943, made in the House of Commons a gemlike speech on an unlikely topic for a time of total war: the relation between architectural design and human behavior. The old House had been blasted by a German bomb, and the question was how it should be reconstructed. A more spacious chamber, perhaps? One with a semicircular arrangement of comfortable chairs and useful desks, such as many of the world's parliaments enjoyed? Churchill thought not. What he wanted, essentially, was a replica of the old House with its rows of facing benches that symbolically expressed the party structure, emphasizing the contrasting roles of the Government and the Opposition. The new House, like the old, should have far fewer seats than there were members, so that in an ordinarily ill-attended session speakers would not be discouraged by addressing empty benches. On great occasions, members flocking in would be crowded standing in the aisles, thus encasing debate and decision with visible signs of gravity and urgency. No desks, for members might bang them as had the rowdy French whose parliamentary institutions, he did not need to recall, had proved less than stable. Churchill summed up these minutiae with a thought that is far from trivial, "We shape our buildings, and afterwards our buildings shape us."

Rare in our civilization are such instances where a public man (or, for that matter, a private man) evinces a thoughtful, constructive concern for the indirect human implications of material design. Yet how men deal with things—whether a room, a city, a river, or the great biosphere itself—both discloses and thereafter influences the way they see themselves and the way they deal with one another. Consciously or unconsciously, we make day-by-day decisions that affect the material world. These decisions have an immediate moral and aesthetic content that

should be taken seriously, even if a deteriorating environment were not a long-range threat to prosperity, health, and the continuation of the race.

Survival is not the only—and perhaps not the most impelling—motive for environmental reform. People have a way of brushing off warnings that their farmlands, their lungs, and their life expectancies are being slowly eroded. The threatened penalties, though severe, seem to lie in the remote future. But inhabitants of drab and chaotic cities surrounded by a despoiled countryside are punishing themselves here and now not only by material disadvantages, but by the absence of a precious immaterial quality. Life is presently diminished, it loses point and relish and sense of direction when it is spent amidst a haphazard squalor that God never made, nature never evolved, and man never intended.

A youth smashes a window or sets fire to a house or mugs an old woman on a street. How much have we nurtured such disorders by the disorders of the American scene? It doesn't look as if anybody around here cared.

WHO KILLED THE ILLINOIS RIVERS?

Although environmental issues do have a grave moral content, there's little sense in the tendency to present the case in the dominant art form of a TV horse opera. This isn't, really, a confrontation between "the polluters" and the good guys in the white hats. "Greed" is to blame. "Man, the dirtiest animal," is to blame, especially because his numbers are increasing. "Technology" is to blame—and this charge, as we shall see, contains much truth, though far less than the whole truth. "Capitalism" is to blame. "The poor," who throw garbage in the streets, are to blame. "Democracy," which seems unable to find remedies, is to blame. And, of course, "the establishment," everyone's goat of atonement, is to blame.

In general, the nomination of villains follows the familiar pattern of dumping the ashes of contrition on somebody else's head. A Columbia law-school senior this year was reported to have boasted that he told recruiters for law firms he "would not defend a client who was a polluter—and most of the clients who pollute are the big ones," a remark indicating that even law-school seniors may have something to learn.

For all men are polluters—and all living Americans are big polluters. The greedy and the ungreedy alike befoul the air with automobile exhaust fumes, the humble 1960 jalopy contributing somewhat more poison than the arrogant 1970 Cadillac. So long as our laws and habits of land use foster chaos, the homes of saints will aggress as rudely upon nature as the haunts of sinners. Who killed the rivers of Illinois by extinguishing perhaps forever their ability to cleanse and renew themselves? The effluents of big industries did a substantial part of the damage. Sewage from towns did part. But most of the damage to the rivers of Illinois came from farms onto which decent and well-meaning "little" men, in the pursuit of the legitimate aim of increasing crop yields, poured nitrogen fertilizers. The result bears the mellifluous name of "eutrophication": algae, slimy green gunk, rampantly feed upon the fertilizer drained into the rivers; the decay of dead algae consumes so much of the available oxygen as to destroy the bacterial action that once cleansed the rivers of organic wastes.

At the root of our environmental troubles we will not find a cause so simple as the greed of a few men. The wastes that besmirch our land are produced in the course of fulfilling widespread human wants that are in the main reasonable and defensible. Nor will we find capitalism at the root of the trouble. The Soviet Union, organized around central planning, has constructed some of the most terrifyingly hideous cityscapes on earth, while raping the countryside with strip mines, industrial pollutants, and all the other atrocities that in the U.S. are ascribed to selfish proprietary interests. Aware, as well they might be, of American environmental mistakes in handling the mass use of the automobile, Russians keep saying they will do it better; but today, as automobiles become more numerous in the U.S.S.R., it is hard to find in city or highway planning, in automobile design, or in any other tangible area signs that they are in fact better prepared for the automobile onslaught than the U.S. was in 1920.

The Japanese, though their basic culture lays great stress on harmony between man and nature, are not handling their environmental relations significantly better than the Americans or the Russians. Japan's economy combining private enterprise with government central planning, seems able to do anything—except cherish the material beauty and order that the people value so highly.

If we wish to think seriously about the environment, we have to give up indulgence in barefoot moralism and the devil theory of what's wrong. We have to identify a root cause that explains the environmental failures of systems as different as the American, the Russian, and the Japanese. Obviously, all three are high-powered industrialized, technologized societies, and our quest for a root cause can start by tentatively picking technology as the villain.

FOR EVERY MAN, 500 "SLAVES"

Despite billions of words on the subject, we still underestimate the magnitude of technological advance and its implications. Thirty years ago in Fortune's tenth anniversary issue, R. Buckminster Fuller found an apt way of expressing what had occurred. He calculated the total energy generated in the U.S. as equal to the muscular energy that would be generated if every American had 153 slaves working for him. Today a similar calculation would indicate about 500 "slaves" for every American man, woman, and child.

These slaves enable us to increase our own mobility hundreds of times and to toss around incredible masses of materials, altering not only their location and external shapes but their very molecules. Excluding construction, earth moving, and many other operations, the U.S. economy, according to one estimate, uses 2,500,000,000 tons of material a year. That's nearly thirteen tons per person.

These figures explain a lot of environmental woes that are otherwise mysterious. Although our cities are not more densely populated, they produce more maddening and wasteful congestion than any cities of the past. Our crowding is not basically a matter of too many human beings to the square mile but of the enormous retinue of energy and material that accompanies each of us. Like King Lear with his hundred riotous knights and squires, we strain the hospitality of our dwelling space, and from our situation, as from Lear's, much grief may follow.

Two hundred million of us are bustling about the U.S., every one sheathed in a mass-and-energy nimbus very much bigger, noisier, dirtier, smellier, clumsier, and deadlier than he is. The paper, plastics, scrap, ash, soot, dust, sludge, slag, fumes, and weird compounds thrown off by the mass-and-energy nimbus exceed by many magnitudes our own bodily wastes. If ten billion mere people, sans technological nimbus, inhabited the U.S., they could not create more congestion, blight, and confusion. The three million high-technology U.S. farmers put more adverse pressure on their land and rivers than the hundred and fifty million low-productivity peasant families of China put upon their land and rivers.

THE RATS WHO RULE THE ELEPHANTS

How should a city be designed and its circulatory system arranged to accommodate a people that employs energy and mass at present American levels? The past offers only wisps of inspiration, but no usable models. Consistently we have failed to face the sheer physical challenge of the contemporary city, assuming that old urban forms would be adequate if we amended them a little to meet one crisis after another.

Along with all kinds of congestion, our cities produce a paradoxical effect of isolation and desolation. Not rationally shaped for the needs of this society, the cities may be shaping us toward irrationality. Frequently mentioned in environmentalist circles these days is a research project carried out by John Calhoun at Bethesda, Maryland. He placed Norway rats in a closed area ample for the original population. As they multiplied, the crowded animals, though well fed, developed most distressing psychoses, which, out of a decent respect for the privacy of rats, will not be here detailed. Many who have heard of this project see a close parallel with our cities.

But the analogy is not quite true to the situation of contemporary urban man. It would be better to find a strain of rats each one of which had the services of a half-house-broken elephant to do its work, run its errands, and cater to its wants. In an ill-organized space these lordly rats, even if they did not multiply, might go crazier quicker than did their cousins in Bethesda.

People who center their anxiety on "the population explosion" see the challenge much too narrowly. In the U.S. and other advanced countries, population has been increasing less rapidly by far than the explosive acceleration of the total energy and total mass deployed. If the population declined and technology continued to breed, without any improvement in the arrangements for its prudent use, a small fraction of the present U.S. population could complete the destruction of the physical environment while jostling one another for room.

A RETREAT TO POVERTY?

We come, then, to the question of whether a headlong retreat from technology would be the right strategy. This option needs to be honestly appraised, not toyed with as it is every day by nostalgic romanticists wiggling their toes in secondhand memories of Thoreau's Walden Pond.

The casualties of a withdrawal from technology would be heavier than many suppose. Everybody, of course, has his own examples of unnecessary technologies, unnecessary products, unnecessary activities. But because we are, thank God, diverse in our wants, the lists do not agree. The man who has since childhood said to hell with spinach has a ready-made response to the news that a high incidence of "blue babies" recorded in Germany has been attributed to heavy use of nitrogen fertilizer on the spinach crop. But other consumers will have good reasons for wishing spinach yields to increase. We will not improve our environmental situation by recommending a technological retreat on the basis of what each of us considers the superfluous items in the households of his neighbors.

To be effective in protecting the environment a technological retreat would extend over a wide front and go back a long, long way. A century ago we had already slaughtered the bison, felled the eastern forests, and degraded the colonial cities. Retreat to the 1870 level of technology, while not giving long-range protection to the environment, would place the median American standard of living far below the 1970 poverty line. Among the consequences of such a retreat would be the closing of 75 percent of the present colleges and most of the high schools. We would give up not only auto-

mobiles and airplanes but also mass education and social services. Grandpa would return to living in the abandoned hencoop.

Since we are not going to choose such a retreat from technology as a deliberate social policy, sheer practicality forces us to seek another way out. In that quest we have to ask seriously why the U.S. and all the other advanced countries have failed so dismally in handling the unwanted effects of technology.

Modern technology did not spring out of the void. It did not well up simultaneously in all the world's peoples. It appears first in European culture, and, although it is now disseminated over the whole globe, its main generative fonts remain to this day Western.

The Western origin and leadership in technology, the main agent of environmental destruction, inevitably raises uncomfortable questions about Western culture itself. The Judeo-Christian religious formation is not essentially "anti-nature," as some angry men now aver. But in contrast to Oriental religions, it does sharply separate its idea of God from its idea of nature and does look upon man as having a special relationship with the Creator and a unique place within creation.

The Western tendency to objectify nature—to see it "from outside"—is undoubtedly responsible for much arrogant and insensitive handling of the material world. But it ought not be forgotten that this same attitudinal "separation" of man from nature forms the basis of man's ever increasing knowledge of nature. In recent centuries, especially, Western man has empirically confirmed his ancient notion of himself as unique among the creatures: no other species possesses a glimmer of his ability to learn about nature and to operate, for better or worse, upon it.

Surely it can be no accident that four centuries of science are attributable almost entirely to Western culture. Extending the pattern of Western religion and philosophy, which had drawn sharp distinctions between ideas of God, of man, and of nature, the scientific method began to separate one aspect of nature from another for purposes of study. This superlatively effective way of discovering solidly verifiable truths tends, precisely because it is sharply focused, to ignore whatever lies outside its periphery of attention.

Science, seeking only to know, is guiltless of direct aggression against the environment. But technology, devoted to action, feeds ravenously upon the discoveries of science. Although its categories are not the same as those of science, technology in its own way is also highly specialized, directed toward narrowly defined aims. As its power rises, technology's "side effects," the consequences lying outside its tunneled field of purpose, proliferate with disastrous consequences to the environment—among other unintended victims.

MILLIONS OF PHARAOHS COMPLICATE LIFE

Modern Western man has advanced the principal of separation or differentiation also in areas of life, such as psychology and politics, that are seemingly remote from science and technology. These trends, too, have contributed to our environmental diseases.

The undifferentiated human mass, say of ancient Egypt, has been replaced by modern men who regard themselves—and in fact are—highly individuated. The long trend to individualism, which has Greek as well as Judeo-Christian origins, has sharply accelerated during the modern centuries. One of its aspects, democracy, is based on the assumption that the diverse wants, skills, interests, and opinions of individuals should not be ignored or rudely aggregated from above, but must be somehow coordinated from below. The latter process is clearly the more difficult, especially when applied to such large questions as how to protect the physical environment from human misuse.

The pharaonic society employed its most potent technology, irrigation, on the premise that everybody shared a common desire to eat. The knowledge required to operate the system was closely held in a group of priestly intellectuals, and the decision-making power was concentrated in the will of Pharaoh. With its technology under unified control, with few conflicts or complications arising from a diversity of skills, interests, rights, and powers within the community, the pharaonic society could maintain for centuries a stable, harmonious relation with nature and could also achieve styliistic and functional coherence within its man-made environment—such as it was.

One can hear today in environmentalist circles half-serious remarks that every city needs a king and every country an all-powerful planner to unify decisions affecting the environment. Such suggestions underestimate the human cost of the reversal, as do proposals for a retreat from technology. We will not voluntarily abandon the view that society should be made up of highly individuated men pursuing their own aims by their own lights.

We have permitted the free combination of individuals on the basis of shared specific aims. By means of such groups, mainly corporations, we have organized and stimulated technological advance, matching techniques to particular group aims. Though this pattern all too often ignores the undesirable side effects of its single-minded thrusts, it fits so closely with the evolution toward human diversity and freedom that we would shrink from a return to the pharaonic kind of harmony and stability. We are not fellahin, and the road back to that condition might be more arduous and more disorderly than the road we have traveled.

WHAT THE GARBAGE SPECIALISTS OVERLOOK

Western culture has never denied that a society stressing the individuality of its members needs the restraint and to some degree the positive leadership of government. But the character of government has also been affected by the trend toward differentiation. The Lord's annointed, with unspecified and even "absolute" power, has been split up into sharply segregated bureaucratic functions.

These, too, generate undesirable side effects. A highway department's mission is defined by statute and by specific appropriations. As it goes about its assigned task of building the most road for the least measured cost, it rips up neighborhoods and landscapes, creating enormous social disutilities that never get into the department's benefit-cost calculations. A sanitation department, told to dispose of garbage, may tow it offshore and dump it. When the refuse washes back upon the beaches and into the estuaries, the problem belongs to some other department. Or the specialists in solid-waste disposal may burn trash and garbage in places and in ways that transfer the pollution to the air.

Fragmentation of modern government occurs even in "totalitarian" countries. Administration of the Soviet economy is divided among fifty-odd ministries for the sake of efficiency. If a paper mill is needed, the men told off for that responsibility look around, like any capitalist, for plentiful timber, plentiful water, and cheap electric power. One paper mill was placed on the shore of beautiful Lake Baikal because the protection of this unique body of water lay outside the field of assigned vision of the men in charge of paper production. They were not being "greedy" or even "stupid" in the ordinary meaning of those words. They were wearing the blinkers of concentration, using the great Western device of fixing attention on the job at hand, of dealing intelligently with one segment of reality at a time.

A PROBLEM OF BALANCE

Though the principle of segregated attention proves gloriously succesful—in research, in work, and in government—it can collide disastrously with the principle of unity. For each man is a unit though his skills and wants may be various. A society is a unit as well as a multitude. Nature, most marvelously connected throughout all its diversities, is a unit. Violation of these unities invites penalties and poses formidable tasks of reintegration.

Here we come to the root cause of our abuse of the environment: *in modern society the principle of fragmentation, outrunning the principle of unity, is producing a higher and higher degree of disorder and disutility.*

How can balance be restored? Since it is profoundly unrealistic to believe that we will or should retreat from such bastions of diversity as science, technology, and human individuality, then we have to seek improved methods of coordinating our fragmented thought and action.

During recent centuries, institutions of coordination, though lagging behind diversity, have not stood still. In economic affairs the market performs, albeit imperfectly, a stupendous job of mediating disparate wants, skills, resources. Government, amidst its bureaucratic fragments, has not completely lost the notion that it is supposed to serve such unitary purposes as "the general welfare." Specialized knowledge has a medium of transfer in the great modern webs of information, particularly the universities where all the sciences meet even if they do not fluently communicate.

How might such integrative agencies as market, government, and university be used, separately or in combination, so as to minimize the damage that fragmented action now does to the environment? This is the question on which the chance of actual reform, as distinguished from alarm and breast-beating, depends.

SUBSIDIZING DESTRUCTION

In two areas, air and water pollution, a moment's reflection should convince anybody that the market, as now set up, is rigged against the environment. A hundred and fifty years ago it was almost unimaginable that clean water, much less clean air, could become scarce in the U.S. economy. Rightly, these resources were then considered common property and used without charge. The price of everything else the economy uses—land, minerals, food, labor, time—becomes dearer. But clean air and water, though now precious, are still left out of the pricing system, still free of charge.

Because the market has failed to keep pace with changing economic reality, the pricing system, expressing relative demand and supply, works against the conservation of clean air and water. A manufacturer is under great pressure to offset rising labor and material costs by developing new techniques. He has been under no comparable pressure with respect to clean air and water. Not surprisingly, techniques for conserving these resources have developed very slowly. The effect of omitting free resources from the pricing system is to make the economy as a whole pay a huge subsidy to those activities that put above average pressure on free resources. In short, we are now providing a huge, unintentional market incentive to pollution.

The most direct and logical way of getting clean air and water into the market system is by a federal tax graduated in respect to the quantity and undesirably of the pollutants. Such a tax, escalating over the first five or ten years so as not to destroy industries whose cost structures are based on the present system, would stimulate the development of antipollution techniques.

Taxes on the abuse of water and air would not replace the present trend toward stricter antipollution measures enforced by police power. Radioactive wastes, for instance, can be dangerous in very small quantities because they concentrate as they move up the food chain. The strictest control of such wastes is required—and may prove expensive. Nuclear power will be better able to absorb such costs if its competitor, fossil fuel, is forced to pay for the clean air and water it displaces. By such combination of government police power and taxing power we can turn the market toward protection of the environment—or at least achieve its "neutrality."

Correcting the market is much more difficult in that growing class of cases where the bad environmental side effects do not occur until the product is in the hands of the consumer or even until after he has disposed of it. It is by no means clear that automobiles, for instance, now carry taxes equivalent to the true social costs incurred by their use and disposal. If we become serious about the preservation or restoration of public transport in American cities the first step would be to make sure that public policy is not subsidizing the automobile.

Still more difficult to deal with is the product that is innocent until it interferes with some technique of protecting the environment. Many plastics give trouble in this indirect way. The polyvinyl chloride bottle causes no problems unless it is burned in a trash incinerator that is equipped with a scrubber designed to catch soot and fly ash. The burning PVC causes hydrochloric acid to form in the scrubber, destroying its metal casing. Some companies that hoped to sell more scrubbers for smaller incinerators have given up because they cannot guarantee their devices against the increasing incidence of PVC in trash. A small tax based on the nuisance side effect of certain plastics would either drive them off the market or encourage a new technology that abated the nuisance. As technology advances into more and more esoteric compounds, each carefully designed for a particular use, protection of the environment will require public policies that force innovators to pay more attention to the side effects of their products.

FORD CHALLENGES A CONSENSUS

With gratifying frequency and emphasis, business spokesmen these days are expressing their determination to exercise greater care of the environment. If business greed lay at the root of our environmental troubles then this repentance would itself signal the great turnaround. In fact, a more sensitive and socially responsible business attitude will be of very limited help—unless it is accompanied by new ground rules. Under the present set of rules, if one corporation is environmentally a good citizen, incurring heavy costs to fight pollution, and if its competitor operates on an environment-be-damned basis, then the first corporation will be punished and the second rewarded. The market will practice selection against the environment.

Instead of getting on with the formidable job of rewriting the rules, public discussion wastes time and energy on irrelevant questions, such as how much of business profit should be diverted to environmental betterment. The problems have become so huge that we would not necessarily make a dent in them with *all* the profits of American business.

Henry Ford II in a speech late last year expressed this point cogently. He first noted that, "Hardly anyone disputes the proposition that service to society requires at least a short-run sacrifice of business profit." Then Ford disputed that consensual proposition. "This point of view," he said, "may have been tenable in the past. As long as public expectations with respect to the social responsibilities of business were relatively narrow and modest, business could pass muster by sacrificing only a little of its short-run earnings. Now that public expectations are exploding in all directions we can no longer regard profit and service to society as separate and competing goals, even in the short run. The company that sacrifices more and more short-run profit to keep up with constantly rising public expectations will soon find itself with no long run to worry about. On the other hand, the company that seeks to conserve its profit by minimizing its response to changing expectations will soon find itself in conflict with all the publics on which its profits depend."

Ford recommended not a middle course but an entirely different approach. Instead of regarding profits as competing with public expectations, such as environmental demands, he argued that business should look upon the rising public standards as opportunities for profit. "We have to ask ourselves what do people want that they didn't want before, and how can we get a competitive edge by giving them more of what they really want?" Ford showed he was fully aware that in many cases governmental action would be required to translate the public's heightened desire for a better environment into effective market demand. New antipollution standards set by law, he said, had stimulated efforts by the automobile companies to reduce noxious emissions from cars.

Ford's and all other realistic approaches to environmental problems imply future government action very different in kind and quality from the typical bureaucratic methods of the past. Some businessmen's continued opposition to government action in protecting the environment can be explained—if not defended—on the ground that their past experience with government controls does not inspire confidence. Businessmen rarely contact "government" in any general sense. They confront one bureaucrat after another. Because the bureaucracy is even more sharply fragmented than business, there is often a good reason for a businessman to conclude that the typical bureaucrat's view of the general public interest is narrower than his own.

EVOLUTION FROM BUREAUCRACY

The beginning of a shift from fragmented to integrative government action can be illustrated by a brief look at the history of a field where concern for the physical environment and concern for the social environment overlap. Generations of indignation about "the slums" came to a head in the Thirties. Crime, ignorance, disease, unemployment and, of course, poor housing were all among the reasons for anxiety. Governmental antislum action concentrated on one element, housing. Here was a material object that we surely knew how to produce in quantity. Without much study it was assumed that new public housing would somehow lever upward all the other adverse conditions of the slums.

So a large, competent, and militant bureaucracy was assembled on the narrow front of public housing. Over the years it went from triumph to triumph, if you measured by the size of the appropriation and the number of units built. People began to notice, however, that this program was not delivering, in human terms, what it had promised. The poor displaced by slum clearance were in many cases worse off than before. The new projects, more grim and sterile than the old slums, did not produce falling crime rates, better health, and improved school performance. Typically, the housing bureaucrats and their supporters brushed off these observations as inspired by reactionary politics and, inevitably, private greed.

A day came when the inadequacies of the narrow approach could no longer be ignored. More general terms, like "urban renewal," began to replace "slum clearance" and "public housing." In 1966 evolution of the governmental approach took a big step forward in the Model Cities program, which envisions a coordinated attack on such disparate fronts as medical care, educational enrichment, improved police work—and housing. Moreover, the Model Cities program calls for a decision-making structure in which people who live in the neighborhoods involved will have an important voice in determining what is done.

Because it runs against the familiar grain of fragmentation and bureaucratic control by the specialized experts, the Model Cities program breeds problems and conflicts. More accurately, it makes explicit and open those problems and conflicts that the old public-housing approach, eyes fixed straight ahead, would have ignored. "The community," now assumed to have its own values about its living arrangements, has been given an integrative role; it is forced to think in terms of priorities and of the relationship between, say, health and education. As a decision-maker, the community sometimes asks questions that would not have occurred to experts working within discrete programs. The broad approach puts pressure on the social and environmental sciences to coordinate their specialized knowledge and to undertake investigations of what needs, in a practical sense, to be discovered.

PLAN FOR THE VALLEYS

There will be many cases where a high measure of integrative action can be achieved with government playing only a secondary, though necessary, role. One of the most fascinating innovations in protection of the environment is on trial just northwest of Baltimore, in the area formed by the Green Spring and Worthington valleys.

These 45,000 acres are inhabited by well-to-do and rich landowners who breed horses and cattle in one of the loveliest landscapes to be found in the U.S. The appearance of the valleys had changed little in this century, but the handwriting was on the hillsides. New highways had made the area more accessible to Baltimore. New real-estate developments pressed in from three sides. There was a wide and deep consensus among the area's 5,000 families that they would like to keep it the way it was. Despite their wealth, they doubted that they would be able to do this. Some landowner would sell to a developer. Reading this as the beginning of the end, another and another would sell. They would do so not out of greed, but because the system as it actually functioned seemed to give them no other real choice. Soon the valley floor would be covered. People who had paid premium prices to live "in the beautiful Green Spring Valley" would discover that they were living in a replica of ten thousand other undistinguished suburbs.

The valley landowners, banding together, sought advice from Dr. David A. Wallace, who had planned Charles Center in midtown Baltimore. To make an ecological study he called in Ian L. McHarg, a landscape architect out of the University of Pennsylvania. Together they worked out a "Plan for the Valleys," described as a chapter in McHarg's book *Design with Nature*. The plan's most striking characteristic is its contrast to the purely negative approach of most conservationists. It accepted change for the area not only as inevitable but as socially desirable. Wallace and McHarg, estimating that unplanned development would generate $33,500,000 in profits, sought to devise a way of orderly development that would add as much.

The unique aesthetic asset of the area was the pastoral scene on the valley floors. There, housing subdivisions would be prohibited. Development could occur in rather dense clusters on some of the area's plateaus, now sparsely inhabited. Within thirty years, population of the area might rise from 17,000 to 110,000 or more. By 1980 more than $40 million would be added to total value.

The big jump, of course, would be in the price of development land on the plateaus. The plan calls for some of this profit to be piped down to the valley-floor owners whose abstention from sales to developers would cause the price rise on the plateaus.

Whether this plan will work remains to be seen. But it is the kind of effort that should provoke study all over the U.S. The essential elements of the plan are (1) the wishes of the private owners; (2) their recognition that the housing needs of other people require great change in the area; (3) the combination of ecological and socio-economic planning principles; and (4) support of the plan by government.

"Plan for the Valleys" runs counter to many ingrained ideas of "absolute" private-property rights and untrammeled market action. The main purpose of institutions based on these ideas is to widen freedom of choice. As our technological power rises it becomes more and more obvious that the use and value of one man's land depend on what his neighbor does with his land. If this new reality is not reflected in our laws and other social institutions then actual freedom of choice diminishes. The wholesome "fragmentation" represented by private landownership will defeat itself in the absence of balancing institutions that can coordinate social action in respect, say, to the preservation of a beautiful environment, a unity that gives value to the ownership of its parts.

HOW TO LOCATE A POWER PLANT

Multiplication of laws setting forth what can't be done will be ineffective unless we invent legal, economic, and social devices through which we can decide what *should* be done. In the absence of such decision structures few people will ever develop Winston Churchill's sense of the connection between material design and human purpose.

Compare the constructive principles of the "Plan for the Valleys" with the negative and accusatory tone of much recent discussion. At a meeting in New York last month, various environmental ills, including the appalling mess of the Jersey Meadows, were excoriated. Said one of the guests, a businessman: "Jersey Standard's officers should have been shot for putting a refinery there in the first place." Another guest asked: "Where should they have put it—in the Rocky Mountains?" The businessman was appalled by this sacrilegious suggestion, but he refused to deal seriously with the question of a refinery's location.

So do most conservationists. Everybody wants ample electric power, for instance, but more and more communities are prepared to resist the presence of a power plant. Decisions on plant location are being made in a basically disorderly way with each fragmented community interest in turn poised against the fragmented interest of the power company. More and more of these cases are getting into courts. But the courts, operating in the narrow dualism of adversary proceedings, are hardly in a position to say where a power plant ought to go. In this decision system the most apathetic or careless community would get stuck with the power plant or refinery—and this might be exactly the worst place to put it from either a business or an environmental viewpoint.

Obviously, a high-technology society needs, and its government should provide, forums for the rational resolution of such questions. Carl E. Bagge, a member of the Federal Power Commission, argues that regional planning bodies should become the forums for deciding on such questions as the location of new power plants and power transmission facilities.

Better handling of the environment is going to require lots of legal innovation to shape the integrative forums and regulatory bodies where our new-found environmental concerns may be given concrete reality. These new legal devices will extend all the way from treaties forbidding oil pollution on the high seas down to the minute concerns of local government. But the present wave of conservationist interest among lawyers and law students does not seem to be headed along the constructive path. Rather, it appears intent on multiplying two-party conflicts between "polluters" and victims.

A NEW ARMY OF POLLUTION CHASERS?

When we read of some environmental atrocity—a sonic boom, a baby bitten in a rat-infested slum, a disease caused by polluted air—our sympathies instantly go out to the victims, just as our sympathies go out to those hurt in automobile accidents. This example should give us pause. The damage suit as a legal remedy in automobile accidents has clogged the courts and imposed on the public a $7-billion annual bill for liability insurance premiums. This huge cost contributes almost nothing to highway safety. For a fraction of the dollars and the legal brains drained off by damage suits we could have produced better highway codes and better regulations for car safety—and also provided compensation for the victims of a diminished number of accidents. If environmental law follows the dismal pattern of automobile tort cases, every business and perhaps every individual will be carrying insurance against pollution-damage suits. An army of pollution chasers, hot for those contingent fees, will join the present army of ambulance chasers. None of that is going to do the environment any good.

From the civilizational standpoint, the expansion of the law of torts was a magnificent advance over the blood-feud, the code duello, and the retaliatory horsewhip. But out of respect for this achievement of our ancestors we are not required to go on multiplying damage suits ad infinitum, while ignoring the need for new legal forms more relevant to the problems of our own time. This is not intended to suggest that environmental tort cases should have no place in future law. It is meant to express the hope that such suits will be exceptional and that the main line of legal development in respect to the environment will break (if conservationists can forgive the metaphor) new ground.

TO PUT THE WORLD TOGETHER AGAIN

The web of communication could do a much better job than it is doing in helping to coordinate society's fragmented actions. Journalism, enslaved to its own outworn traditions, is eager to report those environmental concerns that are reduced to simple and dramatic "confrontations," but journalism is insensitive to the complexities of city planning or of market reform to reduce pollution.

A key contribution to the environmental future can be made by the university, the most significant institution in the whole communication network. Indignation concerning the environment is now at a very high pitch among students and faculty. Not all of this emotion, however, is translated into efforts within the university to balance specialized fragmentation with integrated studies.

An interesting view of faculty attitudes toward the environment was elicited from Robert Wood, Undersecretary (and briefly Secretary) of Housing and Urban Development in the Johnson Administration and now director of the Joint Center for Urban Studies of M.I.T. and Harvard. On his return to academia, Wood found that, throughout the faculties, interest in environmental affairs had suddenly become emotionally intense. "They are a little like the atomic scientists after Hiroshima," he says. "They had assumed that science was automatically improving the world. Confronted with contrary evidence, they feel guilt. But they tend to become impatient when their condemnations of what is happening are not immediately followed by correction."

Many faculty members who are most indignant about the environment would be unwilling to direct their own research or teaching effort to environmental questions. Urban-affairs centers and institutes of ecology are proliferating on campuses but in many cases they are not allowed, because of the jealousy of the entrenched disciplines, to give credit courses or degrees. In the academic structure, such interdisciplinary institutes are looked down upon much as a mongrel would be regarded at a show sponsored by the American Kennel Club.

U.S. society is going to need tens of thousands of "integrators," men who can handle environmental material from several natural sciences in combination with material from several of the social sciences. These men will utilize very high technologies, such as computers and space satellites, to diagnose and cure the side effects of other technologies. Tomorrow's integrators, moreover, must be able to deal with broad questions of human value, purpose, and law that lie beyond (and between) the sciences. The universities that produced the specialists who taught us how to take the world apart will now have to train the men who will take the lead in putting it together again.

CAN WE AFFORD IT ALL?

Environmental damage is so widespread and is continuing so rapidly that there is a serious question as to whether we can afford reform—a question that is not necessarily answered by the glib truth that we cannot afford to go on as we are. An article beginning on page 120 deals directly with economic aspects of environmental problems. Here, however, it is appropriate to place efforts to improve the environment within the perspective of this society's economic future.

If certain twentieth-century trends such as population growth and, especially, the enlargement of the per capita mass-and-energy nimbus are simply extrapolated into the future, it's obvious that at some point we will destroy ourselves by consuming the earth. But these rates may not soar on forever. After ten years of falling U.S. birth-rates, it has become possible to believe that the U.S. population may stabilize between the years 2000 and 2020 at not much above its present level, as a few demographers have predicted.

Limits of growth are also in sight for the more important rate of mass-and-energy used. The heavy environmental pressures come from agriculture and manufacturing (including mining). We are already producing more food than we consume and more than we would need to feed all the hungry in the U.S. The total value of manufactured goods will probably continue to rise for several decades, although substantial reductions in this demand could result from better environmental policies. Many things (e.g., the second family car, the second home) that we now buy are made "necessary" by wasteful environmental arrangements. The U.S. will probably reach saturation in manufactured goods in any event at some point in the next fifty years, if only because the time to use all the things we buy is becoming scarce.

Meanwhile, this economy will be very hard pressed to keep up with its increasing needs on the "services" front. A society that is both highly specialized and rapidly changing requires, as ours has already demonstrated, an elaborate "nerve system," employing millions, to maintain its cohesion and determine its direction. Among the elements of the "nerve system" are education, communications, law, finance, etc., which burn little fuel and consume small tonnages of materials.

WE WON'T SNUGGLE BACK

The probability that gross pressure on the environment is due to stabilize does not of itself constitute a ground for optimism. It merely indicates that our prospect is not hopeless, and that by a huge and intelligent effort we might reverse the present devastation.

Whether that effort will be made depends primarily on how we think about the challenge. We did not get into this mess through such vices as gluttony, but rather through our virtues, our unbalanced and uncoordinated strengths. If we do not succeed in bringing under control our new-found powers, the failure will be attributable to the father of all vices, inattention to the consequences of our actions.

Modern man, Western or Westernized, is not going to snuggle back into the bosom of nature, perceiving all reality as a blurred continuum. That possibility of innocence we lost long ago in—of all places—a garden. We have understood differentiation, specialization, individuation; we have known the glories of action concentrated upon a specific purpose. Our path toward unity lies *through* diversity and specialization, not in recoil from them. A high-technology society without adequate institutions of coordination will produce either chaos or tyranny or both. Freedom will become meaningless because individual men will cease to believe that what they want has any relevance to what they get. But a high-technology society that can innovate adequate structures of decision will expand the freedom of individual choice far beyond any dream of the low-technology centuries.

The chief product of the future society is destined to be not food, not things, but the quality of the society itself. High on the list of what we mean by quality stands the question of how we deal with the material world, related as that is to how we deal with one another. That we have the wealth and the power to achieve a better environment is sure. That we will have the wisdom and charity to do so remains—and must always remain—uncertain.

METRIC CONVERSION

Mr. PELL. Mr. President, the Conference of Federal Environmental Engineers recently adopted a resolution urging a systematic conversion to the metric system in the United States.

I am very glad to ask unanimous consent that the resolution be printed in the RECORD.

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

RESOLUTION

The Conference of Federal Environmental Engineers hereby adopts the following resolution:

"The Congress of the United States is urged to follow an orderly, systematic program to implement immediately the adoption of the Metric System of Measures in the United States. A program should be implemented in well balanced stages to permit all American citizens to become gradually familiar with the new system. A ten year staging period should be developed during which a dual system should be used to enable everyone to become familiar with the Metric System in everyday life and industrial and commercial activities. The teaching of the Metric System to school children at all ages should be encouraged, beginning now. Each State should be encouraged and advised to enact legislation and procedures wherever necessary to conform to the National Policy.

"This program is considered by this organization to be essential to maintain the position of the United States in international trade and technical relationship. It is necessary for the continuing efficiency of the United States especially with regard to engineering and scientific affairs as related to commerce and industry with practically all foreign countries who have adopted or are in the process of adopting the Metric System."

Passed by unanimous vote, after discussion, at the annual meeting held 19 November 1969.

S. J. WARE,
President.
JAMES H. LA VANE,
Secretary.

NATIONAL COMMITTEE AGAINST PREVENTIVE DETENTION OPPOSES PREVENTIVE DETENTION IN DISTRICT OF COLUMBIA CRIME BILL

Mr. ERVIN. Mr. President, the Department of Justice attempted to move the District of Columbia crime bill swiftly and silently through the House of Representatives so that the press, the public, and Congress would be unaware of its infamous provisions and of its serious threat to our constitutional liberties.

Like the burglars it professes to oppose, thieves who operate by stealth in the dead of night, the Department has tried to steal our constitutional rights by shunning frank debate. Instead of stealing mere property goods, however, the Department, in their crime fighting zeal, would steal away our most precious guarantees against tyranny.

Mr. President, Congress has a duty to prevent the executive branch from attempting grand larceny of the first, fourth, fifth, sixth, and eighth amendments of the Bill of Rights.

Despite the speed and secrecy which surrounded the Department's actions in the House of Representatives, they were not totally successful in keeping the people in the dark. A few days ago, a national organization was created to help shed much-needed light on the dangers contained in this legislation. On March 18, the day before the District of Columbia crime bill passed the House, former Supreme Court Justice Arthur Goldberg announced the formation of the National Committee Against Preventive Detention. This committee already numbers among its membership some 70 leaders of the legal profession, including law professors, lawyers, police officials, deans of law schools, and former judges.

The national committee is opposed to preventive detention in whatever form it appears. In the words of Justice Goldberg:

Proposals for preventive detention turn our system of justice upside down, risk the imprisonment of innocent men and invite abuse at the hands of the law during a period of social strain when law must prevail by its steady fairness and even-handed objectivity. It is alien to the American concept of law-enforcement and our tradition to punish persons for actions which *may* take place in the future.

The Eighth Amendment to the Constitution and its implementation in court decisions and legislation clearly guarantee fair bail for all but capital crimes. Pre-trial preventive detention scorns these fundamental provisions of liberty, won after long struggle, by placing those innocent in pointless danger of punishment which should be reserved for those found guilty after fair trial.

Among the many distinguished members of the national committee, in addition to Justice Goldberg, are: Judges Bernard Botein and Charles Desmond, of New York; the district attorney of Queens County, N.Y., Thomas Mackell, and Franklin A. Thomas, deputy police commissioner of New York. Also members are the dean of Catholic University Law School, E. Clinton Bamburger; the dean of the University of Pennsylvania Law School, Bernard Wolfman; the dean of the University of Iowa Law School, David Vernon; and Charles Ares, dean of the University of Arizona Law School. Among the many professors of law are Harry Kalven, of the University of Chicago Law School; Ralph Brown, Clyde Summers, and Boris Bittker, of Yale Law School; Vern Countryman, of Harvard Law School; Walter Gellhorn, of Columbia Law School; and professor and former dean Thomas Cooley, of the University of Pittsburgh Law School. Among the distinguished members of the practicing bar are Edward N. Costikyan, William Van Den Heuvel, and Paul O'Dwyer, of New York; Charles Horsky, of Washington, D.C.; Albert Jenner, of Chicago; and John L. Saltonstall, of Boston.

Mr. President, I ask unanimous consent that a full list of the membership of the National Committee Against Preventive Detention be printed in the RECORD together with the statement of Justice Goldberg opposing the preventive detention portions of the District of Columbia crime bill.

There being no objection, the list of the membership of the National Committee Against Preventive Detention and Justice Goldberg's statement were ordered to be printed in the RECORD, as follows:

NATIONAL COMMITTEE AGAINST PREVENTIVE DETENTION

George Alexander, Professor of Law, Syracuse University Law School, Syracuse, New York.

Charles Ares, Dean, University of Arizona Law School, Tucson, Arizona.

James B. Atleson, Professor at Law, Law School, State University of New York at Buffalo, Buffalo, New York.

E. Clinton Bamburger, Dean, Catholic University Law School, Washington, D.C.

Bernard Berkman, Lawyer, Cleveland, Ohio.

Gerald Berlin, Lawyer, Boston, Massachusetts.

Edgar Bernhard, Lawyer, Chicago, Illinois.

Boris L. Bittker, Professor of Law, Yale University Law School, New Haven, Connecticut.

Judge Bernard Botein, New York, New York.

Ralph S. Brown, Jr., Professor of Law, Yale University Law School, New Haven, Connecticut.

Robert L. Carter, Lawyer, New York, New York.

LeRoy Clark, Professor of Law, New York University Law School, New York, New York.

Daniel G. Collins, Professor of Law, New York University Law School, New York, New York.

Thomas Cooley, Professor of Law, University of Pittsburgh Law School, Pittsburgh, Pennsylvania.

Edward N. Costikyan, Lawyer, New York, New York.
Thomas G. S. Christensen, Professor of Law, New York University School of Law, New York, New York.
Vern Countryman, Professor of Law, Harvard University Law School, Cambridge, Massachusetts.
Judge Charles S. Desmond, Lawyer, Buffalo, New York.
Norman Dorsen, Professor of Law, New York University Law School, New York, New York.
Edward J. Ennis, Lawyer, New York, New York.
Ted Finman, Professor of Law, Law School, University of Wisconsin, Madison, Wisconsin.
Adrian Fisher, Dean, Georgetown University Law School, Washington, D.C.
Walter Fisher, Lawyer, Chicago, Illinois.
Robert B. Fleming, Professor of Law, Law School, State University of New York at Buffalo, Buffalo, New York.
Henry H. Foster, Jr., Professor of Law, New York University School of Law, New York, New York.
Osmond Fraenkel, Lawyer, New York, New York.
Ralph Fuchs, Professor of Law, University of Indiana Law School, Bloomington, Indiana.
Walter Gellhorn, Professor of Law, Columbia University Law School, New York, New York.
Justice Arthur J. Goldberg, New York, New York.
Alvin Goldman, Professor of Law, University of Kentucky Law School, Lexington, Kentucky.
Murray Gordon, Lawyer, New York, New York.
Arthur J. Harvey, Lawyer, Albany, New York.
Lawrence Herman, Professor of Law, Ohio State University Law School, Columbus, Ohio.
Samuel M. Hesson, Union University Law School, Albany, New York.
Charles Horsky, Lawyer, Washington, D.C.
Willard Hurst, Professor of Law, Law School, University of Wisconsin, Madison, Wisconsin.
Albert E. Jenner, Lawyer, Chicago, Illinois.
John M. Junker, Professor of Law, University of Washington Law School.
Harry Kalven, Jr., Professor of Law, University of Chicago Law School.
Marvin Karpatkin, Lawyer, New York, New York.
Dorothy Kenyon, Lawyer, New York, New York.
Stanley Laughlin, Jr., Professor of Law, Ohio State University Law School, Columbus, Ohio.
Richard Lipsitz, Lawyer, Buffalo, New York.
District Attorney Thomas J. Mackell, Queens, New York.
Robert Mannheimer, Lawyer, Des Moines, Iowa.
Martin Miller, Lawyer, Denver, Colorado.
Merle Miller, Lawyer, Indianapolis, Indiana.
Charles G. Moerdler, Lawyer, New York, New York.
E. Kent Moore, Lawyer, Lafayette, Indiana.
Paul Oberst, Professor of Law, University of Kentucky Law School, Lexington, Kentucky.
Paul O'Dwyer, Lawyer, New York, New York.
Robert Pitofsky, Professor of Law, New York University Law School.
Edward Post, Lawyer, Louisville, Kentucky.
Henry J. Price, Lawyer, Indianapolis, Indiana.
Rollie Rogers, Lawyer, Denver, Colorado.
Albert J. Rosenthal, Professor of Law, Columbia University Law School, New York, New York.
Harold Rothwax, Professor of Law, Columbia University Law School, New York, New York.
John L. Saltonstall, Lawyer, Boston, Massachusetts.
Van Schoenthal, Lawyer, Des Moines, Iowa.
F. Thomas Schornhorst, Professor of Law, University of Indiana Law School Bloomington, Indiana.
Herman Schwartz, Professor of Law, University of Buffalo Law School, Buffalo, New York.
Robert Sedler, Professor of Law, University of Iowa Law School, Iowa City, Iowa.
Clyde W. Summers, Professor of Law, School New Haven, Connecticut.
Franklin A. Thomas, Deputy Police Commissioner, New York, New York.
William Van Den Heuvel, Lawyer, New York, New York.
David Vernon, Dean, University of Iowa Law School, Iowa City, Iowa.
Richard Ver Wiebe, Lawyer, Fort Wayne, Indiana.
Bernard Weisberg, Lawyer, Chicago, Illinois.
Bernard Wolfman, Dean-elect, University of Pennsylvania Law School, Philadelphia, Pennsylvania.
Edgar Zingman, Lawyer, Louisville, Kentucky.

NEWS RELEASE OF THE AMERICAN CIVIL LIBERTIES UNION

NEW YORK CITY, March 18, 1970.—Reaffirming its strong opposition to federal legislation authorizing pre-trial preventive detention, the American Civil Liberties Union announced today the formation of a nationwide committee of eminent attorneys and law school deans and professors to oppose the measures.

The National Committee Against Preventive Detention is headed by former Supreme Court Justice Arthur J. Goldberg, and includes such prominent persons as Judge Bernard Botein and Charles Desmond; Queens District Attorney Thomas Mackell; Adrian Fisher, Dean of the Georgetown University Law School in Washington, D.C.; and Albert E. Jenner of Chicago, former Chairman of the American Bar Association Committee on Judicial Selection and Tenure. An immediate target of the Committee is the preventive detention section of H.R. 16196, an anti-crime bill affecting the District of Columbia, which is scheduled for debate in the House of Representatives tomorrow (March 19).

The Committee's creation was announced at a press conference at the Overseas Press Club, held by Justice Goldberg and John de J. Pemberton, Jr., ACLU Executive Director. Justice Goldberg disclosed that the National Committee will bring its views that preventive detention is unconstitutional to members of the Congress and the White House, and also seek to stimulate wider public understanding of the dangers of such legislation.

The text of Justice Goldberg's statement is attached, along with a Fact Sheet on Preventive Detention, and a list of the members of the National Committee Against Preventive Detention.

STATEMENT OF JUSTICE ARTHUR J. GOLDBERG, ON BEHALF OF THE NATIONAL COMMITTEE AGAINST PREVENTIVE DETENTION, MARCH 18, 1970

Proposals for preventive detention turn our system of justice upside down, risk the imprisonment of innocent men and invite abuse at the hands of the law during a period of social strain when law must prevail by its steady fairness and even-handed objectivity. It is alien to the American concept of law-enforcement and our tradition to punish persons for actions which may take place in the future.

The Eighth Amendment to the Constitution and its implementation in court decisions and legislation clearly guarantee fair bail for all but capital crimes. Pre-trial preventive detention scorns these fundamental provisions of liberty, won after long struggle, by placing those still innocent in pointless danger of punishment which should be reserved for those found guilty after fair trial.

Preventive detention is a misguided response to the public concern for safe streets. It is claimed by the Administration that a solution to crime can be supplied by jailing suspects while they wait for trial. The solution misses the mark, obscures the real issues and threatens more damage to public safety than any protection it can possibly provide.

Several reports from the District of Columbia disclose that preventive detention is no cure-all for eliminating crime in the streets. In 1966, the *Report of the President's Commission on Crime in the District of Columbia* stated that of "2,776 persons released on bail pending trial for felony charges, 207 (7½%) were later held for felonies committed while out on bail pending trial, and of the total number, only 4½% were held for crimes involving violence, in Washington, D.C." On January 23, 1969, in hearings before the Senate Subcommittee on Constitutional Rights, the then Counsel of the Subcommittee, Paul L. Woodard, described the experience of two trial judges. One routinely detained all arrested suspects he considered as "bad risks." The second judge routinely released most suspects pending trial. During the period studied, the first judge detained about half the defendants who came before him (144 out of 285). The second judge detained only about one-fifth (46 out of 226). Of those released by the first judge, twelve were charged with offenses—either felonies or misdemeanors—while awaiting trial; while of those released by the other judge sixteen were accused of such offenses.

Such reports make it apparent that hard-line pre-trial detention does little to remedy crime. Quite the contrary, it can be predicted that unconscionable injury to the innocent is the much more likely outcome.

Certainly, it is crucial in this period of our history that the administration of justice and the laws which guide the courts obtain all possible respect from the people. This respect is not available on mere fiat. Neither are Americans inclined to accept a detention system which punishes the innocent and yields but a minimal gesture in the direction of genuine improvement in the administration of justice.

The proponents assure us that concessions to the right of speedy trial contained in proposed federal legislation will provide adequate off-setting advantages to those detained. But the right to a speedy trial belongs to everyone as a constitutional guarantee; it should not have to be purchased at the price of preventive detention. And the benefit to public safety gained by promptly bringing to trial those defendants who are deemed dangerous can likewise be provided for by Congress without conditioning it on the sacrifice of personal liberty and the compromise of one of America's noblest precepts.

Neither the people nor the Congress should permit a misleading, high-risk distortion of traditional freedoms to take place. Preventive detention should not be allowed to delay or obscure the acknowledged improvements in our system of justice which have universal endorsement and lack only priority funding in order to take place. Such improvements consist largely of measures which would shorten the time between arrest and trial and staff more fully and effectively the agencies which supervise defendants who are released pending trial.

From arrest to the conclusion of trial in most criminal jurisdictions now consumes almost two years time. In the best run systems, such as the District of Columbia, where federal moneys provide more judges and court

personnel, the lag is still a year between arrest and trial.

These corrections can be made by (1) improvements in judicial administration, and (2) expenditure of enough money to make the system of justice work expeditiously.

We urge national resolve to achieve these improvements certain to enoble the law rather than the perilous proposals for preventive detention which will erode confidence and respect in the administration of justice. As a first step, we ask members of the Congress to reject pending legislation to permit preventive detention.

LOOSE TALK ABOUT SLANTED NEWS

Mr. McINTYRE. Mr. President, ever since the Vice President's public questioning of the objectivity of the communications media last fall we have heard a great deal of talk about "slanted" news presentations.

Recently one of the most respected weekly editors of my State, Mr. Edward DeCourcy of the Newport, N.H., Argus-Champion, addressed himself to this matter in a most eloquent and thoughtful column.

Because I believe Mr. DeCourcy's analysis deserves widespread consideration, I ask unanimous consent that his column be printed in the RECORD.

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

IS NEWS UNIVERSALLY SLANTED?

(By Edward DeCourcy)

Loose talk about "slanted" news is becoming almost as commonplace as long hair.

Much of it is coming from persons who do not consider themselves "liberal," but claim that the news is being given a "liberal" slant.

I'm not sure just what that means. It probably means that some news is being published about events that show the critic in a poor light, particularly if he is a public official and does not want the public to know about his peccadillos.

If I understand today's idiom, a "liberal" is someone who sees an evil and tries to correct it, and an "unliberal" is someone who sees an evil and thinks it will go away if we leave it alone.

If that is so, nobody should be surprised if a great many newspapermen are "liberals." In their jobs they have to see too much evil in the raw, and no matter how tough they may pretend to be, it gnaws at their hearts. Moreover, newspapermen have to learn to think. Easy as it may appear, writing a news story demands thought. First there is the effort to gather accurate information, often an enormously difficult task. Then there is the even greater effort to put that in orderly words, accurate words, so that the reader will understand, all in the hope that what goes into the reader's mind will be truth.

So, the newspaperman who must witness so much stark evil and who must learn to think is likely to become a "liberal."

The assumption, however, that simply because a great many newspapermen are "liberal" they distort the truth, would be both difficult to prove and a nasty insult.

Some 40 years ago I watched a four-year old girl die on an automobile running board. I can still see those blond curls matted with blood and vomit as the broken little body convulsed to stillness. She had been run over by a drunken driver.

I still see those curls every time I cover the trial of a drunken driver. I always will. I have an abiding conviction that drunken driving is a serious crime, one that our society takes entirely too lightly.

But in the four decades since then, I have never knowingly twisted the news of a single drunken driving trial.

This is not to say that no newsman has ever twisted a story to fit his prejudice. Obviously some have, and probably no day goes by without somebody somewhere being guilty.

It is to say, however, that a newspaperman can be "liberal" or "unliberal" and still be both honest and competent.

I claim that most of those who charge that news is being universally slanted don't know what they are talking about. They can't. There are 1,752 daily newspapers, 8,000 weeklies, 7,249 radio stations and 662 television stations in the United States. Who could read, listen to or watch even one per cent of them?

Like nearly all newspapermen, I make a reasonable effort to keep abreast of the news. I read seven daily newspapers (less than one-half of one per cent), about 40 weeklies (less than one-half of one per cent), and spend about an hour a day watching news broadcasts. With such scant observation I surely can't prove whether newspapers, radio or television generally are slanting the news or not.

I just don't know. And neither do some of the loudest voices making the claim. If they don't read the papers, they don't know what the papers are saying.

The New York Sun was a great newspaper. It got a lot of mileage out of the story about a man who told his little boy, "Willy, if you see it in the Sun, it's so, even if it ain't so."

Mileage or not, the Sun died some 20 years ago.

The truth was then that just because something appeared in the Sun it was not necessarily true, and the truth is now that just because somebody, however exalted he may be, says something it is not necessarily true, either.

In fact, the more exalted he is, the greater is his temptation to slant his own statements.

THE CARSWELL NOMINATION

Mr. GOODELL. Mr. President, I invite the attention of Senators to an excellent statement by the Association of the Bar of the City of New York on the nomination of Judge Carswell.

The association numbers among its members many of the most distinguished lawyers in New York City and, indeed, in the Nation. The fact that this distinguished group is urging the Senate to reject the nomination of Judge Carswell is highly significant.

The statement cogently reminds us once again that Judge Carswell lacks the professional qualifications and the sensitivity to civil and human rights that is required for a Justice of the highest court in the land.

I ask unanimous consent that the text of this statement be printed in the RECORD.

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

MARCH 31, 1970.

Senator CHARLES E. GOODELL,
Washington, D.C.:

The executive committee of the Association of the Bar of the City of New York respectfully requests the Senate to reject the nomination of Judge G. Harrold Carswell for the United States Supreme Court or to recommit his nomination to the Committee on the Judiciary. Service on the United States Supreme Court requires that a Justice have exceptional qualifications of integrity, professional distinction, legal learning and proven sensitivity to human and civil rights. In our considered opinion, the public record demonstrates that Judge Carswell lacks these essential qualifications for a Justice of the highest court in the land. We join with other lawyers and bar associations and with law school teachers in urging the Senate to insist on excellence on the Supreme Court.

FRANCIS T. P. PLIMPTON,
President.
D. NELSON ADAMS,
Chairman.

PECOS GROUP URGES 100,000-ACRE BIG THICKET NATIONAL PARK

Mr. YARBOROUGH. Mr. President, many years have passed and many trees have fallen in the Big Thicket since I first introduced a bill in 1966 to establish a Big Thicket National Park. My present bill on this important proposal is S. 4. The establishment of a 100,000-acre Big Thicket has received numerous endorsements from groups and individuals throughout the Nation.

Texas' only Indian reservation is located in the Big Thicket. The Alabama-Coushatta Indian Reservation is located on the U.S. Highway No. 190 about 17 miles west of Woodville in the range of the "upper thicket" forest type. The reservation is home for a modest but foresighted group of Indians who are determined to improve their economic situation through tourism. The establishment of the Big Thicket National Forest would benefit this hardy group of original Americans as well as all other Americans who love beauty and nature.

Mr. President, I ask unanimous consent to have printed in the RECORD the resolution of the Merry Wives Club of Pecos, Tex., endorsing a 100,000-acre Big Thicket National Park.

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

RESOLUTION ON BIG THICKET NATIONAL AREA

Whereas, the Big Thicket is a beautiful area, not yet viewed by thousands of Texans and other Americans; and

Whereas, new species of trees and shrubs are still being discovered in the Big Thicket, and are of value to the botanical knowledge of mankind; and

Whereas, the Alabama-Coushatta Indian Tribes have lived in this area for many generations and need a large undisturbed homeland; and they need to spread to tourists who visit them the knowledge of their tribal ways and skills; therefore,

Be it resolved that the Merry Wives Club of Pecos, Texas urges the preservation of at least 100,000 acres containing the most unique areas of the Big Thicket, these areas to be connected by environmental corridors; and

Be it resolved that the Interior and Insular Committees of the Senate of the United States be requested to set immediate hearings of S. 4 which would create a Big Thicket National Area.

FRANCES M. MANNEL,
President.
GLADYS BURKHOLDER,
Secretary.
MARJORY L. BLACKWELL,
Corresponding Secretary.

TRANSFER OF JURISDICTION IN UNFAIR LABOR PRACTICE CASES

Mr. HRUSKA. Mr. President, the distinguished Senator from Texas (Mr. TOWER) has introduced proposed legislation which would transfer the jurisdiction for deciding unfair labor practice cases from the National Labor Relations Board to the Federal district courts.

I intend to support this move as I believe it is the best way of correcting what has become an intolerable situation with respect to the absolute lack of credibility of the NLRB as an impartial body interpreting and administering our labor law.

Mr. President, I participated in the hearings mentioned by Senator TOWER which were held by the Subcommittee on Separation of Powers in 1968. Recently, the subcommittee released its report based on those hearings. The crux of the report is that—

> The NLRB has unreasonably emphasized the establishment and maintenance of collective bargaining and strong unions to the exclusion of other important statutory purposse which often involve the rights of individual employees.

The subcommittee found that the Board has been able to do this by "a free-wheeling interpretation of the statute's more general provisions, by applying double standards and by ignoring plain legislative mandates."

I believe the transfer to the district courts of the Board's jurisdiction over unfair labor practice cases will be a giant step in eliminating the abuses and lack of evenhandedness which we have in the Board. I would like to briefly touch upon a few of the reasons the district court approach is the right one.

The NLRB has demonstrated a distressing lack of objectivity and impartiality required of a judicial body. The present structure and operation of the Board tends to lead to a narrow view of the goals of the act. Members appointed to the Board too often have not been impartial men but men who come to the office with definite viewpoints which are rarely changed during the time they serve. There is a built-in polarization which effectively eliminates any hope of having real discussion and persuasion.

The evidence adduced at the hearings substantiates the claim that the Board is politically responsive. The rule as to whether a union waives preelection employer unfair labor practices by proceeding to an election, the rules governing "captive audience" speeches, and the doctrine concerning the permissibility of craft severance, have changed each time there was a change of party in the White House. The division of the Board is either prounion or promanagement.

The built-in political bias of the Board is partly due to the fact that the political forces which operate on the Presidential appointing power are too narrow and tend to focus only on achieving prounion or promanagement bases. This bias has led to denominating the respective boards on the basis of appointing power, "the Eisenhower Board," "the Kennedy Board," and "the Johnson Board."

Mr. President, the end result of the political responsiveness of the Board is that the real goal of the act, which is the protection of the individual rights of employees, is subverted to the interests of organized labor or to management, depending on the makeup of the Board at the time a controversy is decided.

Mr. President, an argument used by those who do not wish to see the present system altered is that because of the many complexities of labor law and because of all of the supposed novel questions which arise, only a Board with "experts" is able to deal with the situation. However, this argument is not really very valid. It was pointed out in our subcommittee's hearings that we no longer have only the bare bones of a labor policy but that it has been substantially "fleshed out" over the years. It was further pointed out that a number of provisions have been left to the courts for enforcement which are far less specific than those over which jurisdiction has been given to the Board, Section 301, for instance, is far less specific than 8(b)(4), 8(e), 8(b)(7). Furthermore, a large number of Board decisions find their way to the courts and a great many are reversed and modified.

Mr. President, the subcommittee's report specifically states that a more desirable tribunal than the NLRB might be the U.S. district courts.

District court judges will have a broader view of their responsibilities and sensitivity to criticism of how they carry them out than is true of NLRB members.

Also, as the report observes, the pressures surrounding the appointment of district judges will not be as narrow and intense as those surrounding Board members because of the manifold responsibilities of district judges.

There are, of course, problems associated with the transfer of jurisdiction to the courts. These were recognized by the subcommittee, but by no means are they thought to be insurmountable.

There might, for example, be a lack of uniformity nationwide by leaving decisions with the many districts courts. But it should be noted that the present system of regional directors and trial examiners is not uniform. Also, there is some diversity because of important cases going to the court of appeals. Furthermore, in every area of law the problem of uniformity exists. There is no more nor no less reason to have uniformity in this area of law than in any other area.

There is also the problem of the caseload of the courts, and this would fall on some districts much more than on others. However, in this context it should be pointed out that assuming that the volume of cases in the courts would be the same as that before the Board, is not correct. Many of the Board's cases are self-generative of future cases. The instability, unpredictability, and the "flip-flopping" decisions of the Board are partly the reason for its large workload. Witnesses at the subcommittee's hearings indicated that specific Board decisions such as Fibreboard and Bernel Foam produce a tremendous amount of litigation.

Overall, the benefits of transferring the jurisdiction to the courts far outweighs the few problems which could be dealt with very easily. But much more important, justice, impartiality and objectivity, which are completely lacking in the Board, would exist in the courts.

Mr. President, in addition to transferring the jurisdiction over unfair labor practices charges to the district court, Senator TOWER'S bill would make another significant change in the enforcement provisions under the National Labor Relations Act as amended.

The power to file unfair labor practice complaints which is presently vested in the General Counsel of the Board would be transfered to the U.S. attorneys and to the aggrieved party.

Before 1947, the General Counsel was subject to the authority and direction of the Board. Believing that such a structure combined the functions of judge and prosecutor in such a way as to prevent a fair hearing, Congress separated the prosecutory and adjudicatory functions by creating a General Counsel independent of the Board. The statute, however, is quite vague as to what standards are to guide the General Counsel's determination of whether to issue a complaint. Since the General Counsel's decision is unreviewable, the failure to issue a complaint has the effect of a negative adjudication of the merits of a case.

Senator TOWER'S bill gives the power to file a charge to the U.S. attorney. If he decides not to file, the individual has the right to file the charge himself, thereby assuring an adjudication on the merits.

Mr. President, the Wagner Act was enacted in 1935 to guarantee and protect the rights of the American workingman. The Taft-Hartley Act was enacted in 1947 because Congress believed that the Board was not carrying out its original mandates. In 1959, Congress was again moved to declare its prerogative over labor policy by enacting the Landrum-Griffin Act.

Our hearings show that the Board continues to follow its own bias, rather than the clear mandate of Congress.

Mr. President, the National Labor Relations Board is a creature of Congress. It has no power but what is given it by Congress. Since it persists in flouting the will of Congress, I believe that it is time for Congress to assert its prerogative in the field of labor by vesting the jurisdiction over labor disputes in the district courts.

UNREST, THE CARSWELL NOMINATION, AND SOCIAL CHANGE

Mr. McGOVERN. Mr. President, I have recently read two articles which I think all Senators might profitably read and consider as they decide the position they will take on the Carswell nomination and many other issues of the day.

One of them is an article, from the Washington Post, entitled "A Black at the Gridiron Dinner," written by Roger Wilkins, a former Assistant Attorney General of the United States who is now a Ford Foundation executive, one of the two black men who were invited to the recent gridiron dinner to witness what

Wilkins has described as "a Mr. Bones routine about the southern strategy" presented by the President and the Vice President of the United States. I had the privilege of being seated next to Mr. Wilkins at the dinner, but like others present I did not have the sensitivity to realize the anguish that he experienced.

The other article is by Dr. Leon Eisenberg, professor of psychiatry at Harvard Medical School and chief of psychiatry at Massachusetts General Hospital in Boston, on "Student Unrest: Sources and Consequences," which appears in the March issue of Science, the monthly magazine published by the American Association for the Advancement of Science.

I ask unanimous consent that the articles be printed in the RECORD, for I believe they offer insight which we need into the causes and consequences of both racial and student unrest. As we debate and act on Judge Carswell's nomination, these and other issues involving the adjustment of our Government and our society to changes—some of them hard to perceive, as occurrences at the gridiron dinner would indicate ought to be in our minds.

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

A BLACK AT THE GRIDIRON DINNER

(By Roger Wilkins)

When it was all over, a number of men had tears in their eyes, even more had lifted hearts and spirits, but a few were so dispirited that they went upstairs to get drunk. We had just heard the President and Vice President of the United States in a unique piano duet—and to many old Gridiron Dinner veterans, it was a moving showstopper. To a few others, it was a depressing display of gross insensitivity and both conscious and unconscious racism—further proof that they and their hopes for their country are becoming more and more isolated from those places where America's heart and power seem to be moving.

The annual dinner of the Gridiron Club is the time when men can put on white ties and tails and forget the anxiety and loneliness that are central to the human condition and look at other men in white ties and tails and know that they have arrived or are still there.

The guests are generally grateful and gracious. But the event's importance is beyond the structures of graciousness because it shows the most powerful elements of the nation's daily press and all elements of the nation's government locked in a symbiotic embrace. The rich and the powerful in jest tell many truths about themselves and about their country. I don't feel very gracious about what they told me.

Some weeks ago, to my surprise and delight, a friend—a sensitive man of honor—with a little half-apology about the required costume, invited me to attend the dinner.

The first impression was stunning: almost every passing face was a familiar one. Some had names that were household words. Some merely made up a montage of the familiar faces and bearings of our times. There were Richard Helms and Walter Mondale and Henry Kissinger and George McGovern and Joel Broyhill and Tom Wicker and William Westmoreland and John Mitchell and Tom Clark (ironically placed, by some pixie no doubt, next to each other on the dais) and Robert Finch and Ralph Nader, and of course, the President of the United States.

One thing quickly became clear about those faces. Apart from Walter Washington—who, I supposed, as Mayor had to be invited—mine was the only face in a crowd of some 500 that was not white. There were no Indians, there were no Asians, there were no Puerto Ricans, there were no Mexican-Americans. There were just the Mayor and me. Incredibly, I sensed that there were few in that room who thought that anything was missing.

There is something about an atmosphere like that that is hard to define, but excruciatingly easy for a black man to feel. It is the heavy, almost tangible, clearly visible, broad assumption that in places where it counts, America is a white country. I was an American citizen sitting in a banquet room in a hotel which I had visited many times. (My last occasion for a visit to that hotel was the farewell party for the white staff director and the black deputy staff director of the United States Commission on Civil Rights.) This night in that room, less than three miles from my home in the nation's capital, a 60 per cent black city, I felt out of place in America.

That is not to say that there were not kind men, good men, warm men in and around and about the party, nor is it to say that anyone was personally rude to me. There were some old friends and some new acquaintances whom I was genuinely glad to see. Ed Muskie who had given a very funny and exquisitely partisan speech (the Republicans have three problems: the war, inflation, and what to say on Lincoln's Birthday) was one of those. I was even warmly embraced by the Deputy Attorney General, Mr. Kleindienst, and had a long conversation with the associate director of the FBI, Mr. DeLoach.

But it was not the people so much who shaped the evening. It was the humor amidst that pervasive whiteness about what was going on in this country these days that gave the evening its form and substance. There were many jokes about the "Southern strategy." White people have funny senses of humor. Some of them found something to laugh about in the Southern strategy. Black people don't think it's funny at all. That strategy hits men where they live—in their hopes for themselves and their dreams for their children. We find it sinister and frightening. And let it not be said that the Gridiron Club and its guests are not discriminating about their humor. There was a real sensitivity about the inappropriateness of poking fun that night about an ailing former President, but none about laughing about policies which crush the aspirations of millions of citizens of this nation. An instructive distinction, I thought.

There was a joke about the amendments to the Constitution (so what if we rescind the First Amendment, there'll still be 25 left), and about repression (you stop bugging me, I'll stop bugging you), and there were warm, almost admiring jokes about the lady who despises "liberal Communists" and thinks something like the Russian Revolution occurred in Washington on November 15. There was applause—explosive and prolonged—for Judges Clement Haynsworth and Julius Hoffman (the largest hands of the evening by my reckoning.)

As I looked, listened and saw the faces of those judges and of the generals and of the admirals and of the old members of the oligarchies of the House and Senate, I thought of the soft, almost beatific smile of Cesar Chavez; the serious troubled face of Vine Deloria Jr., and the handsome, sensitive faces of Andy Young and Julian Bond of Georgia. All those men and more have fought with surely as much idealism as any general ever carried with him to Saigon, with as much courage as any senator ever took with him on a fact-finding trip to a Vietnam battlefield, or even as much hope, spirit and belief in the American dream as any Peace Corps kid ever took to the Andes in Peru. But the men I have named fought for American freedom on American soil. And they were not there. But Julius Hoffman was.

As the jokes about the "Southern strategy" continued, I thought about the one-room segregated schoolhouse where I began my education in Kansas City. That was my neighborhood school. When they closed it, I was bused—without an apparent second thought—as a 5-year-old kindergartner, across town to the black elementary school. It was called Crispus Attucks.

And I thought of the day I took my daughter when she was seven along the Freedom Trail, in Boston, and of telling her about the black man named Crispus Attucks who was the first American to die in our revolution. And I remember telling her that white America would try very hard in thousands of conscious and unconscious ways both to make her feel that her people had had no part in building America's greatness and to make her feel inferior. And I remember the profoundly moving and grateful look in her eyes and the wordless hug she gave me when I told her, "Don't you believe them because they are lies." And I felt white America in that room in the Statler Hilton telling me all those things that night, and I told myself, "Don't you believe them because they are lies."

And when it came to the end, the President and the Vice President of the United States, in an act which they had consciously worked up, put on a Mr. Bones routine about the Southern strategy with the biggest boffo coming as the Vice President affected a deep Southern accent. And then they played their duets—the President playing his songs, the Vice President playing "Dixie," the whole thing climaxed by "God Bless America" and "Auld Lang Syne." The crowd ate it up. They roared. As they roared I thought that after our black decade of imploring, suing, marching, lobbying, singing, rebelling, praying and dying we had come to this: a Vice Presidential Dixie with the President as his straight man. In the serious and frivolous places of power—at the end of that decade—America was still virtually lily white. And most of the people in that room were reveling in it. What I wondered, would it take for them to understand that men also come in colors other than white. Seeing and feeling their blindness, I shuddered at the answers that came most readily to mind.

As we stood voluntarily, some more slowly than others, when the two men began to play God Bless America, I couldn't help remembering Judy Collins (who could not sing in Chicago) singing "Where Have All the Flowers Gone?"

So later, I joined Nick Kotz, author of "Let Them Eat Promises" and we drank down our dreams.

I don't believe that I have been blanketed in and suffocated by such racism and insensitivity since I was a sophomore in college when I was the only black invited to a minstrel spoof put on at a white fraternity house.

But then, they were only fraternity brothers, weren't they?

STUDENT UNREST: SOURCES AND CONSEQUENCES

(By Leon Eisenberg)

They will rediscover rules of behavior which their predecessors have let fall into disuse, including matters supposed to be of little importance: how the young should be silent in the presence of their elders, give up their seats to them, and take dutiful care of their parents; not to mention details of personal appearance, such as the way their hair is cut and the clothes and shoes they wear. It would be silly, I think, to make laws on these matters; such habits cannot be established or kept up by written leg-

islation. It is probable, at any rate, that the bent given by education will determine the quality of later life, by that sort of attraction which like things always have for one another, till they finally mount up to one imposing result, whether for good or ill. For that reason I should not myself be inclined to push legislation to that length.—Socrates, *as quoted in Plato's* "Republic"

Does psychiatry have anything useful to say about student unrest? I am uncertain. My reluctance to give a positive answer stems from the role ascribed to the psychiatrist. When he speaks, he is heard as though his comments are based solely on his knowledge of the mentally ill; his remarks on this topic will be taken to imply that student unrest is a manifestation of illness—and that, as I shall try to point out, is just what I do *not* think it is. I do not deny that some students, indeed some student leaders, are ill; any social movement that involves large numbers of people must, on the basis of statistical probability, include some who are ill. But that fact is tangential to any attempt to understand the fundamental sources of contemporary student behavior. If psychiatrists have anything useful to add, it will be from our knowledge of the interrelation between social forces and psychological development—that is, of normal adolescent and young adult psychology as these arise from, and in turn affect, the social and cultural history of this epoch.[1]

Student unrest in countries on every continent stirs passions and polarizes opinions. Urgent decisions are forced upon administrators by the vehemence of student activists. Traditional academic reliance on committees of investigation and prolonged faculty debates is precisely what students will not tolerate; they insist that delay sanctions immorality. Their tactic of confrontation is designed to provoke a response; clearly, it succeeds in doing so. Without the grace of leisurely contemplation, official reaction rapidly becomes reflex, as unreasoned and as impulsive as that of which we accuse the students. The rapidity of events puts a premium on hastily contrived and simpleminded "explanations" of extraordinarily complex phenomena.

That there is little time does not relieve us of the need to take time to try to understand lest we destroy the virtues of the University in the name of "defending" it. The greatness of the academic tradition lies precisely in its responsiveness to human needs. Needs change, styles change, societies change; many of our students perceive the very university life which we found so meaningful for our own development as irrelevant to theirs; they regard it as counterproductive in solving the major social problems of this era. It is often the brightest, the most committed, the most creative, who so regard it.[2] It falls upon us to try to understand what it is about them, and what it is about the world they and we live in, that can account for this turning away from the Academy. Without such understanding, this nation may set forth upon a course of action that will destroy the University and its students—and us as well.

ACADEMIC TURBULENCE NOT NEW

First, a historical note.

The American student revolution that began in the 1960's is regarded by the general public as unprecedented; this is partly because of the unhealthy quietude that prevailed in the previous decade of witch-hunting congressional committees. In fact, Harvard, recently the scene of a building takeover and a police bust after years of relative tranquility, was wracked by student revolutions in the 18th and 19th centuries. These revolts were not over high moral issues but over the more mundane matter of the quality of the food served in the commons. From this each took its name: the Bread and Butter Rebellion of 1805; the Cabbage Rebellion of 1807. The new commons built in 1814, called University Hall (the name of the building seized in 1969), was the scene of general turmoil which led to the dismissal of the entire sophomore class, one of whose members (John Washington Adams) was the son of the then President of the United States, John Quincy Adams.

Indeed, the European universities, on which the American were modeled, had been marked by serious and bloody fights between the academics and townspeople in France and in England.[3] Cambridge University itself was founded by migrating scholars from Oxford after that university was closed. Perhaps half the universities in Europe owe their origin to such migrations—and the constitutions of others were formalized only after riots had forced change.

If I mention the past, it is to remind us that the phenomena that beset us have not appeared *de novo*, but *not* to suggest that the causes are identical or to imply that we can simply await the passing of the tide. The university occupies a far more central position in contemporary society; students form so much larger a proportion of the young population as to have altered the social role and significance of student life qualitatively; although food or dormitory life can be a trigger for unrest, the public slogans behind which the students rally demand changes in society, not the privilege of the monastic pursuit of isolated scholarship.

My remarks are confined to the North American scene. The phenomenon itself, as each day's newspapers reveal, is worldwide. Some of the motivating factors are similar here and abroad (and thus this article may have at least limited relevance elsewhere). Others are ecologically specific; the antiquated and authoritarian structure of Italian and French universities, the role of military oligarchies in Latin America; the lack of professional opportunities in undercapitalized countries; the suppression of cultural freedom in eastern Europe—each shapes student response. But it is my contention that the United States, by virtue of its enormous productive capacity, its technological finesse, and its relative, but uneven, affluence, offers in its present a view of a future inevitable for the youth of other nations—unless they (and we) recognize the sociological revolution in the status of young people that is part of the "post-industrial" state.

PROLONGATION OF ADOLESCENCE

Let me now sketch in broadly some of the identifiable forces which shape the characteristics of contemporary youth. Of these, the most often mentioned, but by no means the most important, is biological.

There has been a marked secular trend toward a lowering of the mean age at which puberty occurs. Tanner[4] has estimated that "the age at menarche has been getting earlier by some four months per decade in Western Europe over the period of 1830–1960." By this projection, *biological* adolescence begins 4 years earlier than it did a century and a half ago, presumably because of improvements in nutrition and health. Obviously, this is not an infinite regression. There is a biological lower bound; nations, and classes within nations, undergoing the most rapid economic gains experience the most marked changes. The relevance to our topic is simply this: the attainment of the biological capacity for assuming adult roles now antecedes by a significantly longer period than in the past the time at which the young person is admitted to adult status, and would do so even if the age of adulthood had remained constant.

More significant, however, is a second set of factors. With the increasing technological development of modern society, the age at which the necessary training for adult roles can be mastered extends the interval between childhood and acknowledged adulthood still further, thus prolonging adolescence *socially*, just as it has been prolonged *biologically*. I need not spell out the psychological significance of possessing physical, intellectual, and social capacities the responsible exercise of which is denied by the rules and conventions of societies which have not accommodated to change.

Yet, on the other hand, by virtue of this very prolongation of the time available, not to a small elite, but to an ever larger number of our youth, it is also true that adolescent and young-adult psychological development is permitted a time for flowering unknown to earlier generations.

CHILDHOOD, ADOLESCENCE, AND YOUTH AS CONCEPTS

Philip Aries[5] has provided evidence that the *idea* of childhood is a relatively recent cultural invention. In the Middle Ages, only infancy was recognized as a separate stage. It lasted until the age of 7, when the child was assimilated into the adult world by apprenticeship, with little or no formal education for the vast majority of children. The concept of childhood as a separate stage of human development was first advanced in the educational writings of the French philosophers of the Enlightenment.

As infant mortality began to decrease, and as the amount of leisure time began to increase, the experience of childhood began to change. With the growth of industrialization and the need for a better-trained working class, education of the child and his segregation from adult society in the special institutions appropriate to the new concept of childhood began to be the norm for an even larger percentage of the world's children.

Kenneth Keniston[6] has carried this argument one step further: he suggests that the *concept* of adolescence is a 20th-century idea, resulting from the further evolution of society. Freud, writing at the turn of the century, spoke of puberty as a biological event and had relatively little to say about it in contrast to the profusion of publications on adolescence that appeared in the post-World War II period. In this country, mandatory schooling up to the age of 18 has become the rule; the period of being sheltered from work roles and being assigned formal educational tasks has been extended to an increasingly large percentage of the 12- to 18-year-old population, for whom the job market has in any event no openings.

With some 7 million young Americans in colleges and universities, Keniston argues that the ground has been set for a new stage of psychological development: the postadolescent stage of *youth*.

These are young people who have completed the psychological tasks of adolescence in Erikson's terms—emancipation from the family of origin, comfort with sexuality, attainment of a sense of identity and a capacity for intimacy.[7] But in their extended role as students, given a moratorium from the need to assume adult responsibilities, they continue to experiment with adult roles and to reasses their relation to society. Unlike so many of us a generation ago, they are not willing simply to be enrolled in the society made for them by their elders but, instead, question the very foundations of that society. They fluctuate between moods of euphoria, convinced that they can make real a world of beauty and idealism, and moods of alienation, wanting nothing to do with an ugly reality they despair of changing. It is true that they have not learned the necessity of translating idealistic ambition into effective tactics for progress. But have we?

Footnotes at end of article.

I do not wish to be misunderstood. There have been children, adolescents, and youth in all recorded history. But the self-conscious awareness of these epochs as stages of developments and the creation of social institutions to provide the time and the means for their flowering are new phenomena, new at least in the sense that more than a handful of young people participate in this further personal development.

The very newness of the concept of adolescence and the explosive growth in the numbers of those sharing in it contribute to a social hiatus: the absence of traditional mores for behavior appropriate to this prolonged and massed stage of youth. Ruth Benedict, 30 years ago [8], pointed out that primitive societies provide rites of passage in puberty—feats of strength and courage and tribal ceremonies that formally acknowledge the beginning of manhood. Contemporary society has blurred as well as prolonged this transition. For many—the poor, the black, the Mexican, the Puerto Rican, the Indian—there is no assurance of an adult role with meaning and dignity. I have argued elsewhere [9] that the striking absence of adolescent unrest in Israeli collective farms is in part explicable in terms of the need for the labor of the young, upon whom the collective depends for its existence [9]. Perhaps I exaggerate the absence of norms for youth. In our time, riots and rowdyism were hardly uncommon; they occurred after football games and in panty raids. But these were the prerogatives of the college-bound elite; their elders smiled indulgently at these momentary excesses of young gentlemen en route to executive roles. Can it be that our ire is aroused by a difference in *causes*, by the *seriousness* of the challenge, by the *social character* of the crowd, no longer a privileged elite but an unwashed generation?

SOCIAL CHARACTERISTICS OF STUDENT LIFE

Let me shift now from the psychology of individual development to follow Coleman's sociological analysis [10]. To repeat, we confront a large segment of the population who experience an enforced delay of the time at which they enter socially productive work. Moreover, their families are becoming far less important units of social cohesion, as more and more of the roles once borne by the family are taken on by other institutions in society. Third, these young people are segregated into mass educational institutions, which have a special value system: the student is given the task of improving himself on an individualistic basis—indeed, a competitive one—in which the success of one student is at the expense of another; grading is likely to be on a distribution curve. The funnel narrows as the student moves from one level to the next.

Moreover, the university itself has grown larger and consequently more bureaucratic and impersonal. Small group and tutorial sessions, once the hallmark of higher education, have been replaced by computer assignments, large lecture halls, and televised instruction. Funding mechanisms, which make each scientist an entrepreneur in securing money to support his own research establishment, have weakened faculty loyalties to the university and to its students. Faculty advancement has been based on numbers of papers published and grants obtained, rather than on capacity to inspire the young. Regimented in large cohorts, pressed toward egoistic goals, isolated from the governance of the campus, the students' experience is one of disconnectedness from society. Moreover, the growing legions of college students (estimated at 10 million by 1975!) include many who are "social draftees" rather than "volunteers." Most immediately, this results from the search for an alternative to military conscription. But even were the Vietnam war to end, social pressures from parents and peers, together with occupational demands for credentials in the form of diplomas certifying, not competence, but completion, conspire to assign the university the role of producer of a managerial class rather than that of a haven for personal development.

Contrast this with the traditional social function of the young worker who must collaborate with others in producing for society. Though each worker may be motivated by his paycheck, he can earn it only in a common effort by virtue of the very nature of mass production; he can increase it only by joining with others in a trade union. If even the adults in contemporary society feel atomized and alienated, how much more must this be true of the student who has no immediate usefulness to society and who has had little to say in controlling the density of the society of which he is, willy-nilly, a member? It may be this very characteristic that makes joining in common causes so exhilarating an experience for students. As one reads the accounts of those who have participated in the seizure of buildings, one is struck by the repetitive assertion of the sense of euphoria and communal love that characterizes the immediate experience, whatever depression and dismay may follow its failure, and however ineffective the tactic may have been in attaining its professed aims. Some of these revolutionaries of ours are existential revolutionaries; for many it is the experience that matters rather than the accomplishments. In this emphasis on *feeling* lies the threat to the political mechanisms that must be preserved if social change is to be attained.

Just as these young people differ from the youth of an earlier day by virtue of these psychological and social characteristics, the world in which they live differs from the world of our adolescence in equally important ways. Industrialization has been succeeded by automation. To the machines that permitted man to augment his muscles have been added machines that permit him to augment his brain. This awesome power has resulted in a society that changes at an exponential pace. In a sense, the machines do outthink us, for they promise immediate gains so glittering in their appeal that we introduce them before we have been able to calculate their consequences. We are only just becoming aware of the pollution of our environment by the very technology that brings us creature comforts but whose price is the corruption of the quality of life. Some economists predict a future in which there will be work for no more than a fraction of the population. If this comes to pass, the religious ethic of work, common to the Judeo-Christian tradition, may be as out of date as the horse and the gas light. If the young regard the traditions we wish to pass on to them as irrelevant, they may not be wrong. Those traditions, even those only a generation old, may no longer be functional in a world that is radically different from the one in which they may have made sense. The hippie movement is dying, but its insistence on a degree of hedonism that infuriates those conditioned to a lifetime of hard work may in fact be a harbinger of future trends.

REVOLUTION AS THEATER OF THE ABSURD

Of the technical innovations that have special impact upon the young, none is more insistent and relentless than television. Television serves not only to transmit selectively, and by selection to determine, what is "news" but often to affect the course of the news by virtue of the presence of cameras on the scene. Its ubiquity and intrusiveness lend every contemporary happening the quality of living theater. Events are made "events" by the camera, whose presence inspires dramatic performances by providing an audience. Styles of behavior, once slowly spread by personal travel, now command instant imitation—and produce instant boredom, thus forcing a search for ever greater flamboyance if an audience is to be captured. The pace is accelerated, and overstatement is demanded, for the watcher has quickly had enough and turns the knob in search of new and more prurient excitement. It has become standard operating procedure to alert the mobile television truck as to the time and place of the next demonstration; without coverage, its value as witness is diminished. I do not suggest that the similarity of student tactics the world over is solely determined by the visual transmission of style—social urgencies the world over have their own resemblances—but each new stratagem becomes at once available to the rebel discouraged by the bankruptcy of his former repertoire. In *La Dolce Vita*, Fellini employed hordes of news photographers to symbolize the avidity with which the public devours scandal and destroys privacy. How pale the photograph in contrast to the moving image which converts political assassination into a commodity for home viewing!

Pervasive social problems press upon the young from every side. They inhabit a world that hangs upon the edge of instant nuclear destruction. The ideology of some is bitterly evident in the current one-line joke, "When you sail on the S.S. *Titanic*, why not go first class!" American students face enforced service in a savage and unpopular war in Vietnam or the equally unpalatable alternatives of jail or emigration. Their brief flurry into conventional political activity in support of Eugene McCarthy ended in the debacle at Chicago. In their view, the universities they attend have become corrupted in the process of serving the needs of the military-industrial complex, against which President Eisenhower had warned the nation. The major iniquities of society—poverty and racism—continue unchecked in the midst of affluence and plenty.

Unlike the last generation, this one rejects ideologies, capitalist and communist alike. The young insist on unconditional morality, a goal no society has yet attained, and they demand it now. Their insistence on immediate change together with their disdain for tactics and practicality, their emphasis on resurrection through personal witness, and their substitution of rhetoric for the hard work of politics, understandable though these manifestations may be, jeopardize the realization of the very social aims behind which they rally.

Irresponsible calls for social revolution when the social conditions for change do not yet exist can endanger the very possibility of change.

But perhaps we have been addressing ourselves to the wrong question all along. Perhaps we should be asking, not why there is student unrest, but why there is no *adult* unrest, except in response to students. Why are we content to tolerate an immoral and futile war? Why do we as physicians permit health services to be cut back while $100 million each day is committed to the war in Vietnam? It is perhaps because we have been complacent that the young are frantic?

If I have referred to students as "they" and have written as though so multifarious a group shared a single ideology—even that of "rejecting ideologies"—this has been no more than a device of rhetoric. To have qualified each statement with appropriate reservations would have made each sentence a labored paragraph and this brief article an unreadable monograph. One need only cite the bitter schisms that have ripped apart the once pluralistic and decentralized Students for a Democratic Society as testimony to the diversity and contradictions within the student movement. There simply are no reliable data for identifying that fraction of the student population that is "activist" in the broad sense of the term; sections of the country differ, and this month's answers almost certainly will not obtain next month. Indeed, there *are* students who accept tra-

ditional academic paths—some in pursuit of scholarship, others en route to professional roles, still others as a means of achieving occupational mobility—and some who maintain a precarious equilibrium by *not* raising questions.

Whatever the fraction of the disaffected who are explicitly committed to the goal of radical social change, what is striking is the large reservoir of support from their peers, who rally in substantial numbers when sanctions are brought to bear against the initially small bands. It is conventional wisdom to dismiss this secondary response as irrelevant to the initial issues and to attribute it to the cleverness of radical tacticians (and the ineptness of university authorities) in "politicizing" the student body. This is no more than another expression of disbelief in the salience of the issues that arouse students. The post-bust slogans may broaden to include demands for amnesty, but the initial banners are still very much in evidence. They continue to provide, because they are viewed as legitimate, the moral justification in the minds of the many for the defense of the beleaguered few. This remains true whatever may have been the intent of self-proclaimed revolutionaries.

One further distinction must, however, be emphasized. The concerns, the tactics, and the special circumstances of black students, while having attributes in common with those of white students, require a special analysis that is beyond the scope of this article. White student radicals are still in search of a constituency beyond the bounds of the campus; as of this writing, at least, they have had no evident success in their call for an alliance with labor.

Black students command greater, if still limited, sympathy in their own off-campus communities and have begun to voice demands more immediately relevant to the needs of those communities; witness the current emphasis on jobs for construction workers rather than one on purely academic reforms. The experience of growing up black in white America so burns itself into the consciousness of black adolescents and youths as to become the central issue in their development.[11]

The attitudes manifested by the student vanguard, white and black, are more significant than can be ascertained merely through counting numbers. For they bring to awareness, by sharpening to the point of caricature, the very issues, so easily blinked at by those of us who have it made, that threaten the fabric of society. To the extent that they reflect views shared in some part by a substantial percentage of their fellow students, they speak for some millions of young people. And that is a sociological phenomenon without parallel in our—or any nation's history.

WHO SHALL GUARD THE GUARDIANS?

To diagnose students unrest as though it were symptomatic of individual psychopathology is to fall into the error of confusing history with biography. The label of sickness provides a rationalization for avoiding an examination of the critcism the "patient" makes of his "family" and "doctor." To lable unrest as "sick" is no more than a sophisticated version of the rage of adults at the effrontery of the child who pointed out that the Emperor had no clothes on. In part, adult fury stems from the very accuracy of the charge the young lodge against us. This is not to say that the correctness of the accusation warrants abject surrender by our generation; the young have no greater wisdom than we possess, and a good deal less practicality. But it is to say that resort to harsh punishment will perpetuate angry rebellion and block meaningful change.

The danger is dramatically clear. The anarchy of the young; the recklessness of some in threatening the university, the last remaining platform for rational dissent; their isolation from the mainstream of the community—all combine to offer the right wing a prime and long-sought opportunity to smash the university in the name of protecting it. Our difficult task is to defend the legitimacy of student criticism at the same time that we find a way to make students aware that more is needed than sloganeering.

What must be combatted among students is the romantic movement to substitute feeling for knowing. If cold logic without ethics is what enables the engineer or the scientist to hire himself out to be a hangman and produce weapons of mass destruction, it is also true that the romantic revolutionary gets himself and his disciples slaughtered in the mountains by the guns of mercenaries.

Yet students have been perhaps the most potent single force in mobilizing public opinion against the war. Consider only the remarkable support for the Vietnam moratorium generated primarily by student groups. Indeed, 79 university presidents, notably silent until now, have petitioned the government for troop withdrawal. If it is argued that the university has been politicized, let it likewise be recognized that compliant silence is also a political act, particularly when it is accompanied by war-related research at the expense of comparable efforts to solve the staggering domestic problems that confront our nation. The irrational and often self-destructive actions of the minority of self-proclaimed revolutionaries represent only a small part of the youth scene. Indeed, what must be combated is the stereotyping of all students in the image of the few whose unacceptable behavior provides a convenient excuse for ignoring the real issues at the core of present-day unrest.

The energy, idealism, and intelligence of youth are the prime resources of each nation; if those resources are to be wisely spent, our youth must be involved in the mainstream of national life. Youth is impatient—as it should be—with excuses for perpetuating evil. In the excess of its zeal, it sometimes abandons reason. But he who does not lose his mind over certain things has no mind to lose.

FOOTNOTES

[1] L. Eisenberg, *Children* 12, 131 (1965); ——, in *Crosscurrents in Psychiatry and Psychoanalysis*, R. Gibson, Ed (Lippincott, Philadelphia, 1967). p. 65; ——, *Bull. At. Sci.* 22, 27 (1966).

[2] K. Keniston, *Young Radicals* (Harcourt, Brace & World, New York, 1968); R. Coles *Psychiatry* 27, 305 (1964).

[3] H. Rashdall, *The Universities of Europe in the Middle Ages* (Clarendon, Oxford, 1895).

[4] J. M. Tanner, *Growth at Adolescence* (Blackwell, Oxford, ed 2, 1962).

[5] P. Aries, *Centuries of Childhood* (Knopf, New York, 1962).

[6] K. Keniston, in *Psychopathology of Adolescence*, J. Zubin and A. Freedman, Eds. (Grune & Stratton, New York, 1970).

[7] E. H. Erikson, *Psychol. Issues* 1, No. 1 (1959).

[8] R. Benedict, *Psychiatry* 1, 161 (1938).

[9] L. Eisenberg and P. Neubauer, *J. Amer. Acad. Child Psychiat.* 4, 426 (1965).

[10] J. S. Coleman, in *Psychopathology of Adolescence*, J. Zubin and A. Freedman, Eds. (Grune & Stratton, New York, 1970).

[11] W. E. B. DuBois, *Souls of Black Folk* (New American Library, New York, 1969); K. B. Clark, *Dark Ghetto* (Harper & Row, New York, 1965); C. Brown, *Manchild in the Promised Land* (Macmillan, New York, 1965); Malcolm X, *The Autobiography of Malcolm X* (Grove, New York, 1965); R. Coles, *Children of Crisis* (Little, Brown, Boston, 1967); L. Eisenberg, *Ment. Hyg.* 52, 512 (1968); C. M. Pierce, *Amer. J. Orthopsychiat.* 39, 553 (1969); C. A. Pinderhuges, *Amer. J. Psychiat.* 125, 1552 (1969); A. F. Poussaint and J. Ladner, *Arch. Gen. Psychiat.* 18, 385 (1968).

Footnotes at end of article.

THE ORIGINS OF THE RAIL PASSENGER PROBLEMS

Mr. PELL. Mr. President, in view of the increasing public concern about the condition of rail passenger service and in view of the pending Senate bill to assist rail passenger service, I believe it would be helpful to the Senate if a very informative article on the origins of the present rail passenger crisis, published in the March issue of the Signalman's Journal, be printed in the RECORD. 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:

THE RAILROAD PASSENGER, THE FORGOTTEN MAN

Uncle Hotchkiss has a temperamental heart. The doctor says no flying.

Cousin Bonnie has infected sinuses. She should never go up when she has a head cold.

Aunt Emma gets airsick. And Grandpa is afraid of flying.

Well, no matter, you say—they can take a train to wherever they want to go. But that's the point: they can't. There is none out of Corpus Christi, Texas, or Muncie, Indiana.

And what about you, flying from New York to Washington on business—just an hour by plane, but three or four on the ground, getting to and from the airport, more circling the field until your plane can land, and still more waiting for your baggage?

You would have preferred to take a train if the service weren't so bad, the food so undercooked and over-priced, and the cars so old, dirty and uncomfortable.

Perhaps you ought to complain, so that the railroads will know they are losing your patronage because of poor service and short-sighted management. Well, don't bother. They know it very well: in fact, they are doing their best to get rid of you.

The railroads do not want your business. They have been downgrading service and eliminating passenger trains for three decades in a determined effort to switch you to another means of travel. Since 1929, they have managed to cut out 95.5 percent of their passenger trains—a tragedy to the Brotherhood of Sleeping Car Porters as well as the other railway unions, and an incalculable loss to you. They would exterminate all the rest, if they could.

Why this wanton destruction of an important public facility? The railroads answer that the passenger trains are losing money. "The freight traffic is subsidizing the passenger traffic," runs their familiar song.

All their problems would be solved, they insist, if only they could get rid of their passenger trade. And the shippers fancy that with passengers removed, freight rates would go down.

But the railroads have an obligation to Grandpa, and Aunt Emma, and Uncle Hotchkiss, and Cousin Bonnie and you. They were granted charters by the various states to build and to operate public highways. The railroads are public thoroughfares, like turnpikes and canals, created to serve the public need and convenience.

To this end, railroads were given vast grants of public lands and public funds. By 1880, the various states had poured at least $228,500,000 into railroad coffers (in good old-fashioned, 19th century, pre-inflation

dollars), counties and municipalities had contributed another $300 million. New York State and its counties and towns supported its railroads to the tune of $40 million in cash or investments, only a quarter of which was ever repaid. The federal government and the state forked over 184 million acres to the railroads, about one-tenth of the land area of the continental United States! Texas alone handed over some 32 million acres, which is more real estate than makes up many of our states, New York included. In theory, at least, the railroads are very obligated to the public.

Because of the conflict in interests and the constant struggle resulting from it, other nations of the world have, one by one, found it necessary to nationalize their railroads. In this bastion of free enterprise, however, the bogey of nationalization has been staunchly resisted. The private interest has thrived on schemes and counterschemes, swindles and superswindles, crosses and doublecrosses, mergers and submergers, rate wars and hate wars, purchases of senators and commissioners, stock manipulations, panics and depressions, graft and bribery, while the public interest was treated to arrogance and discourtesy.

THE ICC TO THE RESCUE

It became increasingly evident that more than promises was needed to protect the public against the respectable piracy of the railroad tycoons. In 1886, a public outcry led to the appointment of a Senate Committee on Interstate Commerce. The Committee proposed a bill which, among other things, would create a five-man federal commission with power to investigate and regulate the financial operations and management of the railroads. It was not the first such bill to be proposed, but it was the first to be passed. Despite the howls of the railroad lobbyists, it became law on February 4, 1887.

The new Interstate Commerce Commission had no means of enforcing its decisions, however. There was no limit to the ways in which the law could be flouted by cutthroat railroad operators. Without qualms, they betrayed not only the law, but each other. Price wars, illegal rebates, swindles and rigging of books were common practice. One of the railroad presidents told a conference called by J. Pierpont Morgan, "Gentlemen, I have the utmost respect for you individually, but as railroad presidents I wouldn't trust you with my watch out of my sight."

ARROGANCE AND CORRUPTION

Although the ICC became more and more impotent, the railroad magnates frothed at the mouth at the very mention of it, and agitated for its removal. In 1892, Richard S. Olney, counsel for one of the railroads and a director of two others (late Attorney General in Grover Cleveland's Cabinet), advised C. Perkins, president of the Burlington railroad: "The Commission, as its function have now been limited by the courts, . . . can be . . . of great use to the railroads. It satisfies the popular clamor for a government supervision of railroads, at the same time that supervision is almost entirely minimal. . . . The part of wisdom is not to destroy the Commission, but to utilize it.

By the turn of the century, the helpless public thoroughly hated the railroads for their refusal to adopt safety methods (10,000 people were killed in railroad accidents every year and another 80,000 injured); for their arrogance and corruption; for their tax evasions; and for their merciless exploitation of their trainmen (working them 18 hours a day on freight trains). The ICC was of little use to the public in these matters. "The railroads own many of our courts and other public bodies," Commissioner Charles A. Prouty wryly told a reporter in 1904. "Not because they have of necessity bought them with money; they have a different way of doing things. They see to it that the right men . . . are elected. If the Interstate Commerce Commission were worth buying, the railroads would try to buy it. The only reason they have not tried . . . is that this body is valueless in its ability to correct railroad abuses."

It was the crusading Senator Robert La Follette of Wisconsin who sent accountants to look into the books of the railroads in his state, uncovering illegal rebates of over $10 million (which defrauded the public of hundreds of thousands in taxes) and consistent lies and defrauding.

Inquiries were launched, and the U.S. Attorney General instructed United States attorneys to prosecute railroads that paid rebates. In June of 1906, Congress passed the Hepburn bill fixing railroad rates. Succeeding Congresses strengthened federal controls over the huge railroad empire.

FREIGHT IS KING

Early in this century, the railroads were of a mind to dump their passenger trade in favor of the more lucrative and less demanding freight. Freight requires no attention, except from its shippers, doesn't object to filth and obsolescence, doesn't require feeding, sleeping or sanitation, doesn't smoke, drink or litter, doesn't sniffle when it's cold or perspire when it's too hot, and best of all, never complains. Furthermore, there was no limit to the prices that could be extorted from the shippers (and passed on to the public), whereas there was a fixed rate of two cents per mile for passenger fares. But it was not until the advent of the automobile that the railroads had a place to dump the unwanted passenger trade.

In 1920, the railroads began to eliminate hundreds of passenger trains. A meeting of presidents of eastern railroads in 1928 discussed how they might get out of the passenger business. Their answer was to downgrade service, to arrange inconvenient schedules and long, dreary trips, to let equipment deteriorate, and to encourage car and bus travel. And all the while to complain about the deficits of passenger traffic.

In the South and West, a few companies continued to promote their passenger traffic, but in the East during the 1940's only Robert C. Young, of the Chesapeake & Ohio made such an effort. Scotching all the old stock ideas about the passenger trade, Young called the sleepers "rolling tenements." Since 1954, however, almost all the eastern lines have been busily wrecking their passenger traffic.

It has been the habit of the railroads, whenever their legalized piracy has been impeded, to turn howling to the federal government like a favorite child running squalling to papa. At these times they virtuously remind everyone that the railroads exist in the public interest. After conducting hearings, a Senate committee summed up the reasons for the railroads' plight: The picture was one of "obsolete equipment, nineteenth century economics, and antiquated thinking. . ." Congress changed some of the rules on ratemaking and instructed the ICC to give what aid it could to permit the carriers to capitalize on their natural advantages.

In the past decades, the railroads have begun to carry freight by "piggyback" and to cooperate with the truckers by moving their trailers part of the way. Special freight cars were designed, such as the double-deck and triple-deck autorack cars, the "Big John" hoppers that carry more than 100 tons of grain, tank cars holding up to 15,000 gallons, boxcars that can haul an 80-acre tobacco crop, and other specialized trains.

Then began a series of mergers "in the public interest." In 1962 the Chesapeake & Ohio merged with the Baltimore & Ohio; in 1963, the Norfolk and Western joined the Nickel Plate and the Wabash; in 1966 the Pennsylvania united with the New York Central.

Although the ICC had stipulated that the Penn Central merger was contingent upon inclusion of freight and passenger operations of the New York, New Haven and Hartford, no sooner was the merger approved than the two railroads declared they could not handle the New Haven's passenger traffic. Similarly, when the N&W absorbed the Erie Lackawanna and the Central of New Jersey, it disclaimed all responsibility for their passengers. Implicit in these rejections of responsibility for passenger service was a demand for more public funds—all in the public interest, of course—and an Olympian disdain for the interests of the many employes who would be left jobless.

The railroads have never made a secret of their intentions to liquidate their passenger traffic. In July, 1956, Donald J. Russell, president of the Southern Pacific, predicted the end of the Pullman car and the disappearance of long-distance rail travel. The Pennsylvania's president told a New York Times reporter, "I've just about given up hope as to the future of long-haul passenger travel." These were not expressions of regret: they were statements of policy. The systematic annihilation of passenger traffic had been going on since 1929, and the railroads intended to accelerate the process.

GOING, GOING—GONE

The number of passenger trains in the United States had shrunk from at least 20,000 in 1929 to 11,000 in 1946. By 1964 they numbered only 1,300 and by August of 1967, less than 900. At least two states and any number of good-sized cities have no rail passenger service at all. There is no through service between some of the largest cities (between Cleveland and Detroit or Pittsburgh, for instance, or between Dallas and San Antonio). Efforts have been made to end or reduce service between New York and Boston.

This again, it is blandly proclaimed, is in the public interest. Aunt Emma, Uncle Hotchkiss, Cousin Bonnie and Grandpa are not convinced.

The railroads are quick to point out all the villains in the piece: the automobile; the airlines; discriminatory taxes; the money the federal government is lavishing on roads and airports (forgetting that it did as much for the railroads); rising costs of equipment and that favorite whipping boy of all incompetent managements, the unions.

How real is this passenger deficit that the railroads are always parading, like a professional beggar exhibiting his sores?

A PHANTOM DEFICIT

In a report to the ICC in 1962, Commissioner William H. Tucker called the deficit figures of the Baltimore and Ohio "overstated . . . misleading . . . contradictory . . . dubious . . . false." He showed how books were rigged and figures juggled. To achieve its net deficit for 1961, the railroad had arbitrarily reduced the book value of certain securities, had written off a number of claims, and had introduced figures that had no relationship to the 1961 operations. Calculated another way, the B&O could have shown a healthy profit for 1961. The company had, as a matter of fact, predicted a 1962 profit before it had decided to appeal for merger with the Chesapeake and Ohio.

Only two other commissioners heeded Tucker, however, and the merger was approved.

The railroad industry managed to show a $5.5 billion deficit during the years 1950–57. It is obvious that no industry could have survived such staggering losses. "The passen-

ger-service deficit, so-called, is . . . a statistical mirage," says Peter Lyon, in his book, To Hell in a Day Coach, "a fraud, a phony."

The statistical distortions were made possible by an antiquated formula for determining costs which were devised by the ICC in 1887. This formula, which was retired in 1894 and revived and elaborated 20 years later, allows railroads to charge the passenger traffic with overhead and maintenance costs which would exist if there were no passenger traffic whatsoever. Richard F. Mitchell, president of the ICC in 1954, admitted that he believed the 1953 deficit figure of $700 million to be overstated by $200 million, and later judged it another $100 million too high.

The Association of American Railroads compiained in 1955 that it cost the railroads $3 million a year to report "unnecessary statistics" to the government, and that the "separation of common expenses between freight and passenger services" was "burdensome."

A STATISTICAL FANTASIA

In 1957, the National Association of Railroads and Utilities Commissioners held hearings on these "separation" rules and reported: "The term 'passenger deficit' . . . appears to the public and others not acquainted with the rules under which the expenses are assigned, a total loss from the passegner train service. Nothing could be so wrong because its true meaning is that of a statistical fantasia."

The supreme irony is that a few years later during hearings on the Northeast Corridor Project, when the railroads were angling for federal largesse, they did a turnabout on the passenger deficit. They suddenly discovered that the so-called deficit was not $421 million in 1965 but only $44 million (and even that figure is probably exaggerated).

But lies, very often, have multiple lives, and the myth of the passenger deficit survived the light of facts and reason. The ICC came to the conclusion that the passenger service had burdened the railroads with an annual deficit totaling over $500 million. Both railroads and shippers raised their voices in mournful chorus that it was all more than the freight could bear. Their yowls persuaded the Commissioner to investigate the rivers of red ink in which the passengers were drowning the railroads. After a year of testimony, the hearings examiner pontificated that passenger service was on the way out, sleeping cars by 1965 and coach service by 1970.

In August 1958, Congress approved an amendment to the Interstate Commerce Act that permitted the passenger service to be butchered. From then on, two and three hundred passenger trains have been lopped off every month—always "in the public interest."

DUMP THE PASSENGER!

At the same time, the railroads found it expedient to discourage passenger traffic any way they can. One means was by buying stock in the leading bus companies, so as to keep bus fares lower than rail fares.

Not unmindful of the power of advertising, railroads have used it to steer travelers to the buses and airplanes. They even display dazzling new models of automobiles in their depots, to suggest touring by car.

To get rid of their Pullman car traffic, the railroads introduced a higher fare for sleeper cars. In 1918, fares were raised to three cents a mile by the Federal Railroad Administration. Two years later, the ICC approved a price hike to 3.6 cents a mile for "first-class" fares, while coach fare remained at three. Today, the rates are a fat 7.63 cents a mile for first-class and 4.735 for coach.

Just last year, the railroads achieved their objective of killing Pullman service. "A sad new chapter in railroad history is being written," the railway union publication, Labor, reported on December 14, 1968. "After January 1, 1969, Pullman service will end on all U.S. railroads." Union leaders are meeting with the carriers to seek jobs for Pullman employes and to protect their severance pay and benefits.

The railroads must have known that the mass cancellations of passenger trains would disrupt their capacity to handle the mail. By 1959 there were fewer than 2,000 passenger trains running, usually on partial schedules, while the volume of mail had zoomed. Mail delivery by train was so slow and so uncertain that the Post Office canceled contracts with the railroads and awarded them to truckers and airlines. The mail cancellations, too, became an excuse to drop more passenger trains. At a 1955 ICC hearing, the Eastern Railroads Presidents' Conference stressed that they have been forced by the Post Office Department to discontinue passenger trains. "The diversion of the more profitable mail traffic away from the railroads will eventually weaken the railroads' ability to provide a national system of mail service and already has caused . . . the discontinuance of many passenger trains."

The statement ignores the fact that most of the passenger trains were dropped before the Post Office withdrew the mails from them. The railroads have always notified the Post Office when they intended to cancel a mail-carrying passenger train—not from the goodness of their hearts, but to avoid a stiff fine. It seems that the railroads can be fined $1,000 a day if they ignore the Railway Mail Service Pay Act, by which they must "perform mail services . . . when required by the Postmaster General to do so." The railroads have first requested the Post Office to withdraw mail from a passenger train, and canceled it after the Post Office has obliged. Of the 2,538 mail-carrying passenger trains dropped, in 1,730 cases the railroads had requested that the mail be removed.

Cutting the mail service seems to be a prelude to a piteous plea that a passenger train be dropped because it is losing money. Apparently, the railroad corporate heads had expected the freight cars to be able to handle the mail. The railroads, however, had so impaired their ability to deliver the mails that nine railroads were fined a total of $127,000 (the New York Central, $35,000 of it) for delaying the mails during the first quarter of 1967.

MAIL SERVICE SUFFERS

The railroads have deliberately permitted their passenger trains to become run-down. The cars have become dirtier, shabbier and more obsolete. According to the last consensus of railroad equipment published in 1962 by the American Railway Car Institute, 60 percent of the cars then in use were over 30 years old.

Defective tracks and equipment are the causes of an increasing number of train accidents. "From 1961 through 1967, the last fully tabulated year . . . derailments on American railroads increased more than 80 percent . . . from 981 to 1,522," Grayson De Camp wrote in the Cincinnati Post and Times Star, last November.

Research on passenger cars or equipment is virtually dead, the National Academy of Science reported in 1963: "Of two formerly powerful suppliers of passenger cars, one has within the past three years given up all research and development effort; the other has nothing new or imaginative in its distinctly low-key research program."

It should be noted that there are still a few railroads that provide good passenger service, often along scenic routes in the South and West, but even some of these are trying to cut back service. The big carriers which dominate the field have persistently downgraded passenger service.

TRAINS ARE NOT FOR PEOPLE

The airlines find it worthwhile to pay a commission to travel agents for tickets they sell, but not the railroads. Nor will the rail lines offer incentives to ticket agents, although an experiment in nine markets recently proved that sales for Pullman accommodations rose one-third when incentives of merchandise were offered. Instead, the railroads have launched a $2.5 million ad campaign "designed to convince the public that railroads are for carrying freight, not passengers," says the November 11 issue of Labor.

One technique for frustrating passengers is the purposeful mess in scheduling, which makes train connections impossible and leaves passengers stranded in railway stations for as long as 15 hours.

The obstructive tactics of the railroads were noted by the ICC when it turned down Southern Pacific's 1968 bid to axe the famous "Sunset" passenger trains between New Orleans and Los Angeles, once among the nation's finest. "The record is convincing," the decision pointed out, "that the SP has *deliberately* set out to discourage . . . patronage of the Sunsets." This was accomplished by "reducing what was once a convenient and comfortable service to a slow, unreliable, uncomfortable train without sleeping facilities, with only rudimentary dining facilities; a train on which a seat cannot be reserved, arrival and departure times cannot be ascertained by telephone or printed schedules, because they are often unattainable, and a train for which adequate station waiting room is frequently lacking. . . Under such circumstance, we must find . . . that the carrier has unnecessarily depressed its passenger revenues and in so doing has forfeited the right to claim that the losses it helped to create are an undue burden."

What can replace the nation's lost railroads? Our clogged highways with their appalling death toll do not offer a safe, relaxing or efficient means of travel. Jammed airports and stacked airlanes make plane travel increasingly inconvenient if not unnerving. Buses are slow and for long trips exhausting. Railroads are potentially the safest, most dependable, convenient and efficient means of travel especially for short or medium trips. They should also be the cheapest. A train can move a bigger load at less cost than any other form of transportation; its powerful diesel engine averages 192 ton-miles to a gallon of fuel compared to 58 ton-miles by truck.

A RAY OF HOPE

Help to the betrayed passenger has come from an unexpected source. The junior Senator from Rhode Island, Claiborne Pell, happens to prefer rail to air travel. Elected in 1960, Pell became aware, in his trips to Washington, of the railroads' missed opportunities and their abuse of a public trust. In 1962, he drew up a plan for an eight-state public authority to own and operate a high-speed passenger service in the urban area from Boston to Washington. Now known as the Northeast Corridor Project, it was supported by Presidents Kennedy and Johnson. On September 30, 1965, the administration's Ground Transportation Act, authorizing $90 million for new equipment and research, was signed into law. The long-delayed research is now under way. Some of their new equipment recently acquired by the Long Island Railroad and the Penn Central Metroliner (the high-speed, luxury train running between New York City and Washington, D.C.) are among the latest fruits of this research. It has been a slow start (perhaps too slow, since the Metroliner, for example, is almost

obsolete before it has begun twice-a-day service), but a start nevertheless.

Another hopeful note was sounded in early 1967 when a group of unhappy railroad passengers organized the National Association of Railroad Passengers. The fledgling organization has already spoken on behalf of the estimated ten million (or more) steady railroad passengers in this country. Opposing the Penn Central's bid to drop its last passenger train between Cleveland, Columbus and Cincinnati, the NARP executive director, Anthony Haswell, told the Public Utilities Commission of Ohio, "The people of Ohio were repeatedly assured that the Penn Central merger would result in better service." Now the railroad is telling them "to drive, to fly or ride the bus," he said.

THE UNIONS SPEAK OUT

One of the consistent forces for protecting passenger traffic has been the railroad unions, who have always fought for more passenger service, better safety standards and improved equipment. Whenever there has been an unwarranted curtailment of passenger traffic, it was the railway unions who raised the alarm and forced the ICC to halt further losses. In recent months, the rail unions were among those who vigorously opposed the applications of the Santa Fe and the Southern Pacific to give up some of their famous passenger trains.

Right now, the Railway Labor Executives' Association is fighting to save the bankrupt Tennessee Central from being scrapped, and is protesting a C & O effort to scuttle more passenger trains between Chicago and Grand Rapids, Michigan.

Organized labor believes that passenger traffic not only must be preserved, but upgraded, in line with other aspects of our amazing technological society. It has not, at this point, called for nationalization of the railroads. Yet if there is no other way out of this unconscionable mess, the impatience of a frustrated public may force acceptance of the solution adopted in Canada and throughout Europe.

ALASKA: THE POLLUTERS' UNPROMISED LAND

Mr. GRAVEL. Mr. President, a recent speech by the chairman of the board and chief executive officer of North American Rockwell, Mr. Willard F. Rockwell, Jr., came to my attention. It was entitled Alaska: The Polluters' Unpromised Land and delivered in Chicago on March 20.

I wish to call it to the attention of the Senate because of the telling points it contains on the whole issue of the opportunities, yet dangerous, offered in the exploitation of Alaska resources. As elsewhere the task is to see to the utilization of its commodity resources—particularly oil—without unusual pollution and depletion of the ecological environment. Our chance in Alaska is to learn by the errors previously made in other parts of the country, and the remarks by Mr. Rockwell set out in some detail the hopes we have.

The discussion is instinctive for the larger issues of environmental preservation everywhere. I ask unanimous consent that it be printed in the RECORD.

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

ALASKA: THE POLLUTERS' UNPROMISED LAND

(By Willard F. Rockwell, Jr.)

Three thousand miles north and west of this dining room there is unfolding one of the great ecological dramas of our time.

A relatively unspoiled wilderness has come face to face with monumental twentieth century pressures for exploitation of its resources.

The State of Alaska is face to face with a made-made problem: how to achieve maximum use of its natural resources without the familiar triple debacle of depletion, pollution and disaster.

It's not the first time Alaska has been under similar pressures.

But now, for the first time, the state has the opportunity to checkmate the twentieth century exploiters and polluters with twenty-first century scientific tools and management techniques. It has a unique opportunity to use a coordinated systems approach in planning, organizing, directing, and controlling its future growth.

In order to appreciate the full significance of that opportunity, let's pull back for a moment and survey our own situation here in the continental United States.

We're faced with environmental disaster. For more than a century we've done everything conceivable to ruin our land for future generations.

During this same period, conservationists were crying in the wilderness. Finally, the country started to pay attention, and we thought that we had salvaged something. But today, the specter of environmental pollution has again threatened our land. Until very recently we seemed to be losing the battle.

But something happened just recently to turn this whole sorry situation around.

Just 40 days ago, we the people were pushed solidly and decisively, and it was exactly what we needed.

I'm referring to President Richard Nixon's Message on Environment which he sent to the House and Senate on February 10, 1970.

"We can no longer wait," the President said, "to repair the damage already done, and to establish new criteria to guide us in the future. . . .

"Only lately," he continued, "have we recognized how precious and how vulnerable our resources of land, water and air really are."

He then proposed a 37-point program, embracing 23 major legislative proposals and 14 new measures in five major categories:

Water pollution control.
Air pollution control.
Solid waste management.
Parklands and public recreation.
Organizing for action.

The President addressed himself directly to the municipalities of America that are polluting our waters; he spoke to industries that are discharging their wastes into those waters; he spoke to the oil industry and to the automobile industry; to the electric utilities. He spoke to the manufacturers of beer bottles, and milk cartons, and hair shampoo. He spoke to big land developers. He spoke to you, and he spoke to me.

"The tasks that need doing," he said, "require money, resolve, and ingenuity and they are too big to be done by government alone. They call for fundamentally new philosophies of land, air, and water use, for stricter regulation, for expanded government action, for greater citizen involvement, and for new programs to ensure that government, industry and individuals are all called on to do their share of the job and pay their share of the cost." End quote.

For years many Americans, and I believe I can number myself among them, have been speaking as often as we could about the vitally important problem of preventing the pollution of the planet Earth, about the need for a coordinated systems approach to overwhelming problems of environmental management.

For the past ten months, as a member of President Nixon's Citizens Advisory Committee on Environmental Quality, I've had an even deeper appreciation of those problems.

However, at times I felt as though we alone couldn't supply the necessary push.

It was John W. Gardner, chairman of the Urban Coalition Action Council, who pointed out the benefits of being pushed once in a while.

"Every nation or city or corporation or federal agency," Mr. Gardner said, "doesn't move until it's given a solid push. Not a mild push—but a solid jolt. If the push is not administered by vigorous or purposeful leaders, it will be administered eventually by an aroused citizenry or by a crisis."

In the past six months the crisis in environment came to a head. Our citizenry is at least partially aroused as evidenced by a Gallup poll indicating a willingness to shoulder the cost of clean-up. And we now have the national leadership we so desperately need.

We're not alone in coming to grips with these suffocating environmental problems. It's a global threat. England, France, Switzerland, Chile, Peru, Mexico, Japan—all have problems. The West German Government has allotted 1.5 billion dollars for just one project—to clean up the Rhine River.

We know that it's going to be expensive. President Nixon, in his mesage, quoted a figure of $10 billion alone over a five-year period just for the construction of municipal waste treatment plants and interceptor lines needed to meet our national water quality standards.

All of us are going to be sharing the cost—through higher taxes, higher rents, higher fuel costs, higher commodity prices. The only thing more costly would be to do nothing.

Alaskans are aware of the waste of natural resources and careless pollution here in the continental United States. They know the story of the gigantic cesspools that we call lakes and the horrors that we call rivers. They know about vanishing wildlife.

They've a few stories of their own to tell. The Virgin Land, when it comes to plundering of natural resources, isn't exactly virgin at all.

The plundering started on the discovery voyage Vitus Bering made 229 years ago from Kamchatka to the shores of Alaska.

The slaughter of the fur seals in the open sea was just one of the disasters that overtook the wildlife.

The whaling fleets that a century ago were thick in the waters off Point Barrow have disappeared.

In an eighty-year period, from 1880 to 1960, more than $1.5 billion in mineral wealth was taken from the Territory—half of it from the gold fields—and the only heritage that accrued to Alaska was the endless hills of naked rock and gravel.

What at one time were the world's greatest high-grade copper mines today are vast holes in the ground.

Once it was thought that the hordes of salmon fighting their way into the spawning streams of Alaska were inexhaustible. If you remember, that was said of our buffalo and the carrier pigeon. The commercial salmon catch has been dwindling.

Pollution, too, has been more than a word to Alaskans. According to a Department of Interior report published two years ago, water pollution in numerous areas is becoming serious. Raw sewage discharge in the greater Anchorage area has resulted in gross pollution of Cook Inlet.

Mining and construction have resulted in local silting of streams and concurrent damage to fishery resources. Water discharged from sea food canneries, pulp mills and oil producing poses a threat to both stream and coastal water quality in the Kenai Peninsula and in southeastern Alaska.

Despite the offenses already committed Alaska is still the promised land of fabulous resources.

Alaska's resources are its oil, its minerals, and the edible fish in the sea. Its resources are its 33 million acres of commercially productive forest land, its wildlife and game, and its arable land. Three million lakes and ten thousand rivers will provide water for all uses from agricultural to hydroelectric power generation.

Alaska's resources are its 21 million acres of national forests, its 26,000 miles of coast line, and its clean natural environment.

Alaska's resources are its basic logistics capabilities—road, rail, and air transportation to service an area of 586 thousand miles. It has wide access to the sea.

Alaska's resources are its growing gross economic product with solid foundations in industry, agriculture and service.

As guardians of this treasure, Alaskans are determined that the mistakes perpetrated in continental United States will not be continued up north.

Determination is one thing—the money to carry out that determination is another.

It reminds me of the Biblical quotation:

"A Feast is made for laughter,
And wine maketh merry;
But money answereth all things."

Until recent times, surplus money was as scarce in the treasury of the State of Alaska as it is in many of the older states.

In 1967, the total revenues for Alaska, which has a population of 280,000, were $290 million.

Slightly more than half of that sum came from the Federal Government. About one-fourth was collected in various taxes within the State.

Then—almost overnight—Alaska had the necessary funds to back up its determination to use its resources wisely and to control its environmental future.

I'm sure all of you are aware of the North Slope oil find.

Very briefly—the most exciting event in the history of oil in the United States occurred two years ago when oil was discovered on the barren North Slope facing the Arctic Ocean. It is conservatively estimated that 20 to 40 billion barrels of low-sulphur-content oil may be in the area, and it will start flowing south to the lower forty-eight states some time in 1972 at a million-and-a-half barrels a day.

Last fall, more than $900 million was paid by a score of oil companies to the State of Alaska for additional leases in the North Slope area alone.

If the State of Illinois had reaped the same windfall, in the same proportion to the taxes paid within the State, an incredible 32 billion, 221 million dollars would have been added suddenly to the State Treasury.

The discovery of the North Slope oil fields is just the beginning of similar opening of natural resources that will inevitably follow.

The State's mineral potential will dwarf the most fabulous stories of the past. Only a fraction of the territory has been thoroughly explored for minerals—probably less than one percent.

Therefore, I am convinced that we are about to see in Alaska an inevitable pattern toward urbanization and industrialization.

Alaska is already concerned about the effects on geography and wildlife of this new way of life.

The easily scarred tundra, the delicate vegetative layer of mosses, lichens, grasses and sedges, is already, without man-made interference, in a critical balance with nature. Any break in its surface could leave unhealed scars for years and become a focus for erosion. As a result, seed test farms have already been established near the drilling operations to find suitable cover to replace the gouged-out tundra.

There is concern about interference with the mating habits of the three hundred thousand caribou that wander in endless journeys over central and northern Alaska.

There is concern about disturbance to nesting grounds of the millions of migratory birds who return each spring to Alaska.

It is not certain if the removal of gravel from Arctic streams for the building of roads in the oil fields will change the spawning runs of fish.

Gentlemen, I've been an ardent conservationist most of my adult life. I've fought in some of the battles, and I've fought them hard, and I intend to continue the fight.

But let me make it clear: I'm not advocating we turn the State of Alaska into a fish and game preserve.

Alaskans are entitled to, and must have, all the benefits of a strong, well-developed economy.

They have every right to bring the oil to the surface, to mine the minerals, to harness the waters for electric power. They have every right to harvest the crops from both the land and the sea.

But Alaskans have a great opportunity to reassess, before they are locked into rigid positions, the relationship between technology and the environment. And I'm happy to tell you that they already appear to be reacting with great responsibility.

Less than three months after the oil lease money was deposited in the banks, the State of Alaska, in conjunction with the United States Department of Interior, called a meeting of experts.

In essence, the experts were asked by the State, "What's the best conservation practice we can follow here in Alaska? What's the most feasible development course we can chart? How should we manage our natural resources?"

Just think about this for a moment.

What if this country, a full century ago, had been able to make a master survey of *all* its natural resources?

Better yet, if the country could have *acted* upon that survey?

What if, a full century ago, systems analysts, resource and environmental specialists, and management specialists had been summoned by the Governors of Illinois, Ohio, Pennsylvania and New York and been told, "Here's how our population is going to grow over the next century. Here's a projected pattern of industrial growth. We want you experts," the Governors would say, "to conduct a complete and precise inventory of our natural wealth. We want you to tell us the what, where, and how much of everything.

"We'll develop the organization," the Governors would continue, "assemble the team, and prepare the requisite legislation and authoritative charters to carry out the plan."

And finally this most important directive which, had it been given and enforced, could have saved this nation the present blight of environmental degradation. "A word of caution," the Governors would have said to the experts one hundred years ago, "the beauty and purity of the land and its water and its atmosphere must be preserved."

What if engineers, scientists and political leaders had been given that mandate just fifty years ago by the State of New York alone?

What if the same experts had been called as late as 1940 to the Los Angeles Basin?

Governor Keith Miller of Alaska is fortunate that today he is in the position of the governors of Illinois, Ohio, Pennsylvania and New York a century ago—with this great addition: Alaska can profit not from our meager triumphs in resource management and environmental control, but from our awesome mistakes. As the Greeks put it, "It is disgraceful to stumble against the same stone twice."

But the state is most fortunate because there are now available for use in environmental and resource control new scientific tools and new management techniques. These are the direct outgrowth of twenty-five years of intensive research and development stemming from the Korean war, the cold war, and the flight of the Apollo to the Moon.

And the aerospace industry in addition has developed management systems for extremely complex endeavors.

The Apollo program was perhaps the most ambitious single undertaking ever attempted by man. The management structure created for Apollo directed the efforts of 400,000 people, dispersed in innumerable government agencies and more than 20,000 industrial concerns throughout the country. The program entailed the disbursement of almost $22 billion over the past nine years.

Yet in several respects the Apollo program was a simple management task compared to what lies ahead for Alaska. For Apollo, the goals and objectives were clear, unambiguous, easily communicable and understandable, easily expressed in clear quantitative terms. They did not change with time.

Not so for the State of Alaska.

The Apollo management structure was monolithic. All resources to accomplish the Apollo objective flowed from the top down through a management structure where authority, responsibility and sub-objectives could be held in balance at every level.

Not so for the State of Alaska. The interaction of socio-political forces with the products of a society and the natural resources of an area form a set of problems far more complex than any yet encountered. Very simply, when people enter an environmental problem, everything gets complicated.

It's a tough management job, but it can be done.

Most exciting are the new scientific tools that are now or shortly will be, available.

They will be prospectors in the sky, leading to the discovery of new mineral, water and food storehouses. They will allow men to inventory accurately the natural resources.

In forestry and agriculture resource management, it is now possible to classify and evaluate the extent and health of vegetation resources.

In water resource management, it is now possible to establish water tables, snow and ice pack, lake and river status, and location of fresh water in salt water regions.

In wildlife and game resource management, it is now possible to locate and track major herds, locate conditions favorable to support of animal life, and improve our ability to locate commercially valuable fisheries.

In power systems development, it is possible now to improve the probability of locating geothermal power sources. We can aid now in site selection for nuclear and non-nuclear power generation plants, and in the control of temperature contamination. We can aid in planning power distribution-and-control networks.

These are only some of the areas where we now have capabilities from space-sponsored technical advances to benefit Alaska's future.

A few weeks ago in an issue of the *Saturday Review*, I read the following summation:

"With all his gifts, man has been able to effect vast change, making his life different from that of those who lived before. His capacity for invention and his sense of creative splendor have constructed great civilizations.

"But he has never been in command of his works.

"He has never been in balance."

End quote.

Here in the lower forty-eight we have almost been defeated by that loss of command and lack of balance, and we're turning now to a task of restoration.

But Alaska is different. The state has been bruised, but not defeated, in this environmental struggle.

It has an unparalleled opportunity to be in command of its works.

It has an unparalleled opportunity to stay in balance.

It can do so if its people continue with their expressed determination to remain free and unfettered from senseless exploitation and pollution.

It can do so if its people accept the acknowledged heavy cost.

It can do so if it reaches out for the scientific and management tools now available.

Alaska, for generations acclaimed as the land of opportunity, offers this entire nation a last chance to be convinced that men can control their environmental destiny, that men can inherit the Earth without despoiling it.

Thank you.

FORMER SURGEON GENERAL SUPPORTS FEDERAL AID FOR TRAINING IN VETERINARY MEDICINE

Mr. YARBOROUGH. Mr. President, veterinarians are vital to the health and well-being of the Nation. To suggest otherwise would only betray a lack of understanding of the contributions of veterinary medicine to mankind.

On March 18 and again on March 23 I had occasion to discuss the subject before the Senate. I am, of course, still quite concerned that the administration may attempt to withdraw Federal assistance to veterinary medicine as a result of a mistaken notion that veterinary practice is largely limited to pet care. Nothing could be further from the truth.

The basic role and scope of modern veterinary medicine is the protection and improvement of the health, food supply, and economic welfare of our entire population. Veterinarians protect the health and productivity of our livestock industry, care for the ills of an expanding population of companion animals, shield our human population from animal diseases which affect man and contribute to the conquest of human disease through cooperative research.

I am very much pleased to see that my views are shared by no less an authority than Dr. Luther L. Terry, Surgeon General of the United States, during the period 1961–65 and currently vice president for medical affairs at the University of Pennsylvania, as well as Chairman of the Committee on Veterinary Medical Research and Education of the National Academy of Sciences. In a letter dated March 17, Dr. Terry tells me of his distress on learning that "veterinary medicine may not be included in the 1971 budget for health manpower grant programs of the Department of Health, Education, and Welfare."

Mr. President, I ask unanimous consent that Dr. Terry's letter to me be printed in the RECORD.

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

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., March 17, 1970.

Hon. RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: In my capacity at the University of Pennsylvania, as well as my position as Chairman of the National Academy of Sciences' Committee on Veterinary Medical Research and Education, I am distressed to learn that veterinary medicine may not be included in the 1971 Budget for Health Manpower Grant Programs of the Department of Health, Education and Welfare.

We are finally moving into the era when veterinary medicine is arriving at a stage of scientific maturity, and is in a position to make its greatest contribution to human health and welfare. Accordingly, it is time that veterinary medicine be accepted as one of the legitimate and contributing health professions. To deny support of these schools by the Federal Government is not only shortsighted, it is uninformed and unrealistic. I urge you to use your influence to recognize veterinary medicine for its present and future contribution to the nation's health, and that it be given its proper share of the Federal contributions toward using all proper channels of improving the health of our people.

I sincerely appreciate your consideration of this matter.

Sincerely,

LUTHER L. TERRY, M.D.

THE ARMENIAN GENOCIDE: "NEITHER TO LAUGH NOR TO WEEP"

Mr. PROXMIRE. Mr. President, genocide leaves a terrible blot on the conscience and memory of humanity. Past atrocities, when brought to the surface and recalled, are indeed painful memories.

One of the most horrible instances of a crime against an ethnic and religious group began in Turkey in November of 1895, and continued for 27 bloody years. Two million of the Armenian minority in Turkey were murdered, as an attempt to solve Turkey's "Armenian problem." Two million more Armenians were left homeless by these tragic events.

An Armenian pastor named Abraham Hartunian miraculously survived the terrors of the Armenian genocide. His book "Neither To Laugh nor To Weep: A Memoir of the Armenian Genocide" is compelling testimony to the fact that our vigil against genocide must never be weakened.

Mr. Hartunian writes of painful memories, and his book is not easy to read. Yet, in spite of all the terror described in these pages, the book is of vital importance. The lesson is too powerful, the message too urgent for anyone concerned with the protection of human rights is not to take immediate notice of this vital account of this monstrous crime.

"Neither To Laugh nor To Weep" shows clearly why Senate ratification of the United Nations Genocide Convention is of the greatest importance.

Mr. President, I ask unanimous consent that several excerpts from "Neither To Laugh nor To Weep" be printed in the RECORD.

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

On Sunday morning, November 3, 1895, the church bells (of the city of Severek) were silent. The churches and schools, desecrated and plundered, lay in ruins. Pastors, priests, choristers, teachers, leaders, all were no more. The Armenian houses, robbed and empty, were as caves. Fifteen hundred men had been slaughtered, and those left alive were wounded and paralyzed. Girls were in the shame of their rape, mothers in the tears of their widowhood, orphaned children in wild bewilderment. The enslaved remnant was subject to nakedness and hunger, deprived of religion, honor, the very right to live. . . .

The terrible year of massacre, deportation, robbery, pillage, Gethsemane, crucifixion—the year of the annihilation of the Armenian people—1915 began. . . . Soon the deportation began. From April 4 to April 11, fifteen leading families of Zeytoon were brought to Marash and taken to the deserts to perish. One day a group of devout Christians, who called themselves Brethren of Christ, were brought from Zeytoon and hanged on a public thoroughfare. . . . Terror prevailed everywhere. . . . There was no longer any safety for the Armenians (of the town) of Marash. The days and weeks passed in continuous terror. . . . The Zeytoonists were being deported caravan after caravan, group after group, brought to Marash and sent to distant slaughterhouses. . . . Continuing thus, during April, May, June and July, the deportation of Zeytoon was completed. Turkey's long dreamt dream had come true. But hardly had Zeytoon been emptied when the deportation of the Armenians of Gurin, Albustan, and Yarpouz began. . . . Even the village folk around Marash were being driven out. Our own destruction was approaching. . . .

It is necessary to bear in mind that the Armenian population of the city was day by day being reduced in numbers, and the hardships of the remnant were ever growing. The most terrible and unbearable thing was that this situation had no end, no beginning, no limit. Every individual, each family, from second to second, was in horrid expectation of deportation, imprisonment, or immediate death. Every few days new corpses could be seen dangling from scaffolds. This was the life we were living. As here, so in every part of Turkey, the condition of the Armenian was thus, and even more evil and unbearable.

CENTRAL STATES, SOUTHEAST, AND SOUTHWEST AREA TEAMSTER PENSION FUND

Mr. HRUSKA. Mr. President, on November 20, 1969, I placed in the CONGRESSIONAL RECORD, a series of Oakland Tribune newspaper articles. These articles, written by Jeff Morgan and Gene Ayres, concerned alleged misuse of the Central States, Southeast, and Southwest area Teamster pension fund.

When I placed this series of articles in the RECORD, I suggested that pension fund trustees "must be responsible and exercise their power judiciously so as to protect the rights of the pension recipients."

On March 13, 1970, President Nixon sent a bill to Congress, S. 3589, which is designed to protect wage earners' pension benefits. President Nixon said when explaining the reason for this act:

While most of the plans are carefully managed by responsible people, we must make certain that the employee's money is fully protected. I am therefore proposing the "Employee Benefits Protection Act." This Act would protect employees with pension fund right against improper investments and conflict of interest on the part of the administrator of these funds.

Since my remarks to the Senate on November 20, I have been contacted by Frank E. Fitzsimmons, the general vice president of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Mr. Fitzsimmons complained to me about "numerous inaccuracies and misstatements" contained in the Tribune stories.

I make no judgment on the factual accuracy or inaccuracy of the stories. However, in fairness to all parties concerned, I ask unanimous consent that Mr. Fitzsimmons' letter to me be printed in the RECORD so that both sides of the question will be presented.

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

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,

Detroit, Mich., March 5, 1970.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: Recently in your office I discussed with you the numerous inaccuracies and misstatements which appeared in the series of newspaper articles which you placed in the Congressional Record on November 20, 1969 (35075–35085). One of the most vicious ones was the statement that I, as General Vice President of the International Brotherhood of Teamsters, "split(s) [my] $100,000 annual salary as head of the Union with Hoffa's wife." This is a gross and malicious falsehood. In my position as Acting President of the International Union, I draw the full salary established by the Constitution of the Union. I do not split, divide or divert any part of such salary to Mrs. Hoffa or to any other person.

I also called to your attention that the Congressional Record for the day in question was subsequently reproduced in a most deceiving manner. In the reprinting, many of the statements were underlined and some were placed in blacklined boxes for emphasis. The reproduction was then placed in a cover which was an exact copy of the cover for the Congressional Record for that date, but to which had been added headlines in bold print, such as, "36.8 Million Lost in 1968," "The Billion Dollar Swindle," "Bankruptcy Predicted." A copy of that cover is attached hereto. It is apparent that the format is such as to create the impression that this is an authorized reproduction of the Congressional Record and that the underlining, boxes and other additions are part of such record and also have been authorized by the Congress. I believe this type of abuse of the records of the Congress should be investigated and appropriate action taken against those responsible.

The Congressional Record for that day has been forwarded to the Central States, Southeast and Southwest Areas Pension Fund for comment by the Trustees. I am sure that within a reasonable period of time you will hear further from the Fund.

I appreciate your courtesy in permitting me the opportunity to call these matters to your attention, and I hope that some corrective action will be taken.

Very truly,

FRANK E. FITZSIMMONS,
General Vice President.

NEW ENGLAND FOREST RESEARCH

Mr. McINTYRE. Mr. President, I am deeply concerned about the continued problem of forest research in the Northeast.

The Congress appropriated $75,000 in 1966 to plan a sorely needed forest research laboratory in the Northeast. That phase is now completed, and the construction contract can be let if the necessary funds are available.

The Senate Appropriations Committee has moved forward in providing funds for these labs throughout the Nation. Last year funds were provided for two new laboratories but the administration did not use this money. This has set back this total research program and further delayed action on the Northeast laboratory.

This new laboratory is sorely needed. I cannot overemphasize how closely the economic health of New Hampshire and its neighboring States is tied to forest resources. Nor could I overstate how heavily dependent forest resource based industries are upon a productive forestry research program.

New Hampshire is 87 percent forested. Among them, the six New England States have 31 million acres of forests. These forests are a major source of water, recreational opportunity, wildlife and esthetics, and they are a potent factor in the economy of the region. The total annual value of manufactured wood products is about $2 billion, and the wood-using industries of the area provide steady employment to 110,000 people.

To keep this part of our economy healthy, to assure the perpetuation and the expansion of forest resource based industries, we must have a strong research program.

The Forest Service has a research program underway at the University of New Hampshire in Durham, N.H., but the 14 scientists and an equal number of assistants working on this program are now in totally inadequate quarters. They are located in a renovated hardware store, overcrowded, poorly ventilated, and lacking in the laboratory facilities required for intensive research.

Yet handicapped as they are, they are working on five projects of crucial importance: First, watershed yield improvement and flood runoff reduction; second, genetic improvement of white pine and other associated species; third, production of high-valued hardwoods; fourth, control of diseases that degrade northern hardwoods; and fifth, improved management of private forest recreation enterprises.

Rising costs of wood production and growing competition from other materials compel constant search for new knowledge, better methods, and more efficient techniques of timber production and use.

At the same time, increasing needs for pure water and insistent public demands for more forest recreation and esthetics require new knowledge and its application in the intensive management of forest land to coordinate conflicting uses—expending the economic resource while simultaneously protecting and improving the environment.

The 14 scientists now engaged in this research at Durham include hydrologists, a meteorologist, foresters, an ecologist, pathologist, a soil scientist, a plant physiologist, and silvaculturists.

Their present, limited facilities will continue to handicap their work and frustrate solution of highly complex forestry problems.

With the proposed forestry sciences laboratory, on the other hand, the Forest Service can achieve the goals and objectives outlined above for the five projects at Durham and thus make a telling contribution to the economic well being of New Hampshire and New England.

The new laboratory building would contain 12 laboratories, nine laboratory facilitating rooms, and staff offices, and would be located on an 8-acre area on the campus leased free to the Forest Service by the university.

Its very location is an added benefit, for close cooperation and coordination of research can be maintained with university programs of instruction and research in forestry, botany, soils, and related fields, and would bring about a sharing of facilities and interchange of ideas among the scientists of the Forest Service and the university.

The region's economic dependence upon forest resource based industries, the compelling demand for research in forest resource production and use, and the ideal location of the proposed forestry sciences laboratory are, I believe, convincing reasons for the construction of this laboratory.

The importance of forest research has now been officially recognized by the New England Governors' Conference.

Mr. President, I ask unanimous consent that the resolution approved by the New England Governors' Conference and signed by all of the Governors of New England be printed in the RECORD. I also ask unanimous consent that the letter written by the director of the State of New Hampshire Department of Resources and Economic Development, Division of Resources Development which very ably states the case for this urgently needed laboratory in the State of New Hampshire be printed in the RECORD.

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

RESOLUTION

Whereas, the forests of New England have furnished livelihood, recreation and an environment to benefit the Region and the Nation and these 31 million acres of woods and wilderness cover three-fourths of the land in our six-state area whose other one-fourth of the land supports one of the highest population densities in the country; and

Whereas, New England's forests are now sustaining the impact of an expanding population which requires large quantities of outdoor recreation, water, lumber, paper, wildlife and scenery; and

Whereas, New England's forests are able to produce increased amounts of these goods and services, providing public housing, augmenting rural economies and healthful environments without pollution or degradation; and

Whereas, such intensive management of New England's forests requires development of new scientific knowledge which must be developed through intensified forestry research;

Now therefore be it resolved that the New England Governors' Conference requests a prompt and substantial augmentation of Forest Service, U.S. Department of Agriculture Research as a public investment in the development of New England's forests for the benefit of the people of New England and the Nation.

KENNETH M. CURTIS,
Governor of Maine.
DEANE C. DAVIS,
Governor of Vermont.
JOHN DEMPSEY,
Governor of Connecticut.
FRANK LITCH,
Governor of Rhode Island.
WALTER R. PETERSON,
Governor of New Hampshire.
FRANCIS W. SARGENT,
Governor of Massachusetts.

DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT, DIVISION OF RESOURCES DEVELOPMENT,

Concord, N.H., March 27, 1970.

Hon. THOMAS J. MCINTYRE,
U.S. Senator, Senate Office Building, Washington, D.C.

DEAR SENATOR MCINTYRE: Your support and assistance in maintaining and increasing the level of Clarke-McNary—2 funds is urgently solicited. These funds, as you know, are made available to the states through the U.S. Forest Service for forest fire prevention and control. It is my understanding that the Fiscal Year 1971 recommended appropriation of CM-2 funds has been reduced from 16.4 million to 14.4 million. This represents a loss to New Hampshire of approximately $18,600 from $121,600 to $103,000. This makes a sizable hole in our forest fire program. The congressional limit on CM-2 appropriations is 20 million and we had great hopes that the 1971 appropriation would be upward to this limit instead of reduced.

The President and the administration have placed great emphasis on the need for improving the environment and have requested large sums to fill many natural resource needs. They have stressed action programs on water pollution, air pollution, noise abatement, outdoor recreation, fish and wildlife habitat, to mention a few, and rightfully so. I am surprised at their deemphasis of the forest fire control program which is basic to the protection and management of our forests and total environment. This is especially true here in New Hampshire where 88% of the state is covered with forest growth.

The forest fire control record in New Hampshire has been very good in recent years due in great part to the fine cooperation of the state and towns in prevention and control programs and in great part to favorable weather conditions. We all know, however, that under the proper set of weather conditions we could suffer extensive forest damage. Values protected within the forest environment are growing all the time with the development of many recreation resorts. We only have to look at California and other states to see the consequences of uncontrolled wildfire. Soil and water management, erosion control, game and wildlife habitat, aesthetics, tourism and many other forest uses all depend on forest fire protection.

With rising costs for supplies, equipment, and manpower, and the great pressures on state appropriations, the need for increasing federal allotments is most important.

Your continuing support of our forest and other natural resources programs is most appreciated by all of us. CM-2 allotments to the state are most basic for a better environment.

I have been advised that the budget hearing of the Sub-Committee on Appropriations for the Department of Interior and Related Agencies is scheduled for April under Chairman Alan Bible. Your forwarding this letter to this Committee for inclusion in their record and any additional support which you might give would be most appreciated.

Sincerely yours,

THEODORE NATTI,
Director.

GREAT LAKES TEST PROGRAM A FAILURE

Mr. TYDINGS. Mr. President, last summer the Department of Defense conducted a test program of shipping military cargo through Great Lakes ports during the 1969 shipping season of the St. Lawrence Seaway. The test was undertaken at the behest of the Great Lakes maritime interests and encouraged by the Great Lakes Conference of Senators. They were complaining that military cargos were being shipped out of east coast ports and that the Lake facilities were thus unjustly ignored.

In July, after learning that the first ship had sailed only two-thirds, full, that cargo had to be generated as far away as Maryland and believing that the military might learn from the experiences of U.S.-flag lines that were unable to make a commercial success of scheduled service through the Seaway, I wrote Secretary Laird and termed the project "contrary to economic good sense." I was joined in this letter by Senators BOGGS, BROOKE, BYRD of Virginia, CASE, DODD, MATHIAS, PELL, RIBICOFF, SMITH of Maine, SPONG, and WILLIAMS of New Jersey.

The test program is now completed. Cost and performance data were collected during the test and evaluated by both GAO and DOD. I wish to call this evaluation to the attention of the Senate.

I emphasize that the purpose of the test was to see whether money could be saved by using Lake ports rather than east coast facilities in the routing of military cargos. The Great Lakes Conference of Senators was confident that it could. In fact, in a July 11 letter to Secretary Laird they optimistically predicted that over $100,000 would be saved.

The GAO and DOD analysis, however, found that—

Excess costs of $415,218 were incurred in shipping the test cargo through the Great Lakes compared with East or Gulf Coast ports.

This little experiment cost the taxpayers over $400,000. It was not only contrary to economic good sense, it was an outrageous waste of Federal expenditures. We all recognize the need to eliminate unnecessary governmental spending. I suggest we start here and drop what is obviously a political boondoggle.

Over the knowledgeable objections that such a project could not possibly save money, a test program was conducted. Now that the results of the test are available, the facts are in, let us make sure that the project is dropped and that another test not be conducted in the 1970 shipping season.

Equally noteworthy is the breakdown of average costs per measurement ton. The evaluation confirms what was to some common knowledge, that east and gulf coast ports costs were lower overall than Great Lakes port costs. The difference was $6.05 in the average of line haul, port handling, and ocean costs.

The statement of the Great Lakes Conference Senators that "it was apparent that the unitary all-water voyage should be—and would prove to be—more efficient and cheaper than the two-part rail-plus-ship method of routing cargo overland to the east coast before placing it on oceangoing vessels" has been shown to be incorrect. The St. Lawrence Seaway route cost more not less. The fact is that Baltimore and her sister ports provide better service.

Moreover, the GAO-DOD analysis shows that only 3,410 MT's of retrograde cargo was carried by the test vessels. This is roughly 5 percent of the cargo carried and well below the 10-percent average of retrograde that military shipments usually obtain.

Finally, the analysis points out that even under test conditions the project could not obtain sufficient cargo. The test was designed to ship between 80,000 and 90,000 tons of cargo. Yet not even 70,000 tons could be found. The analysis also mentions problems with time schedules and containerization facilities, thus highlighting the commercial advantages of east coast ports.

Mr. President, the evaluation of the test program clearly and emphatically states that—

DOD, because of the mix of its cargo and its lack of retrograde traffic, cannot operate controlled vessels economically in Great Lakes ports.

The test thus conclusively shows that DOD should not operate such a shipping service.

I will write to the Secretary of Defense shortly requesting him to take the steps necessary to insure that, on the basis of the GAO-DOD analysis, the test program of shipping military cargo to Great Lakes ports be discontinued and that a wasteful project be terminated.

I ask unanimous consent that certain letters relating to this issue be printed in the RECORD.

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

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,

Washington, D.C., March 27, 1970.

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

DEAR SENATOR TYDINGS: As you know, the Department of Defense conducted a test program of shipping military cargo through Great Lakes ports during the 1969 shipping season.

The data that was collected throughout the test period has been closely evaluated by the General Accounting Office as well as the Department of Defense. Because of your previously expressed interest in the program, we are forwarding a summary of its results with this letter.

We hope you find this information useful. However, if anything further is needed, please do not hesitate to contact us.

Sincerely,

V. F. CAPUTO,
Director for Transportation and Warehousing Policy.

GREAT LAKES SHIPPING TESTS

The Department of Defense (DoD) normally routes its military export cargo through ports where U.S. Flag shipping is available. Ports, such as Great Lakes ports, that are routinely served only by foreign flag shipping are generally not considered. As a result, only minimal volumes of our military export cargo has been routed through Great Lakes ports.

The almost exclusive use of tidewater ports for cargo originating in midwestern states in some cases results in additional transportation expenses being incurred because of the additional line haul cost necessary to move the cargo to those ports. Our concern with the propriety of incurring these additional expenses prompted us to ask the Comptroller General for his opinion. He concluded that the Cargo Preference Laws preclude us from routing cargo to ports where no U.S. Flag shipping is available, merely to reduce transportation costs. However, the Comptroller General suggested that consideration be

given to the use of shipping controlled by the Military Sea Transportation Service (MSTS) at Great Lakes ports.

As a result, we conducted a test during the 1969 shipping season in which commercial ships chartered by MSTS were used in service between the Great Lakes and Europe. The two chartered vessels which served the ports of Milwaukee, Kenosha, Toledo and Port Huron with 11 sailings carried a total of 68,631 measurement tons of cargo. The test objectives were to determine whether the use of military controlled vessels in the Lakes would result in reduced shipping costs, U.S. Flag shipping operators could be induced to expand service to the Lakes, and greater competition could be stimulated among ports and inland carriers.

The cost and performance data that were collected during the test and evaluated jointly by the General Accounting Office (GAO) and the DoD indicate that excess costs of $415,218 were incurred in shipping the test cargo through the Great Lakes compared with East or Gulf Coast ports. The average costs per measurement ton were as follows:

[Average cost per measurement ton]

	Great Lakes	East/ Gulf Coast
Line haul	$5.13	$7.30
Port handling	7.08	4.77
Ocean costs	28.89	22.98
Total	41.10	35.05

The cost of shipping via the Great Lakes would have been less if:

1. *A more efficient mix of cargo generated.* 66% of the test cargo was vehicles, cargo that is difficult to stow efficiently on conventional vessels. If a greater proportion of the cargo had been the more efficiently stowable general cargo, ship utilization would have improved, thus permitting larger payloads and lower unit costs.

2. *More inbound cargo had been carried in the test.* Only 3410 MT's were carried in the test vessels. Hence, the outbound cargo had to bear most of the round trip costs.

There were two other factors that had an adverse impact on the test program. First, as can be seen from the figures on the previous page, port handling costs at Great Lakes ports were higher than such costs at tidewater ports.

Second, some limited amounts of cargo, principally household goods, certain types of Exchange Service merchandise, and items procured from contractors and vendors for direct shipment to ocean terminals, that originated or were destined for delivery in the test area, were not for a number of reasons transshipped through Great Lakes ports. For example, in the case of some household goods, the ship schedules and required delivery dates were not compatible; the need to containerize highly pilferable Exchange Service cargo meant that such items (which are designated as "container required" by the shipper services) had to be transported to tidewater ports for shipment onboard container ships; the delivery terms specified in procurement contracts, many of which were awarded prior to initiation of the test program, called for delivery on an FOB basis to a tidewater terminal; lastly, in a relatively few instances, inadvertent routings resulted in some shipments being directed to other than Great Lakes ports. However, the total volume of cargo in these categories was not sufficient to substantially change either the test results or our conclusions drawn therefrom.

Experience during the 1969 shipping season indicates that the DoD, because of the mix of its cargo and its lack of retrograde traffic, cannot operate controlled vessels economically in Great Lakes ports. On the other hand, we believe that the test indicates that a commercial U.S. Flag operator could improve substantially upon DoD experience by carrying additional commercial general cargo outbound and attracting inbound cargo. For example, the DoD's average outbound lift during the test was 5929 measurement tons (MT's). Assuming other things remained equal, an average inbound payload of about 2000 MT's would have resulted in a break-even operation. A further increase in outbound or inbound tonnage levels would result in lower costs than shipment via East and Gulf Coast ports.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., July 8, 1969.

Hon. MELVIN R. LAIRD,
Secretary, Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: At a time when non-essential defense expenditures must be kept at a minimum, it is disturbing to read that the Defense Department is operating a shipping service to the Great Lakes ports contrary to economic good sense.

Reports indicate that the Great Lakes area simply can not provide the Military Sea Transport Service vessels with sufficient cargo. The first ship sailed only two-thirds full and it is likely that the other vessels involved will do so also. We have been advised that in order to find sufficient cargo military traffic has been artificially routed through the St. Lawrence Seaway from points as far away as Georgia and Maryland. Moreover, these ships may well return empty because retrograde cargo returning to the U.S. is not moved inland.

Since the Seaway was first opened in 1958, efforts have been made to route military cargo through ports on the Great Lakes. These efforts have not been a commercial success. Three civilian lines attempted to provide U.S. flag service into the Lakes area and were unable to do so because the amount of cargo generated simply did not pay for the extremely high costs incurred by the ships being tied up for so long in the Seaway.

We believe that MSTS can benefit from the experience of these shipping lines. We believe further that our Atlantic coast ports can provide MSTS with excellent, economic all year service.

While the shipping service to the Great Lakes ports may be described as a test program, surely economic feasibility studies were available to indicate what the actual results would in fact be.

We urge you to review the situation personally and discontinue this MSTS operation.

Best wishes.

Sincerely,

JOSEPH D. TYDINGS, EDWARD W. BROOKE, CLIFFORD P. CASE, CHARLES MCC. MATHIAS, ABRAHAM RIBICOFF, WILLIAM B. SPONG, JR., J. CALEB BOGGS, HARRY F. BYRD, JR., THOMAS J. DODD, CLAIBORNE PELL, MARGARET CHASE SMITH, HARRISON A. WILLIAMS.

JULY 11, 1969.

Hon. MELVIN LAIRD,
Secretary, Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: On July 8, 1969, a group of Senators representing East Coast states wrote to you requesting reappraisal of the Pentagon's test program of shipping military cargo via the Great Lakes and the St. Lawrence Seaway.

This program was initiated at the beginning of the 1969 shipping season in an effort to find a more economical way of shipping overseas military cargo which is manufactured in the Midwest.

It was apparent that the unitary all-water voyage should be—and would prove to be—more efficient and cheaper than the two-part rail-plus-ship method of routing cargo overland to the East Coast before placing it on ocean-going vessels.

The test program is designed to ship approximately 80,000 to 90,000 tons via the Great Lakes routing. This compares with an overall total of some 20,000,000 tons of cargo that the military shipped overseas last year, with more than 8,000,000 tons going through East Coast ports.

Clearly, the test program is a very modest one. However modest the program though, we cannot permit the assertions that are made in the July 8 letter to go uncorrected.

The letter opens with a statement that defense expenditures should be kept at a minimum. We wholeheartedly agree. Beyond this, we find that virtually every other statement that is made in the letter is either completely untrue, or a distortion of existing facts.

Taking these assertions in order:

1. The *letter* states that:

The Great Lakes cannot provide MSTS with sufficient cargo. It states that the first ship in the test program sailed only two-thirds full, and that others probably will do so also.

The *fact* is that:

The first ship in the program left the Great Lakes with 6,539 measurement tons, which was *full* capacity. The second ship had 6,722 MT, and the third ship had 7,767 MT, both figures representing full capacity. In fact, on each occasion, the Pentagon had to leave behind on the docks approximately 1,000 extra MT that could not be taken because the ship was fully loaded.

2. The *letter* states that:

In order to find sufficient cargo military traffic has been artificially routed through the St. Lawrence Seaway from points as far away as Georgia and Maryland.

The *fact* is that:

Although in the first week of the program last April one shipment of cargo from Maryland was routed to the Great Lakes to be shipped out the Seaway, over three-fourth of the cargo on the first shipload came from Great Lakes states, and that proportion has increased steadily. On the fourth shipload—the most recent to leave for abroad—every item of cargo on the ship came either from Great Lakes states or points westward, and this will continue to be the case for all future shiploads.

3. The *letter* states that:

Ships participating in the test program may well return empty because retrograde cargo returning to the U.S. is not moved inland.

The *fact* is that:

Although the first ship had no retrograde on its return trip, the second ship returned with 1929 MT of retrograde cargo, and the third ship returned with 730 MT of retrograde. Since the normal rate of retrograde for all overseas Pentagon shipments is only 10% (this includes the East Coast), the Midwest is *more than* holding its own, with 2659 MT of retrograde for 21,028 MT shipped overseas,—a rate of better than 12½%.

4. The *letter* states that:

Since the Seaway opened, efforts have been made to route military cargo through ports on the Great Lakes, and these efforts have not been a commercial success.

The *fact* is that:

This is the first sustained test to compare costs between Great Lakes Seaway shipping and line-haul-plus-ocean-shipping embark-

ing at the East Coast. The only previous experience was two years ago, when DOD shipped 170,000 tons of prefabricated housing overseas which had been manufactured in the Midwest. The material was shipped via the Lakes-Seaway route precisely because it was cost favorable.

5. The *letter* states that:

While the shipping service to the Great Lakes ports may be described as a test program, surely economic feasibility studies were available to indicate what the actual results would in fact be.

The *fact* is that:

Such a study *was* made by the Pentagon in 1962, and concluded that significant cost savings could be achieved by shipping cargo out of Great Lakes ports and encouraging American flag shipping to go after it. The 1962 report also concluded that if private shipping did not seek out this cargo then the military should use its own ships for Great Lakes-Seaway carriage.

Moreover, in 1968 the Defense Department sought the advice of the U.S. Comptroller General on how the military could take advantage of the cost savings that would result from Seaway routings. The Comptroller General advised that in the absence of private shipping the Pentagon ought to use its own control ships to pick up military cargo at Great Lakes ports.

The present test program is designed precisely to test out—and take advantage of—these economic forecasts.

6. Finally, the *letter* states that:

The Defense Department is operating a shipping service to the Great Lakes ports contrary to economic good sense, and urges DOD to review the situation and discontinue this MSTS operation.

The *fact* is that:

Although some money was lost on the first shipment, due to the inevitable costs of initiating any new program, estimates show that $5000 in costs was saved on the 2nd shipload, and as the program hits its stride, about $10,000 should be saved on each shipload. Overall, in its first year, it is estimated that the test program will save the taxpayer more than $100,000 in shipping costs.

Sincerely,

WILLIAM PROXMIRE,
Chairman,
Great Lakes Conference of Senators.
PHILIP A. HART,
Vice Chairman,
Great Lakes Conference of Senators.

PRESIDENT NIXON'S CARSWELL LETTER

Mr. McGOVERN. Mr. President, yesterday the President of the United States released an extraordinary communication in regard to his position on how the Senate should act on his nomination of Judge Carswell to the Supreme Court.

The President asserted that he and only he had the constitutional authority to appoint judges to the highest court in the land, that the Senate had no right to substitute its judgment on these matters for his, and that the issue in the Carswell case was no longer the qualifications of the judge himself but the constitutional authority of the President.

I find the President's interpretation of his prerogatives and those of the Senate to be a strange construction indeed.

One commentator said yesterday that the President was essentially right, that the Senate has not traditionally given Presidents such difficult times over their nominees and that, in this case, the Senate should follow political custom and approve the man the President says he wants.

I find this point of view totally unacceptable.

I agree with the President that there is something much greater at stake over the Carswell nomination than the judge himself. But that something is not the President's constitutional prerogatives.

The greater issue at stake here is the question of respect for the highest judicial body in the land at a time when respect for the law is at a seemingly low ebb in the land. The greater issue at stake is the question of maintaining the legitimacy of the Supreme Court in the eyes of millions of Americans of minority races who feel their rightful place in this Nation threatened.

The President's assertion that approval of his nominee is due him because he is President does not speak to that issue.

There are several further comments to be made on the President's not-so-strict construction of our various constitutional prerogatives in regard to nominees to the Supreme Court.

First, and most important, Judge Carswell is the President's choice, nobody else's. Nobody forced the President to seek out and finally decide on Judge Carswell as his nominee.

Nobody forced him to choose a nominee who at the mature age of 28 made a racist speech that even the nominee now says is "obnoxious" to him in retrospect.

Nobody forced him to choose a nominee who knowingly or unwittingly—either is equally damning—actively participated in subverting the law of the land by transferring a public golf course into a private and segregated hands for a financial pittance.

Nobody forced him to nominate a judge who was openly hostile to civil rights lawyers appearing before him to defend the rights of black Americans because it was his judgment that they were simply making trouble in his part of the country.

Nobody forced the President to nominate Judge G. Harrold Carswell.

And the Senate of the United States has no obligation to approve Judge Carswell in opposition to its own best judgment.

The Senate has only one obligation. To do its true constitutional duty, to advise and consent or not consent on this nomination, to represent all the people that make up this great nation.

I, for one, am sure the Senate will fulfill its obligation.

Mr. President, the editor of the Washington Post has treated this issue most thoughtfully in today's issue of the Post. I ask unanimous consent that this superb editorial be printed in the RECORD.

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

[From the Washington Post, Apr. 2, 1970]

JUDGE CARSWELL: THE PRESIDENT'S "RIGHT OF CHOICE"

George Washington, August 8, 1789: ". . . as the President has a right to nominate without giving his reasons, so has the Senate a right to dissent without giving theirs."

President Nixon's claim that the Senate must vote to confirm Judge Carswell or place in jeopardy the constitutional balance between the Executive and the Legislature is an arrogant assertion of power that attacks the constitutional responsibilities of the Senate and is based on a false reading of history. It is, indeed, a presidential endorsement of the argument made recently in the Senate that since Mr. Nixon won the election he is entitled to put anyone he wants on the Supreme Court.

The President, of course, qualifies this claim by saying that "if the charges against Judge Carswell were supportable, the issue would be wholly different." But what he really means is that since *he* finds those charges—of mediocrity, of racial bias, and of a lack of candor—unsupportable, the Senate must accept his judgment and confirm his choice. He leaves a senator, who is given the constitutional responsibility of consenting to nominations, no latitude in making his own independent judgment on the fitness of the man for the office.

The President makes no attempt to square this bold assertion of the right to fill offices with this nation's constitutional or political history except to claim that his predecessors have been freely given the "right of choice in naming Supreme Court justices." He seems to overlook the fact that one out of every five presidential nominations of men to sit on the Supreme Court has not been confirmed by the Senate. He does not mention that the Senate failed to consent to nominations to that court made by Washington, Madison, John Q. Adams, Tyler, Polk, Fillmore, Buchannan, Johnson, Grant, Hayes, Cleveland, Hoover and Johnson.

It might be well, since the President has brought it up, to recall why the Senate was given the power to approve or reject presidential nominations to high office. It came about as a compromise in the Constitutional Convention between those who wanted the President to have absolute power to fill those offices and those who wanted to give that power to Congress. Alexander Hamilton explained the compromise in The Federalist:

"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 connections, from personal attachment, or from a view of popularity."

That this was intended to be a substantial check on the President's power was made clear in the first Congress. Arguing in favor of a secret ballot in the Senate on questions of confirmation, William Maclay said, "I would not say, in European language, that there would be court favor and court resentment, but there would be about the President a kind of sunshine that people in general would be well pleased to enjoy the warmth of. Openly voting against the nominations of the President would be the sure mode of losing this sunshine." And arguing in favor of an open vote, Robert Morris said it would be beneath the dignity of the Senate to vote in secret since a Senator, in passing on a nomination, ought to be "open, bold and unawed by any consideration whatever."

It is against that background—an attempt by the men who wrote the Constitution to keep the President from filling offices with

anyone he might choose and a history in which the Senate has approved 108 nominations to the Supreme Court while failing to approve 26—that Mr. Nixon pleads the case for Judge Carswell. A vote against confirmation, he says, is to vote to strip the President of the power to appoint. No opponent of confirmation that we know of has suggested that the Senate, not the President, nominate prospective justices. No opponent has suggested that Mr. Nixon not make a third choice to fill the existing vacancy if his second choice fails. No opponent has suggested—as did some Republicans at the time Chief Justice Warren offered his resignation—that the President not choose at all. Some, for that matter, have even jested that the Senate ought to confirm this nomination since the next one might be worse.

What Mr. Nixon is attempting to do is to turn an attack on his judgment into an attack on the prerogatives of the office he holds. Those who oppose confirmation are, indeed, questioning the judgment of the President. But the impact of a rejection by the Senate would not be on the powers of the presidency but on the personal power of this President.

The irony of all this is clear. The current vacancy on the court exists solely because the Senate did *not* act on the principle stated by Mr. Nixon yesterday when it received the nominations of Justice Fortas and Judge Thornberry. It refused to be a rubber stamp then and it refused again when it rejected Mr. Nixon's nomination of Judge Haynsworth. Surely this should have put the President on notice that the Senate was not to be trifled with. Yet he came back after that defeat with a nomination that is an insult to both the Senate and the Supreme Court, a nomination of a man who is substantially inferior to Judge Haynsworth. Although this put many senators who wish to support the leader of their party in extremely embarrassing positions, the argument has now been turned on its head. Some of them are now saying that *they* cannot reject Judge Carswell without insulting *the President*. It is important to be clear in our minds about who is insulting whom in this matter. The answer is in yesterday's presidential letter to Senator Saxbe, for what the President is saying is nothing less than that he alone is entrusted "with the power of appointment." He is not so entrusted; he has only the power to *nominate*. The power to *appoint* is one he shares with the Senate. The Senate's best response to this attack—this insult, if you will—on its constitutionally given prerogatives in the appointments process would be an outright rejection of the nomination of Judge Carswell.

THE PRESIDENT'S STATEMENT ON VETERANS' MEDICAL CARE

Mr. SCHWEIKER. Mr. President, I highly commend President Nixon for announcing today that he would seek $65 million in additional funds from Congress for the Veterans' Administration medical program—$15 million for the remainder of this fiscal year and $50 million added to the budget request for fiscal year 1971.

The President and his able Administrator of Veterans' Affairs, the Honorable Donald E. Johnson, are to be congratulated for their review of the problems facing the VA hospital system, and their action in response to what they learned from studying the system.

The Subcommittee on Veterans' Affairs, of the Committee on Labor and Public Welfare, has itself been reviewing this situation extensively and intensively since last November. As ranking minority member of that subcommittee, I have been taking a deep personal interest in this matter. The veterans returning today from Vietnam, who have made such great sacrifices in this war, must continue to have the finest in medical care and services. Yet, as the President notes in his statement today:

As a result of past decisions, the ability of the VA hospital system to meet future needs has been seriously impaired.

The President's fine statement outlines not only the need for additional funds from Congress for VA hospitals but also other steps which have been taken to improve medical care and management in these hospitals.

I look forward to joining with the President in supporting increased funds for VA hospitals. I ask unanimous consent that his statement be printed in the RECORD.

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

STATEMENT BY THE PRESIDENT ON VETERANS MEDICAL CARE

For a number of years, the Veterans Administration hospital system has been experiencing increasing difficulties in providing a full range of services for the care of sick and disabled veterans. As a result of past decisions, the ability of the VA hospital system to meet future needs has been seriously impaired.

Action must be taken now to insure that eligible veterans will receive the medical care they require.

When I appointed Donald E. Johnson to be Administrator of Veterans Affairs last June, I directed him to make a thorough review of the veterans medical care program: to identify the problems, analyze the causes, take such immediate corrective steps as appropriate, and recommend a total medical care program appropriate for future needs. He has completed that review, and today he reported his findings.

I am pleased that the Administrator and his new management team have taken a number of immediate administrative steps to improve the quality of the veterans medical care program. However, his review shows that additional funds are required immediately if the VA is to meet its obligations to veterans requiring medical attention. *Therefore, I have approved an increase of $50 million in the VA's medical care budget request for fiscal year 1971—which makes it $210 million more than the approved appropriation for fiscal year 1970—and have authorized the VA to seek from Congress an additional appropriation of $15 million for the remainder of this fiscal year.* These requests will enable the VA to improve medical care for all eligible veterans, particularly for those suffering from battle injuries.

This Administration is committed to providing quality medical care for every eligible veteran.

BACKGROUND OF THE PROBLEM

A 1968 law required the Veterans Administration to reduce its staff to the mid-1966 level. This deprived the VA's medical care program of several thousand workers in all categories of the health services professions at a time when the VA requirements for such personnel were growing steadily.

Last September, to meet this problem, I raised VA's personnel ceiling by 1,500, even though employment authorizations for other Federal agencies were being reduced by 51,000. I also approved the VA's fiscal 1971 appropriations request for an additional 2,100 medical care employees.

Even more health services personnel will be required in the immediate future to meet the special problems presented by an increasing number of Vietnam Era dischargees and the increasing scope and complexity of health care delivery systems.

THE VIETNAM ERA VETERAN

Men and women with service in the Armed Forces since the onset of the Vietnam conflict are being discharged in steadily increasing numbers. The annual rate of separations grew gradually from 531,000 in calendar 1965 to 958,000 in 1969. In 1970 and 1971, the annual rate will climb well above one million.

Many of those now leaving the Service suffer from wounds received in combat and are discharged directly into VA hospitals. Currently 7% of the patients in VA hospitals and 9% of VA out-patient treatment cases are Vietnam Era veterans. These percentages are expectd to rise during the next few years. Also, all Vietnam Era veterans are entitled to VA dental care in the year following separation from service. Due to the increasing discharge rate, the demands for such treatment have led to an abnormally high backlog. Additional funds are required to correct this situation.

Better battlefield care and faster evacuation of the war wounded have resulted in a high incidence of patients with multiple amputations and spinal cord injuries in VA hosptals. Special hospital centers, with more staff than usual, are required for the care and rehabilitation of these patients.

These new developments combine to impose greater than normal demands upon the professional staffs of VA hospitals and clinics and require both more personnel and an increased range of specialized skills.

SPECIALIZED MEDICAL PROGRAMS

As medical knowledge expands, the techniques for saving lives becomes more complex, more specialized, and more expensive. For several years, the VA has identified for separate funding and control a group of 23 "Specialized Medical Programs," including Coronary/Intensive Care Units, Hemodialysis Centers, Organ Replacement Centers, and Pumonary Emphysema Units. These innovations in VA hospitals and clinics pioneer the latest advances in diagnosis and treatment.

The VA's efforts to make these programs available throughout its hospital system have been constrained by lack of funds. For example, there is presently an insufficient number of Coronary/Intensive Care Units in the VA hospital system. Such units reduce mortality in heart attack cases by 15 to 30 percent; every eligible veteran should have access to these life-saving facilities.

Administrator Johnson also has found that the VA has not had the funds to open and operate a sufficient number of Prosthetics Treatment Centers and Spinal Cord Injury Center for severely wounded veterans from Vietnam.

These Specialized Medical Programs are not only important to the veterans who benefit directly from them, they are also important to America because the veterans medical care program consistently has been a leader in the development of innovations of great importance to our total health delivery system.

Concern for the nation's older veterans is an integral part of the VA's specialized medical care mission. These patients will require greater number of chronic care and nursing care beds as the veterans population continues to age.

OTHER PROBLEMS

Administrator Johnson has identified a number of other problems affecting the veterans medical care program. Most of these have been brought on by a combination of inflationary pressures and budgetary restrictions. These include a reduction in supporting services available in VA hospitals as compared to many non-governmental hospitals; deferrals in the purchase of replacement equipment; stretch outs of maintenance and rehabilitation projects; and curtailment of the construction program to modernize or replace outdated VA hospitals.

The VA's potential as a clinical training resource has been neglected. Full reliance on the VA's system of 166 hospitals for medical education purposes would not only improve the VA's position—as a consumer of health services personnel—but would also help the entire nation meet its requirements in the health manpower area.

THE STEPS WE ARE TAKING

Solution of many problems related to the veterans medical care program will take time—even if we had all the necessary funds immediately.

We must, however, find early solutions to the more pressing problems which directly involve patient care. These include

—the need for increased staffs to serve existing Specialized Medical Programs, especially those concerned with care of wounded Vietnam veterans;

—the need to open and adequately staff and equip more centers under these programs;

—the need to bring the backlog of Vietnam veteran dental care cases within normal operating levels;

—the need to provide additional nursing care beds for older veterans.

The $15 million supplemental appropriation which I have authorized would be expended in April, May and June to clear up the excessive backlog in Vietnam veterans dental claims; improve the staffing of existing Specialized Medical Programs, especially the Spinal Cord Injury Centers and the Coronary/Intensive Care Units; carry out plans for taking hemodialysis units into the homes of veterans suffering from serious kidney ailments; and help meet increased costs of needed drugs and medicines.

The VA's budget request already submitted to Congress for the fiscal year to commence in July would provide extra staff to activate 121 additional bed units for Specialized Medical Programs and to open an additional 1,155 nursing care beds, a 28% increase in this program.

The new request for $50 million would be used to increase the staffs of VA hospitals and clinics; to improve further the staffing of the Spinal Cord Injury Centers and other important Specialized Medical Programs; to purchase seriously needed operating equipment; and to absorb rising drug and medical costs.

OTHER STEPS TO IMPROVE MEDICAL CARE

Beyond these requirements for additional funds, a number of steps have been taken to improve the veterans medical care program.

New Management Team—An entirely new top management team for the VA's Department of Medicine and Surgery, headed by Dr. Marc J. Musser has been appointed. This group has the talent, the initiative, and the outlook to develop and carry out needed improvements in veterans medical care.

Improved Management Controls—Streamlined management controls over the widespread operations of the VA, including its system of 166 hospitals have been established. By merging the fiscal audit, internal audit and investigation services, more frequent audits and faster investigations into complaints will be possible.

Improved Management of Hospitals—The management at each VA hospital is being evaluated, and a number of replacements in hospital directors, assistant directors, and chiefs of staff have already been made. Other personnel changes will be made as the need is demonstrated. A new program to upgrade the managerial skills of those in charge of the hospitals will make possible greater decentralization of appropriate authority to hospital directors. An executive recruitment and development program to provide for future hospital leaders will be undertaken and a program for simplification of paperwork procedures and other hospital administrative practices is underway.

Study of Future Needs—A comprehensive study of the future needs of the veterans medical care is continuing to insure that developing problems will be identified early and analyzed as to their significance to the program.

Closing Health Manpower Gap—The VA, in coordination with other interested agencies, will explore new approaches to the problem of closing the gap in the nation's critical health manpower situation. This will include studies to improve techniques of training health services personnel, improvements in health delivery systems, increased sharing of expensive and short-supply medical equipment by hospitals in the same community, and the potential for the establishment of new medical schools in conjunction with VA hospitals.

COMMITMENTS TO FULFILL

To those who have been injured in the service of the United States, we owe a special obligation. I am determined that no American serviceman returning with injuries from Vietnam will fail to receive the immediate and total medical care he requires. This commitment will require more than dollars to redeem; it will require sound management of existing VA facilities, wise use of existing personnel and equipment, and—most importantly—a sensitivity to the needs of our veterans, personal as well as medical. Administrator Johnson and his staff have a keen appreciation of these requirements. We, as a people, have commitments to our veterans, and we shall fulfill them.

VA HOSPITAL CRISIS

Mr. CRANSTON. Mr. President, today the President released a statement announcing that he had approved adding $50 million to the VA medical care item in the President's fiscal year 1971 budget.

In the President's fiscal year 1971 budget the medical care item is presently $1,702,200,000. The President's action makes that figure $1,752,200,000.

I congratulate the President on his wisdom in recognizing the great needs of the Veterans' Administration hospital and medical care system in responding to the increasing demands being made upon it by disabled Vietnam veterans and an overall aging veteran population.

I do want to place in perspective the move made today.

First, what the President has done, today—and again I want to make clear that I am delighted with his action—is to restore to the VA fiscal year 1971 budget the amount which the Bureau of the Budget had lopped off in February. For the VA's budget request for fiscal year 1971 to the Bureau of the Budget was $1,751,398,000—just $602,000 less than what is now being restored. Moreover, the VA's own medical staff and top doctors calculated that the VA medical care item should be about $77 million more than this amount. These top physicians and administrators in the VA's Department of Medicine and Surgery actually believed a medical care budget of $1,828,243,000 was needed to do the job, but were cut back by the Veterans' Administration prior to submission of the VA budget request to the Bureau of the Budget.

Now, this is not in any way to deprecate or minimize what $50 million more will buy in the way of hospital, medical, and dental care for our disabled veterans, especially those recently returned from Vietnam. It will undoubtedly help appreciably, but, as the above figures clearly show, it does not meet the needs that even the VA's doctors foresee. And it plainly fails to cope with most all the problems that the President described in his statement; namely, "reduction in supporting services available in VA hospitals as compared to many nongovernmental hospitals; deferrals in the purchase of replacement equipment; stretchouts of maintenance and rehabilitation projects, and curtailment of the construction program to modernize or replace outdated VA hospitals."

What the $50 million does do is stop up the dike enough to ameliorate the rapidly impending crisis situation which has been dramatically pointed out over the past 5 months by the Veterans' Affairs Subcommittee in the Senate—through 6 days of recently published oversight hearings on Medical Care for Vietnam Veterans; by the House Veterans' Affairs Committee's periodic release of surveys of each State's VA hospital directors regarding their enormous unmet needs—already 43 releases have been issued; and through the outstanding coverage of this issue afforded by network and local television, the press, and other news media.

For example, the chairman of the House Veterans' Affairs Committee, back in early October 1969, called attention to the $20 million worth of specialized medical facilities not being fully or even partially utilized at that time. In our subcommittee hearings on November 21 and again on November 25, I raised this question with VA administrators and doctors, and a chart provided by the VA last month and presented on page 54 of our hearing record shows that 65 of these facilities have not yet been activated and are not scheduled for full or partial activation until some time in fiscal year 1971.

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

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

TABLE II.—SPECIALIZED MEDICAL SERVICES

[Not planned for activation in fiscal year 1970]

	Program	FTE	Amount
Region No. 1:			
Bronx	Day Hospital	3.5	$42,806
Castle Point, N.Y	Pulmon. Emphysema	2.5	30,119
East Orange, N.J	Alcohol Trt	12.5	141,084
Northampton, Mass	Alcohol Trt	12.5	141,084
Syracuse, N.Y	Stereo. Brain Surg	3.5	46,886
West Haven, Conn	ICU/CCU	16.4	138,110
	Epilepsy Center	2.0	23,307
	Day Hosp. Care	3.5	42,806
Wilmington, Del	Card Catheriz	2.5	28,843
	Pulmon. Emphysema	2.5	30,119
Total		60.3	642,088
Region No. 2:			
Atlanta	Open Heart Surgery	2.5	45,333
Columbia, S.C	Speech Path	1.5	22,824
Charleston, S.C	Pulmon Emphysema	2.5	30,119
	Pulmonary Function	1.0	11,309
	ICU/CCU	16.8	138,110
Louisville	ICU/CCU	12.0	98,650
Miami, Fla	ICU/CCU	7.2	59,190
Nashville, Tenn	Alcohol Treatment	12.5	141,084
	ICU/CUC	20.4	167,705
	Organ Replacement	10.5	154,472
Oteen, N.C	Speech Path	1.5	22,824
Richmond, Va	Pros. Trt. Center	1.0	17,271
	Electron Microscopy	1.0	11,509
San Juan, P.R	ICU/CCU	31.2	[1] 256,490
	Hemodialysis	10.5	[1] 144,033
	Pulmon Emphysema	2.5	[1] 30,119
	Pulmon Function	1.0	[1] 11,309
Washington, D.C	Electron Mirroscopy	1.0	11,509
Total		99.7	1,039,354
Region No. 3:			
Alexandria, La	Pulmon. Function	1.0	11,309
Dallas, Tex	Day Hosp	3.5	42,806
	ICU/CCU	18.0	147,975
Jefferson Barracks, Mo	Clin. Radio	1.0	26,070
Kansas City, Mo	Day Hosp	3.5	42,806
Little Rock, Ark	Hemodialysis	10.5	[2] $144,033
New Orleans, La	Electron Micro	1.0	11,509
St. Louis, Mo	Day Hosp	3.5	42,806
	Organ Repl	10.5	154,472
Shreveport, La	Speech Path	1.5	22,824
Wadsworth, Kans	Pulmon. Emphysema	2.5	30,119
Wichita, Kans	Pulmon. Function	1.0	11,309
Total		57.5	688,038
Region No. 4:			
Allen Park, Mich	Electron, Micro	1.0	11,509
	Pulmon, Emphysema	2.5	30,119
Chicago, Ill. (WS)	Day Hosp	3.5	42,806
Des Moines, Iowa	Pulmon, Emphysema	2.5	30,119
Hines, Ill	Ment. Hygiene	2.0	[2] 39,646
	Spec. Refer. Lab	2.5	27,692
	Speech Path	1.5	22,824
	ICU/CCU	10.8	[2] 88,785
Indianapolis, Ind	Alco. Trt	12.5	141,084
Madison	ICU/CCU	13.0	104,195
Minneapolis, Minn	Alco. Trt	12.5	141,084
	ICU/CCU	16.0	128,245
Sioux Falls, S. Dak	Pulmon, Function	1.0	11,309
Wood, Wis	ICU/CCU	2.4	19,730
Total		54.7	606,707
Region No. 5:			
Long Beach, Calif	Speech Path	1.5	22,824
	ICU/CCU	14.4	118,380
Martinez	Speech Pathology	1.5	22,824
Salt Lake City, Utah	Day Hospital	3.5	42,806
	Electron Microscopy	1.0	11,509
	ICU/CCU	9.6	78,920
San Francisco, Calif	Pros. Trt. Center	1.0	17,271
Seattle, Wash	ICU/CCU	9.6	78,920
	Day Hospital	3.5	42,806
	Pulmon, Emphysema	2.5	30,119
Tucson, Ariz	ICU/CCU	9.6	78,920
Total		41.8	404,095

[1] New facility construction will delay activation until fiscal year 1971.
[2] Completion will be delayed until fiscal year 1971.
[2] Scheduled for completion in phase II construction, June 1973.

So the urgent needs outlined by the President in the VA's specialized medical programs are not new.

And the same can be said for all the other unmet needs mentioned by the President which were discussed throughout our hearings on November 21 and 25, December 15 and 16, and January 9 and 27; throughout the 43 press releases over the last 2 months by the House Veterans' Affairs Committee; and which I highlighted 2 months ago in my floor statement on the VA fiscal year 1971 budget just then released, 1 month ago in a speech to the American Legion—inserted in the RECORD on March 23 at 8696 by Senator SCHWEIKER, and again on the Senate floor just last week in a March 23 statement on the crisis in California VA hospitals.

In the latter statement, I said that the fiscal year 1971 VA budget was at best a standstill budget in light of inflation in the cost of providing medical care and salary increases.

Yes, the $50 million will help, and I commend President Nixon for seeking to make it available. But let there be no mistake. It will not meet renovation and construction needs. It will not permit the absolutely essential substantial increases in hospital staffing ratios. It will not provide for a vigorous health personnel training and education program. And it will not eliminate the dental care backlog.

It will not, in short, provide the means to make the full VA hospital and medical care system—which is a national resource of enormous potential—a truly first quality medical system.

To move in that direction, I have been working closely with Chairman TEAGUE, and we plan to announce very shortly the joint recommendations we will make in our respective bodies for specific increases in the fiscal year 1970 VA supplemental request as well as the fiscal year 1971 VA budget. It is clear now, however, that although desirable and welcome, the President's action—increasing by less than 3 percent the total VA medical care budget—is far too little, and I hope not too late.

IS THE NEW YORK TIMES FAIR?

Mr. GURNEY. Mr. President, I ask unanimous consent to have printed in the RECORD my letter to the New York Times dated March 31, 1970. The letter I think is self-explanatory. So far, the New York Times has not seen fit to print it. I hope that a sense of fair play will lead the Times to present a contrasting viewpoint on the Carswell nomination. My hope was obviously misplaced.

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

MARCH 31, 1970.

To the EDITOR, NEW YORK TIMES:

Sir: An excellent example of slanting the news by omitting one side of the story can be seen in the way the New York *Times* mishandled the Carswell story this weekend.

When Senator Fulbright stated he would vote for recommittal of the nomination to committee, this made the front page on Friday under a 3-column headline: "Carswell Foes Gain Senate Supporters."

But when Senator John Sherman Cooper, who had voted against Judge Haynsworth, issued a statement supporting Judge Carswell's nomination, and when eleven Federal judges on the Fifth Circuit Court of Appeals endorsed his nomination, how was the news covered?

In the Washington *Star* and the Washington *Post*, front page stories; in the Los Angeles *Times*, a front page wrap-up and two separate stories on page 4; in the Baltimore *Sun*, page 1.

However, in the New York *Times*, not one line appeared about this strong support of Judge Carswell in its Sunday edition distributed in Washington, despite the fact that it was carried by the wire services early Saturday afternoon for release at 6:30 p.m. In its last edition, the story did appear—buried on page 34.

The decision by the *Times* to play down such news that it does not approve of hardly comes as any surprise. It is in the tradition of their late-edition-only coverage of the House of Representatives' resolution supporting the President on Vietnam, which made front page headlines everywhere else but appeared as a paragraph in a different story in the back pages of a very, very late edition of the *Times*, again, not distributed in Washington.

Some editors may think their news judgment and fairness cannot be challenged if they "cover" a story in the back pages of a late edition's partial run. I do not agree.

The advertisements for your newspaper recall the words of your founder: "to print the news impartially, without fear or favor." Does this now mean without fear of being complete in your news coverage, and without giving the other side the favor of a fair hearing?

Perhaps you should consider changing the *Times* motto from "All the News That's Fit to Print" to "All the News That Suits the Tint".

Very truly yours,

EDWARD J. GURNEY,
U.S. Senator, Florida.

FLOYD IVERSON—A FINE PUBLIC SERVANT

Mr. BENNETT. Mr. President, Floyd Iverson, regional forester of the Forest Service intermountain region in Ogden, Utah, since March 1957, has announced his retirement, effective today, after nearly 40 years of duty with the Forest Service.

It has been my pleasure and privilege to work closely with Floyd during the past 13 years, and I have been delighted and sometimes amazed at the way he has smoothed out problems that have come along from time to time. I suppose this is the real key to what I know has been a most successful career.

During his years with the Forest Service, Floyd has served with distinction in many varied assignments from forest ranger to regional forester. His outstanding leadership in resource management and administration of the 19-forest intermountain region was recognized with a Superior Service Award in 1962 and with the coveted Bridger Award of Utah State University in 1964.

He will be succeeded by Vernon O. Hamre, a Forest Service employee of more than 25 years, serving since early 1969 as deputy regional forester of the Pacific Northwest region.

I take this opportunity to welcome Mr. Hamre to Utah and to extend to Floyd Iverson my sincere thanks and my best wishes as well as those of my staff for a pleasant and rewarding retirement.

THE CARSWELL NOMINATION

Mr. GURNEY. Mr. President, on March 18, 1970, the distinguished Senator from California (Mr. CRANSTON) publicly accused Judge G. Harrold Carswell of "bias and hostility against civil rights attorneys who argued cases in his court, in violation of canons 5, 10, and 34 of the canons of judicial ethics."

The Senator based this most serious charge on the statement of Mr. Theodore Bowers, an attorney of Panama City, Fla.

I was very much disturbed by this most serious allegation, and I inquired into the matter further. On the basis of my inquiry, I must conclude that my distinguished colleague, through no fault of his own, has been seriously misled by Mr. Bowers.

I ask unanimous consent to have printed in today's RECORD a letter dated March 24, 1970, from Mr. Julian Bennett who has had some experience in dealing with Mr. Bowers and with Judge Carswell.

Mr. Bennett served as attorney for the Panama City School Board during the controversies Mr. Bowers referred to in his statement. I think his letter is self-explanatory.

Mr. Bennett has also furnished me with a photograph, which cannot of course be reproduced in the RECORD. It shows the cocaptains of this year's Bay High School football team after their election by their squad. One is white, Mr. President, and the other is black.

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

LOGUE, BENNETT & WILLIAMS,
Panama City, Fla., March 24, 1970.

HON. EDWARD J. GURNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GURNEY: I apologize for the late letter concerning Judge Carswell, but I have been wading through the mass of orders and documents in the file in order to try to present a comprehensive report to you.

First of all, let me say that the matters you reported to me attributed to Attorney Bowers and quoted by Senator Cranston in the debate on Judge Carswell, are completely false. I am shocked that a brother member of the bar would, at this late date, make the *first* complaint about Judge Carswell's conduct. Particularly is this true since a glance at the record since the case commenced by the serving of the first desegregation complaint, November 16, 1963, reveals that Judge Carswell ruled with Attorney Bowers and the individual negro plaintiffs far more consistently than he ruled with the defendant School Board.

For example, in the early days of this litigation when "free transfer" was the permitted method of desegregation, Attorney Bowers, on September 8, 1966, sought an order transferring 115 negro children from an all-negro school to a predominantly white school; the Board took the position that these students had not made a timely application as called for in a previous desegregation order; Judge Carswell ruled promptly and swiftly that these children must be enrolled immediately and excused their lack of timely application altogether. This order appears in the record as the Order of Judge G. Harrold Carswell September 15, 1966. Of course, we accepted his order and enrolled the children accordingly. No appeal was made.

I am astounded that Attorney Bowers would attack a Judge that ruled so consistently with him throughout this six years of litigation.

As I mentioned to you in my telegram, in the six years the Judge probably averaged entering at least two orders a year on matters relating to this desegregation case. The first and only orders of Judge Carswell that were appealed by either side of this litigation from the date it commenced, November 16, 1963, was the most recent appeal of the order of April 3, 1969 as supplemented by the order of April 10, 1969, both by Judge Carswell.

Basically, the substance of the appeal was the simple, straight-forward statement by the Negro plaintiffs that there would be three schools (two elementary schools and one junior high school) out of the total of 26 schools in the County, that would have an all Negro student body. All faculty would be integrated with each school having Negro and white faculty on each staff equal to the ratio of Negro faculty members to white faculty members in the County as a whole. There has never been any complaint in any appeal at any level that the faculty was not desegregated properly.

There was no issue on appeal concerning any conduct by Judge Carswell at the trial court level creating any unfair or biased position with regard to any desegregation order. The simple point that if there is any all black schools in any County in the South, the school system is unconstitutional. As we now know, the famous decision in the Orange County, Florida case has indicated that strict neighborhood zoning, eliminating the dual school zones, can be a constitutionally permissible school system even with some all black student bodies, provided there is integration of all other activities, particularly faculty, athletics, extra-curricular activities, etc. With that in mind, I enclose a photograph and news article taken from Sunday, March 22, 1970, issue of the Panama City News-Herald showing that two co-captains for the Bay County High School football squad for the 1970 season. One is a young Negro athlete, Ricky Lockhart, and the other a white athlete, Mike Faile.

As I stated to you in my telegram, the high schools have been integrated since 1967. The County School Board voluntarily closed the only all-Negro high school at the urging of Judge Carswell and even without Judge Carswell entering an order to that effect. He made the Board see their duty and they did it and this is the result. The community has accepted integration in athletics and elsewhere, and it is unfair for Judge Carswell to be branded anticivil rights when, to a large degree, he played a major part in helping the Board turn away from segregation toward integration, as Judge Carswell knew and consistently ruled throughout the six years of litigation, that segregation was no longer constitutionally permissible.

Judge Carswell has accomplished far more with his chambers meetings between counsel on all sides than any argument Theodore Bowers has ever made on the law. The fact that he has only been appealed one time and reversed on that occasion because the Supreme Court of the United States had only subsequent to his decision, rendered the famous *Alexander v. Holmes County Board of Public Instruction* in Mississippi, which introduced the new requirement that all school systems must commence immediately to operate on a unitary basis and then litigate subsequent thereto.

I might add that it is not fair to Judge Carswell, or for that matter any other southern United States District Judge, to judge these good men on yesterday's record with today's law. Desegregation law is constantly shifting, though never deviating from the principle that "segregation is dead".

To illustrate, in desegregation litigation we have gone under various higher court pronouncements along the following successive legal routes:

1. Free transfer of any student to any school he desires to go to.

2. Mandatory free choice wherein all students must choose once a year which school he will attend.

3. Abolition of free choice and substitution of zoning, pairing, and the like.

4. Neighborhood school zones drawn with impartial zone lines ala Orange County, Florida decision.

Even the liberals in the United States Senate must understand, as has been echoed by no less an authority than President Nixon, that much is left to be desired in Supreme Court decisions on the subject of desegregation requirements. In some cases they have been explicit; in other cases they have been vague; in other cases they have said nothing; for example, whether the Constitution requires bussing or pairing to accomplish racial balance. No less an acknowledged authority than Frank Johnson, United States District Judge in Montgomery County, Alabama, issued an order filed February 25, 1970, in which Judge Johnson, who is the idol of many of the liberals in the North and among the news media, said:

"Plaintiff's objections and the few proposals made by the Office of Education, Department of Health, Education and Welfare, that differ from the plan as proposed by the Montgomery County Board of Education appeared to be based *upon a theory that racial balance and/or students ratios as opposed to the complete disestablishment of the dual school system is required by the law. Such is not this court's concept of what the law requires. Complete disestablishment of the dual school system to the extent that it is based upon race is required. While pairing of schools may sometimes be required to disestablish a dual system, the pairing of schools or the bussing of students to achieve a racial balance, or to achieve a certain ratio of black and white students in school, is not required by the law.*" Arlam Carr et al and National Association, Inc., plaintiffs v. Mont-

gomery County Board of Education et al, defendants, USA amicus curiae, Civil Action No. 2072-N, U.S. District Court for the Middle District of Alabama, Northern Division, Opinion dated February 25, 1970.

Judge Carswell, to my knowledge, has ruled that the law requires no less and he is consistent with Judge Johnson in not requiring any more.

I, again, sincerely thank you for the opportunity of expressing my views. I am a former democratic officeholder in Bay County, Florida, and still a registered Democrat. Politics has nothing to do with this matter as far as I am concerned. Until Judge Carswell was nominated for the United States Supreme Court, I have never heard any attorney, black or white, that has practiced before him, either at the District Court level or on the Appellate level, that has complained of the type of conduct complained of by Attorney Theodore Bowers.

I hasten to add that the pressure to defeat this good man has caused a member of my profession to make what could be labelled, at best, unkind, untrue and unfair statements. For him I apologize, and to Judge Carswell I know that I speak for all the other lawyers who have served before him, black and white and wherever situated, in wishing him good luck.

Very truly yours,

JULIAN BENNETT.

"TRUTH IN POLITICS"—REMARKS BY SENATOR EDMUND S. MUSKIE AT THE JACKSON DAY BANQUET IN SPRINGFIELD, MO.

Mr. EAGLETON. Mr. President, Jackson Day in Springfield, Mo., is the occasion for one of the outstanding gatherings of Democrats in the Nation. Each year, Democrats from throughout the State congregate for a weekend of fellowship and discussion of the party's past achievements and future goals.

A national party leader addresses the Jackson Day Banquet each year. On March 21, over 1,700 Missouri Democrats heard a thoughtful and incisive address by the Senator from Maine (Mr. MUSKIE). I ask unanimous consent that his remarks be printed in the RECORD:

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

TRUTH IN POLITICS

(Excerpts from the remarks of Senator EDMUND S. MUSKIE)

As a Senator from Down East, I am glad to be in Missouri, the gateway to the West. It was once said of Missouri that you raise "corn and cotton and cockleburs and Democrats." From the enthusiasm here tonight, I think you are on your way to a bumper crop of Democrats in 1970.

You have two distinguished Senators, my good friends and colleagues, Stuart Symington and Tom Eagleton, and a great Democratic Governor, Warren Hearnes. You are making a fine contribution to the House of Representatives with your vigorous and able Democratic Congressmen, Clay, Symington, Sullivan, Randall, Bolling, Hull, Ichord, Hungate and Burlison.

Here in Springfield, in the beauty of the Ozarks, spring is bursting upon us and we have the makings of a great Democratic revival meeting—a revival founded on the belief of Missourians in candor and action. Missouri gave the nation that courageous President from Independence, Harry S. Truman. He is one man who has always told it like it is, before the Republicans learned to use that phrase as a slogan.

Last year the Attorney General of the United States, John Mitchell, picked up Missouri's "show me" motto. He urged that the people watch what the Republican Administration did instead of listening to what it said. I have watched and listened, and the only thing worse than what I have heard is what I have seen.

The public relations men working in the White House reflect a belief that the package and the label are more important than the product. They are lucky the Truth in Packagaing Act doesn't apply to the Republican Party. Of course, no one has ever accused the Republican Administration of being consumer oriented.

The problem goes beyond misleading labels. The air is being fouled by attacks on our liberty and assaults on some of our most cherished institutions. The country is in danger of being smothered by a blanket of fear and confusion. Our economic environment is being undermined by a unique combination of continuing inflation and rising unemployment, which only republican economists seem to know how to achieve.

In America our greatest political tradition is not only that our elected officials are men of the people, but also that they will both lead the people and trust the people.

If the President would face up to the realities of America and the world we live in, he would know that the way to fight inflation is not by vetoing funds for health and education, but by ending the waste of war and of weapons that do not secure our future but jeopardize it. The spiraling costs which rob the pocketbook of every housewife are the direct product of our expenditures on war and weapons.

Millions of Americans are denied the opportunity to buy a home or to obtain even decent housing as rising interest rates and tight money strangle the housing industry. Marginal workers are pushed out of jobs, and new jobs are not available as one million Americans have been added to the rolls of the unemployed.

It may be the new Nixon in the White House, but it is the same old Republican economic policies.

The President's failure to control inflation and the threat of recession are paralyzing the Government in other areas where action is required. We are going through a period of great crises in the United States, crises of our schools and of our souls, crises affecting the streets we walk and the air we breathe.

If we do not reorder our priorities, redirect our efforts, and commit our resources today, we may not have the opportunity tomorrow.

Our children are a primary victim of our misordered priorities. The nation's educational systems are being torn apart, caught up in the adjustments of integration, trapped in traditional teaching methods, packed in overcrowded classrooms, and wracked by student dissent.

Our school systems desperately need help. Can they get that help when the Federal education budget is cut? Can another generation wait while the President appoints a study group?

If we are to avoid tragic incidents like that in Lamar, South Carolina, where little children were the victims of the fears and hates of adults, the President must seek to lead the American people away from their fears and hates.

Last week a distinguished Republican colleague of mine, Senator Brooke of Massachusetts, commented on the tragedy of the Nixon-Agnew leadership on civil rights. They were following, he said, "a cold, calculated political decision" and while the President had promised to "bring us together," to date "everything he has done so far appears to be designed to push us apart."

Thoughtful Americans are deeply troubled by the tendency of the Administration—through the Vice President and the Attorney General—to link together those who protest peacefully with those who protest violently. It appears to be a deliberate endeavor to incite suspicion and contempt for those who simply disagree with the White House, however lawful their point of view, however peaceful their actions. As they stifle difference and dissent today, they set the stage for upheaval tomorrow.

The President and Vice President are hiding their heads in the sand when they seek to isolate their Administration from the young, and the young from middle America. They may succeed momentarily in avoiding direct confrontation, but what is needed is direct dialogue leading to mutual respect. There is no room for either student violence or police violence, and the way to avoid violence is to establish communication.

The young are telling us some very important things. Our colleges and universities have become too impersonal and unrelated to their students and their communities. In our affluence, we as a nation have become too self-satisfied and self-righteous and unwilling to see our own failures and inadequacies. In the race to bigger and better homes in suburbia, we have lost sight of our poor and underprivileged. In our haste to improve our technology, we have been destroying our environment.

And our political policies and practices have become unresponsive and inflexible. We Democrats were due for a shake-up, and we got one! One of the areas where I believe we can perform the greatest service is to help our young people make their way into the political process. The politics of protest can never be as effective or enduring as the politics of free election.

For those young people involved in the issues of our times, we must offer participation in our party. As adults, however, we are entitled to do a little shaking too. There has been a tendency among the young to scorn the established political parties, to fail to differentiate between them, and to demand total conformity to a single point of view. Thus, as we open our party to young people and their ideas, we must help them to see that great national political parties require accommodation as well as idealism, that great goals can be achieved far more readily by constant political support than by sporadic protest.

While we know why we are Democrats, we must justify to the young our belief in the vast difference there is between the institutions that comprise the Democratic and the Republican Parties. They can see how bad the Republican Administration is, but we must show them just how constructive we can be. They have a right to the "show me" attitude. A beginning step in that direction is for us to recognize that the greatest danger to America is not from those young people who are concerned and involved and who participate, but from those young or old who are apathetic and unconcerned.

We have an opportunity this year to go to the people all over this land. When we go, we must cut through the political smog and arouse this nation. The Republican Administration in Washington is an Administration of apathy.

The Administration has succeeded in part in its endeavor to intimidate the television media and the press. I believe that there is even some popularity today in the Vice President's speaking *loudly* while the Attorney General carries a big stick and the President attends athletic events. But let us not as a party be intimidated, nor shirk our responsibilities.

The armaments race will not be ended until our people demand it. Our schools and cities cannot be saved unless the people are willing to pay for it. Pollution cannot be conquered unless all cooperate and share the cost. Hatreds cannot be overcome unless understanding is offered. We, the Democrats,

must lead a new crusade to awaken and revitalize America. We Democrats have never been the silent Americans before, and it is not the time now.

TRANSFER OF LORTON PRISON

Mr. TYDINGS. Mr. President, this morning the Committee on the District of Columbia held a hearing at which we gave the Department of Justice an opportunity to testify regarding its position on the proposal in the House-passed District of Columbia crime bill to transfer the Lorton Prison from the District of Columbia government to the U.S. Bureau of Prisons.

Regrettably, nearly a year after the transfer proposal was first made, the Justice Department testified this morning that it still has not formulated a position on this matter crucial to the President's own anticrime efforts in the National Capital.

Ten days ago the committee conducted hearings on several controversial provisions in the District of Columbia crime bill which recently passed the House of Representatives, including the Lorton transfer.

At that hearing, several distinguished witnesses, including the Honorable James V. Bennett, for 27 years the Director of the Federal Bureau of Prisons, testified vehemently against the transfer. Among others who testified against the Lorton transfer were Mayor Washington, City Council Chairman Hahn, and U.S. Representatives DONALD FRASER and BROCK ADAMS.

Noticeably missing at that hearing, however, was the testimony we had requested from the Department of Justice, the Federal agency that must assume responsibility for operating Lorton if the transfer becomes law.

To accommodate the Department of Justice we postponed its appearance before our committee from last Monday to last Thursday. Last Wednesday, however, the Department informed the committee that it still had not established a position on the Lorton transfer. At that time, I suggested the Department take another week to consider the matter further, and we scheduled today's hearing.

It is inconceivable to me that the Department of Justice has been unable for so long to develop a position on the Lorton prison transfer.

The House committee added this provision to the President's crime bill on February 19. Representatives of the Department of Justice were in the committee room when it occurred. Now, nearly 2 months later, the Department still has no position on this immensely important anticrime measure even though it seems to have a position on every other section of this 500-page-long bill.

The Department's silence on this issue is particularly baffling since the rest of the President's anticrime program here will be rendered useless without an effective correctional system.

The criminal justice system is only as strong as its weakest link. No matter how many police we put on the streets, no matter how much we reform and strengthen the court system and criminal law, unless our correctional institutions rehabilitate criminals, we will make little progress in the war against crime.

Recently, both President Nixon and Chief Justice Burger called for an overhaul of our Federal and local correctional systems. In his November 13 message, the President noted:

> Nineteen out of every twenty persons who are sent to prison eventually return to society. What happens to them while they are in confinement is a tremendously important question for our country.

As Chief Justice Burger told the Association of the Bar of the city of New York, it is in the way we deal with offenders while they serve their sentences that "the success or failure of our society will make itself known."

Another most baffling aspect of the Justice Department's silence is the fact that the Lorton transfer comes in direct conflict with the recommendations of every major study of correctional institutions over the past several years. The President's Commission on Law Enforcement and the Administration of Justice, the Joint Commission on Correctional Manpower and Training, and the President's Commission on Crime in the District of Columbia all recommended that corrections in the future become more community oriented.

President Nixon has concurred with those recommendations. In his November 13 message on the prisons, the President said:

> Correctional experts believe that the local jail concept should be replaced with a comprehensive community-oriented facility which would bring together a variety of detention efforts adult and juvenile court diagnostic services treatment programs both for those who are incarcerated and for those on supervisory release and the half-way house concept. Pilot projects along these lines have already been designed for New York City and Chicago. They should be given the highest priority and available funds should wherever possible be used to encourage other centers of this sort.

The Lorton transfer seems to me to fly in the face of the President's own recommendation. While the Department has remained silent on Lorton proposal, I am pleased to note that other responsible voices in the community have spoken out on the matter.

Within the last 2 weeks, two major newspapers in Washington have editorialized against the transfer.

In a March 23 editorial entitled "Tough Crime Bill," the Washington Evening Star called the Lorton transfer proposal an "absurd and destructive effort." The Washington Post took a similar position in a March 28 editorial entitled "Who Should Run Lorton?"

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

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

TOUGH CRIME BILL

Having received from the House its very tough District omnibus crime bill, Senator Tydings has sensibly moved to set in motion the conference machinery through which differences between the two houses must now be worked out.

Given some miracle of legislative reasonableness, an agreement might materialize during the next several days. We don't anticipate it. The conflicts between the Senate's several anticrime measures and the one big House bill are so large in number and substance that a very complex series of compromises will have to be pieced together. Especially where constitutional issues are involved, this seldom occurs overnight.

And yet, there is no cause for despair. For the emphasis thus far, quite properly on the vital differences between the House and Senate actions, has tended to overshadow significant areas of agreement. Both houses have, in fact, agreed upon a revolutionary restructuring of Washington's courts and upon the general pattern, at least, of other fundamental changes in the system of criminal justice here. Differences, minor and major, abound throughout. Yet, barring some unforeseeable snag, the prospects are that the President will receive the sort of anticrime bill he seeks—and that it will be a tough bill.

The principal issues, commanding most of the headlines, involve House-approved proposals not acted upon at all by the Senate. But even in these instances, there is a world of opportunity for compromise.

Thus, for example, we urge the Senate to buy the House demand for a concept of preventive detention—enabling judges, under carefully prescribed safeguards, to detain certain criminal suspects awaiting trial. No further amount of debate will settle the issue of such a provision's constitutionality—and that is a matter, eventually, for the Supreme Court to decide. The public safety, meanwhile, requires congressional authorization of such powers.

If the Senate should yield, as we believe, on that point, however, there are those points on which the House must give way—including, surely, the absurd and destructive effort to transfer Washington's Lorton prison complex to federal control. The argument that this might help criminal justice in the District is a cruel deception—to which the White House has contributed by remaining silent. Senator Tydings' special hearing on the subject today, seeking to clarify the issues, is a timely step.

In the days ahead we intend to comment on other specific conflicts. As to the details of court expansion, judicial tenure, juvenile procedures and mandatory sentencing, for instance, we lean more to the Senate than to the House views. But the thoroughness of the House District Committee effort, in the wake of much criticism, and the conclusive nature of the House action, for that matter, deserve to be recognized.

No doubt the "vigorous support" expressed in behalf of the House committee bill by the President and by most Republican members had a strong impact in swamping liberal moves to water down the bill. But there is no justification, in our opinion, for viewing the end result wholly in any such partisan terms.

The results seem to us rather a manifestation of the deep concern and frustration in the House as a whole over the intolerable incidence of crime in Washington—sentiments which surely are shared no less by the public.

WHO SHOULD RUN LORTON?

By moving to expand the present corrections department into a full-scale city department of correctional services, the Senate has come forward with an effective answer to the House's misguided proposal for transferring the Lorton prison complex to the Federal Bureau of Prisons.

The Senate would pull together under one municipal administration all the related correctional activities including the present correctional department, the parole board,

the bail agency, and the institutions for juvenile delinquents. Thus, one agency would be in a position to keep track of all persons in the correctional system from initial arrest, through trial, confinement and rehabilitation to ultimate release on parole. By contrast, the House action would splinter the existing corrections department by placing the Lorton institutions under federal control, but still keeping the city jail and other related agencies within the city government, a clearly undesirable fragmentation.

Mayor Washington in his testimony before the Senate District Committee on the Lorton transfer found *irony* in the fact that the transfer would "seriously affect the District's efforts to reduce crime in the city and rehabilitate offenders through a balanced, coordinated program." He also made the point that the *integrity* of the local government was involved since the splintering away of Lorton would run counter to the effort to consolidate and streamline the operations of the city government and make it "more responsive to the needs of the District's citizens and more responsible in carrying out programs to meet those needs."

One of two other elements involved in the Lorton controversy is the effort of some of the prison's white guards to force the ouster of Kenneth Hardy, the superintendent of corrections. Mr. Hardy is a black administrator who has made rehabilitation the keystone of the prison system's program for the treatment of offenders, replacing the old "get tough" policies which concentrated on formal prison routine but failed to give sufficient emphasis to such matters as job training, education and rehabilitation. Mayor Washington has publicly affirmed his confidence in Mr. Hardy in the face of an uninformed and abusive attack on him by a House District subcommittee.

The other element is seldom spoken, but it undoubtedly is very real. The prison complex eventually must be removed from its present location in southern Fairfax County which is rapidly becoming heavily suburbanized. Should abandonment of Lorton take place under federal control, local prisoners would be sent to Petersburg and Lewisburg and Atlanta, remote from the prisoners' homes and the machinery for their rehabilitation and parole, including the city-centered halfway house program. The most desirable Lorton transfer, to a new system of modern penal institutions which should be built in the next few years within the city limits, will occur more rapidly by keeping its administration within the city government.

The national administration, which would acquire direct responsibility for Lorton if it is transferred, has been strangely silent. It looks as if the silence was a price paid to Congressmen Broyhill and Scott who represent Fairfax County and other conservative members of the House District committee for their down-the-line support of other controversial features of the administration's omnibus crime bill.

The unfortunate result of it all, unless the Senate is successful in holding out in conference against the transfer, would be precisely what the Mayor has warned of—a serious setback to the administration's anti-crime effort for Washington which is based on a strategy of strengthening all parts of the criminal justice system simultaneously.

TRIAL OF THE CHICAGO SEVEN

Mr. HANSEN. Mr. President, much of the national news media seems to have concluded that the trial of the so-called Chicago Seven was unfair, and that Judge Julius Hoffman is really the culprit.

Already, paperbacks are in print portraying Judge Hoffman's conduct of the trial in the most critical terms.

Now we are informed, according to the New York Times of March 29, 1970, that most of the defendants have contracted with well-known American publishing firms to write their story. One can imagine how balanced such presentations will be. So far, I have not heard of any offers to give Judge Hoffman an opportunity to defend himself from such attacks. I ask unanimous consent that the New York Times article referring to books to be written by the Chicago defendants be printed in the RECORD.

One of the points harped on by these self-serving critics is the manner in which Judge Hoffman cited for contempt the defendants as well as their attorneys.

An excellent discussion of this contempt question was written by a Washington, D.C., attorney, Mr. Frank J. Whalen, Jr., and published in the letters column of the Evening Star of Washington on March 21, 1970.

Unfortunately, it has received little publicity.

I ask unanimous consent that Mr. Whalen's letter be printed in the RECORD. I would hope that those curbstone lawyers, who have so freely expressed their opinions on the contempt question, will read the letter.

Perhaps they might even, as has Mr. Whalen, recognize the need for distinguishing between the cases bearing on the question of contempt and whether or not such cases are applicable to the situation which arose in the Chicago trial.

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

CHICAGO RULINGS SCORED BY CLARK—CONSPIRACY CASE PROMPTING A RASH OF PUBLICATIONS

(By Henry Raymont)

Former Attorney General Ramsey Clark has denounced the contempt sentences of the "Chicago 7" defendants and their two lawyers as "impermissible by any standard of justice—or, so far as I can see—law."

Mr. Clark also concludes that the trial "failed miserably" and urges Americans to look deeply into the facts, the causes and the implications of the five-month conspiracy trial, which ended Feb. 20.

The 42-year-old Texan made his first public comments on the trial to be published by the Swallow Press, a small Chicago publishing house, on April 13.

Two other books containing excerpts of the transcripts have already appeared and at least eight other books about the trial will be published within the next few months. They include a 22,000-page, five-volume set of the full transcript.

Public interest in the emotional confrontations between the defendants, mostly young men fired by political dissent, and Judge Julius J. Hoffman, 74 years old, who was manifestly unsympathetic to their radicalism, has encouraged publishers to commission a tide of books on the trial. They include books by at least four of the defendants. It could not be immediately determined if Judge Hoffman was contemplating writing one too.

CONVICTED FOR INTENT

The trial began with eight defendants accused of conspiring to incite a riot during the 1968 Democratic National Convention in Chicago. After several disorders in the courtroom, the case of Bobby G. Seale, one of the defendants, was severed from that of the others. All seven were ultimately found not guilty on charges of conspiracy but five were found guilty of crossing state lines with the intent to incite a riot. Before the jury announced its ruling, Judge Hoffman sentenced the defendants and their lawyers to up to four years in prison for contempt.

Mr. Clark, who was Attorney General at the time of the convention, was barred by Judge Hoffman from testifying as a defense witness on grounds that he would have "nothing relevant" to say. Mr. Clark at the time would not comment on the ruling or the trial, which was still in progress. "I'm a man of the law and I follow the law," he explained.

In the foreword to "Contempt," the former head of the Justice Department raises a series of questions about the trial. He asks if the law under which the defendants were indicted was the product of "fear and hypocrisy," why protesters at the convention were not given permits to demonstrate and whether Judge Hoffman was "temperamently suited" to conduct the trial.

Mr. Clark describes "the failures at Chicago" as "the failures of men and emotion," adding: "If the system is so frail that it cannot cope with the events in Chicago, the days ahead will be turbulent indeed."

Some of the books on the Chicago case, including "Contempt," were conceived during the trial and have already been rushed to completion. Others will not be published until the fall.

TWO EARLY BOOKS

The first book to be issued was "The Tales of Hoffman," a Bantam Book with excerpts from the transcript and 32 pages of sketches of trial scenes. This appeared on Feb. 24, four days after the trial ended. Another recent paperback is "Trials of the Resistance," a New York Review book, with an essay by Jason Epstein on Judge Hoffman's exchanges with Mr. Seale.

Mr. Epstein is preparing a book on the trial for Random House, where he is a senior editor. He had planned to call it "Contempt" until he discovered that the Chicago publisher had already used the title—Random House is also planning books by two defendants, Tom Hayden and Mr. Seale, whose "Seize the Time" contains three chapters on the trial.

A third defendant, Jerry Rubin, has just completed a book for Simon and Schuster, and a fourth one, Rennie Davis, is writing one together with Pe * * * magazine, to be published by Alfred A. Knopf.

Grove Press is issuing at least two books, one by John Schultz, a Chicago writer, and another by Jules Feiffer, the cartoonist who sketched the proceedings at the trial. J. Anthony Lukas, who covered the trial for The New York Times, has been approached by several publishers with offers to write a book.

The complete transcript will be published by Chelsea House, which is collecting donations to cover the $55,000 it estimates will be needed for printing costs. The publishing house has offered to make 25 copies of the full transcript available to the defendants who must file them in order to make their appeal.

CONTEMPT AND THE LAW

SIR: Your editorial, "The Disrupters," and the column by James J. Kilpatrick concerning the contempt citations imposed by Judge Julius Hoffman in Chicago require some discriminating attention. Apparently Mr. Kilpatrick regards himself as a lawyer. The Star is, of course, not a lawyer, although it undoubtedly has lawyers available to it. In your editorial you said:

"The Supreme Court, in three recent rulings, has held that a sentence for contempt of more than six months cannot be imposed by a judge alone, but must grow out of a jury trial."

In his column, Mr. Kilpatrick referred to three cases:

"The key cases can be read in an hour: Cheff v. Schnackenberg in June, 1966; Bloom v. Illinois in May, 1968; and Frank v. U.S., last May."

The general thrust of Mr. Kilpatrick's column and of your editorial seemed to be the same. I suspect that they are infected by the same misreading of the decisions. Mr. Kilpatrick, in a rather supercilious tone, speaks of this as a settled matter: "Hoffman had abundant time to catch up on the developing law of criminal contempt."

The three cases plainly do not involve a uniform pattern of decision by the United States Supreme Court. Chief Justice Warren, in his *dissenting* opinion, referred to the Frank case as involving "unfortunate retreat from our recent decisions and alarming expansion of the nonjury contempt power, the excessive use of which we have so recently limited in (Bloom) and (Cheff)." It is plain that Chief Justice Warren did not regard Frank as involving a steady continuation of settled doctrine.

SPEAKS OF "KEY CASES"

In Mr. Kilpatrick's column, he quoted from Chief Justice Warren's dissenting opinion without indicating that it was a dissent. He speaks of "key cases": Cheff, Bloom and Frank as if they settled the matter, and as though Judge Hoffman were stupid not to see that they settled the matter.

In fact, there is not one of those cases which involved contempt committed in a courtroom or in the face of the judge. Bloom involved a contempt proceeding for filing a spurious will for probate; Cheff involved contempt for failure to abide by a cease and desist order arising out of a Federal Trade Commission proceeding for fraudulent salesmanship, and Frank involved a criminal contempt proceedings arising out of sale of oil interests without complying with Securities and Exchange requirements.

In my opinion, if you knew enough about the legal problems involved in a subject to refer to both the action of Judge Hoffman and the action of Judge Pratt here in the District of Columbia as being a "legal monstrosity" on February 17 you should have known enough about the subject on February 19 to have seen to it that Mr. Kilpatrick did not get away with citing a dissenting opinion in Frank as though it involved the opinion of the court.

The doctrine of separate offenses and the doctrine of consecutive sentences for separate offenses are well settled in the law. It is also well settled in moral philosophy, where it is recognized that increased blame is incurred when offenses are sufficiently separated in time that a new moral determination is involved in committing the second, the third, the fourth and subsequent acts.

As all seem to agree, these are troubled times, but they are not so troubled that it does not become clear that misconduct in the face of judicial officers must be stopped. There seem to be suggestions by those who excoriate Judge Hoffman that what he should have done was to deal with each contempt immediately as it occurred. In a trial involving the number of persons who were involved, and one which was plainly expected to last for many weeks, such treatment was obviously impossible. The defendants could not conceivably be granted a due process trial if it were repeatedly interrupted by such proceedings with reference to one of seven or eight defendants and two different lawyers.

WOULD PROLIFERATE

The possible alternative of waiting until the end of the trial and then conducting a jury trial would literally mean that the only way of dealing with such obstruction of justice of the most immediate kind would be to proliferate the obstruction into yet another trial of even longer length, when there is no real expectation that the longer trial of even greater length will not produce similar misconduct in the face of the court and yet further consumption of the time of judge, jurors, and all other persons in dealing with that.

One result from the tactics employed by the defendants and their counsel in the Chicago trial which cannot be allowed to occur is the paralyzing of even one court, never mind the paralyzing of all of the courts in the Northern District of Illinois. A conceivable additional technique might, I suppose, have some attractiveness, for instance, the setting down for hearing of each contempt promptly before another judge in the same court, with the right to jury trial if that is called for. The disruptive effect on the basic trial would obviously be as great, if not even greater, than a similar technique conducted in Judge Hoffman's own court.

As a practicing lawyer for two decades, it is now plain to me and has always been plain to me that the summary power to punish for contempt for insulting the trial judge, or disobeying the trial judge's orders, must always exist, subject only to the right of appeal, which should be accorded to the defendant on contempt in the same way that it is accorded to every other defendant, with the same expectation of reasonable protection of well-behaved counsel from judicial oppression that Justice Jackson assured to the bar in his opinion in the Sacher case in 1952.

It is this reader's view that the reaction of the news media to the Chicago situation could well stand more study of the law and the judicial system and less expression of offhand emotional reaction.

FRANK J. WHALEN, JR.

THE WAR IN LAOS AND CAMBODIA

Mr. HANSEN. Mr. President, for the past several weeks American newspapers have headlined stories about the important advances made by North Vietnamese Communist forces in Laos and Cambodia. These same stories have been given prominence on network newscasts.

Generally speaking, the impression is abroad in America that the Communists are overrunning those two tiny Indochinese countries and that a grave threat is thus posed that Americans might become heavily involved.

I think it safe to say that most Americans who think about Laos and Cambodia at all are under the impression the Communists have won major victories and soon will be in control.

Well, on Wednesday morning the New York Times published, on pages 2 and 3, a couple of stories which, in my opinion, should have been given the same kind of treatment that the previous scare headline stories got. Buried on page 2 was a story about Laotian troops making major gains. Laotian loyalists had recaptured the town of Sam Thong. When the Communists captured that town there were blazing headlines. When they were forced out, the editors of the paper gave the story a small space on page 2.

On page 3 of the same newspaper appeared a story about Cambodia. Last week and early this week there were many stories about Communist troops pushing to the very outskirts of Phnompenh, the capital of Cambodia. It was not hard to gain the impression that Cambodia was about ready to drop into Communist hands. Again, numbers of Americans who concern themselves with such matters were under the impression all was lost.

But on Wednesday the Times reported there were no Communist troops on the outskirts of Pnompenh, and that, apparently, there never had been. I quote the Times:

> After some scare reports circulated late last week placing Vietnamese units deeper inside Cambodian territory than they have been in the past, military sources now report more intense pressure on Cambodian border posts but not deep penetration of Cambodian territory.

Those stories which the Times now concedes were simply scare stories were given wide circulation in the American press and, therefore received wide credence among the American people. Unfortunately, the news media simply did not give as wide circulation to the true facts as they did to the original rumors.

Let me conclude by pointing out the United States is not involved in ground action in either Laos or Cambodia. We do not intend to get involved. And with the kind of firm leadership we are getting from President Nixon, we will not become involved.

I ask unanimous consent that the New York Times articles be printed in the RECORD.

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

KEY TOWN IN LAOS SEIZED FROM FOE—SAM THONG IS RETAKEN IN UNEXPECTED SHOW OF FORCE

(By Tillman Durdin)

VIENTIANE, LAOS.—In an unexpected show of strength, Laotian troops have driven North Vietnamese soldiers from several hilltop positions overlooking Sam Thong and re-entered the mountain valley town, 80 miles northeast of here, it was reported today.

Sam Thong which had been the administrative center for a large part of north central Laos, was evacuated by the Laotians two weeks ago when it was attacked by North Vietnamese troops advancing from the Plaine des Jarres into the mountains to the southeast of the plain.

The North Vietnamese pushed past Sam Thong to the more important military base town of Long Tieng, 10 miles over a mountain ridge to the southeast, but despite rocket attacks and a series of infantry attempts to take the heights that provide control of Long Tieng, the North Vietnamese have so far been unable to shape Laotian domination of the Long Tieng area.

FOE STILL IN AREA

Military sources here hesitated to say that Laotian troops under Maj. Gen. Vang Pao had consolidated their hold on Sam Thong. North Vietnamese were still in the area and could counterattack, but four companies of Laotian troops were in the town this morning and General Vang Pao was reported to have said he could and would hold it.

Simultaneously, Laotian troops reportedly surrounded several hundred North Vietnamese four to five miles northeast of Sam Thong and were keeping them hemmed in while they were pounded by Laotian fighter-bombers. It was thought unlikely that the North Vietnamese could be kept trapped, but they were said to be suffering heavy casualties, of which 20 dead had been counted by this afternoon.

Artillery attacks and bombing by American fighter-bombers from Thailand are believed to have contributed to the success of the reinforced Laotian defenders of the Sam Thong-Long Tieng area.

MORALE IMPROVES

The Laotian re-entry into Sam Thong last night and this morning, together with the successful defense of Long Tieng, has greatly improved morale here and at the front.

Laotian leaders here feel that every week that North Vietnamese gains can be frustrated at this time enhances the possibility that the North Vietnamese, who set out across the Plaine des Jarres last month with the seeming intention of occupying a larger part of north-central Laos, will not be able to achieve their objectives before the rains come in June. During the rainy season, offensive operations through the mountains north and northeast of here are virtually impossible.

The North Vietnamese now have the equivalent of a division of troops in the Sam Thong-Long Tieng area, enough manpower to take it over if well armed and supplied, but they are believed to have pushed ahead faster than their logistical support and to be short of food and munitions.

CAMBODIA IN NEW PLEA TO SOVIET AND BRITAIN ON RED-TROOP ISSUE

(By Henry Kamm)

PNOMPENH, Cambodia.—The Government disclosed today that it had renewed an earlier appeal to the Soviet Union and Britain, cochairmen of the Geneva Conference of 1954, to send the International Control Commission back to Cambodia to investigate its charge that North Vietnam and the Vietcong were stepping up their military activities against Cambodia.

Heightening the tone of its first request, presented to the embassies here on March 22, the Government asserted that the two Vietnamese Communist armies were committing "more and more flagrant and repeated violations of the Geneva accords."

A Government note charged that the North Vietnamese and Vietcong troops "not only refused to withdraw from Cambodian territory but now attacked openly Cambodian posts and defense forces inside Cambodian territory."

Cambodia requested that the two co-chairmen exert all their influence to bring about on an urgent basis the return of the three-member commission.

COMMISSION OUSTED IN 1969

Prince Norodom Sihanouk, ousted March 18 as Chief of State, ordered the commission to leave Cambodia at the end of last year, asserting that Cambodia could not afford its upkeep. India is chairman of the commission, which functions also in Laos and Vietnam, and Canada and Poland are the other members.

After some scare reports circulated late last week placing Vietnamese unitsdeeper inside Cambodian territory than they have been in the past, military sources now report more intense pressure on Cambodian borders posts but no deep penetration of Cambodian territory.

Britain has declared her support of Cambodia's request, as has India, but the Cambodian Foreign Minister, Yem Sambaur, said yesterday that there had been no reply from the Soviet Union. The commission has been blocked throughout its area of operation by the discord between the Canadian and Polish members, which India has not appeared capable of bridging.

Meanwhile, no crisis signals are noticeable in this placid capital. Government offices, including the Defense Ministry, continued to observe working hours until early in the afternoon. Only the small groups of students performing drill exercises in the streets of the capital as part of a military-preparedness build-up are an indication of an intensified state of readiness.

BOMBINGS IN THE UNITED STATES

Mr. HANSEN. Mr. President, there is growing evidence of the need for Congress to act swiftly and firmly in the matter of the bombings that have blasted so many sections of our country. It appears more than likely that they are a concerted effort at terrorism on the part of the radical left.

Just yesterday Chicago police were able to identify a Miss Bernadine Dohrn as the tenant of an apartment that was, in fact, a bomb factory. Miss Dohrn is a former national secretary of the Students for a Democratic Society.

In raiding her apartment police found 59 sticks of dynamite, a supply of blasting caps, four bottles of an explosive liquid, and 8 ounces of plastic explosives. These things are not a young lady's cosmetics. Whoever put them there could have had only one purpose—and that purpose is to manufacture bombs.

This is not the first time such a bomb factory, manned by a group from the nihilist left, has been found. Senators will recall the tragic explosion of a rowhouse in New York's Greenwich Village area where another group of SDS types were manufacturing bombs. Somehow, they made a mistake and blew themselves to pieces, along with the house. There was also serious damage to the houses on either side.

Mr. President, there is every indication that the bombs which have hit our public buildings, office buildings, banks, and other institutions have not been entirely a sporadic or a hit-or-miss affair. We cannot comfort ourselves by assuming they are the result of some madman's tortured mentality.

We hope that every effort will be made to pursue unrelentingly investigations of those bombings. Whatever the reason or reasons behind them they pose a serious threat to the safety of our citizens, a challenge to law and order, and an alarming evidence of contemptuous disregard for life and property.

INTERVENTION IN CAMBODIA ILL ADVISED

Mr. HART. Mr. President, Mark Etheridge, Jr., editor of the Detroit Free Press and a knowledgeable student of Southeast Asia, has written a perceptive piece on the expansion potential of the Vietnam conflict.

Mr. Ethridge looks at the Indo-China peninsula in historical perspective and sees little hope that the ills of centuries will be cured by American arms.

He strongly urges noninvolvement in Laos and, I think, makes a convincing case for continuing American withdrawal from Vietnam.

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:

INTERVENING IN CAMBODIA ILL-ADVISED—END VIETNAM WAR INSTEAD OF MOVING IT

(By Mark Ethridge, Jr.)

Before President Nixon decides he's got a good thing going in Cambodia with the new anti-North Vietnam regime of Gen. Lon Nol, he should take a hard look at some current myths and ancient realities.

The myths, which came into prominence when Mr. Nixon was vice president, are that communism is monolithic, that it is everywhere and everytime a dire threat to the United States, and that if one nation falls to communism its next-door neighbor will. All these are summed up in the domino theory, the foreign policy reasoning which first got us involved in Vietnam.

Another myth is that since Gen. Nol, who overthrew Prince Sihanouk, controls the army he therefore controls the country. And a third myth is that Cambodian support just might provide the extra leverage which Saigon needs to turn back North Vietnam and the Vietcong.

The old realities are far more persuasive. When the domino theory was invented, President Eisenhower could only have been thinking of Russia, its next-door neighbor China, which went communist in 1949, and China's next-door neighbor, North Vietnam. That was the only example available.

But the reality is that China is very much its own state, that the Chinese civil war had gone on since 1895, long before Russia's, and the two are now implacable enemies.

It is also a reality that Vietnam has hated and feared China for a thousand years, and the Chinese had nothing to do with the establishment of an independent Vietnam in 1954.

The domino theory only works when governments are rooted as insecurely as dominoes standing on edge. If a government has a base in the support of the people, though, it cannot be uprooted except by invasion.

Which leads to old reality No. 2: Control of the army is far from a sure thing in Southeast Asia. Thieu controls the army of South Vietnam, but he does not control the people. Souvanna Phouma controls the Laotian army, but the Pathet Lao, the Laotian-liberation movement, has almost taken over the country.

The same thing could happen in Cambodia. Prince Sihanouk's threat to call for a liberation army to restore him to power is not an idle one. The Red Khmer, Cambodia's Communist Party, already exists, and Sihanouk has more support among the people than does Lon Nol. Further, the North Vietnamese have an estimated 40,000 troops in Cambodia, plus Vietcong, who are more than a match for the ill-equipped, ill-led Cambodian army.

The last reality Mr. Nixon should look at can be found in a map and a history book. The two dominant nations in that part of Asia for the past 600 years have been the Viets and the Thais. In between are squeezed the Cambodians and the Laos with all their assorted tribes.

Until the French colonialists took over Indochina more than 100 years ago, the tribal chiefs of Cambodia and Laos were forever paying tribute to the rulers of Thailand and Vietnam. The weakest kingdoms were absorbed, the stronger made vassels to one dominant nation or the other.

CULTURAL SUPERIORS

The Viets—and the Thais—still consider themselves the cultural superiors of the Cambodians and the Laotians. North and South Vietnam have more in common than South Vietnam and Cambodia. American civilian experts in Vietnam have been saying for years that if the war is ever ended, South Vietnam could be expected to invade Cambodia within five years.

A border dispute near the Plain of Reeds has long been a point of contention between South Vietnam and Cambodia, and the U.S. refusal to recognize the Cambodian version of the border was one reason for Sihanouk's

breaking of diplomatic relations with the United States.

Any alliance between these natural enemies, then, is bound to be shaky at best, mercurial most likely and disastrous at worst. Further, South Vietnam is hardly in any position to provide Lon Nol with help. This leaves the United States as the only source of support for the new regime, since Cambodians distrust the Thais as much as they do the Viets.

In light of the old realities, Mr. Nixon would be ill-advised to intervene in Cambodia. Instead of Vietnamizing the war, he might well spread it to all of Southeast Asia. And instead of building a bastion against the southward movement of communism, he would most likely create a vacuum into which it would move even faster.

As historians and military experts alike have pointed out, the United States is a Pacific power, not an Asian power. Even if we wanted to, we could not become an Asian power, nor is it a vital interest of the United States.

Weighing the very real dangers against the gossamer hopes, Mr. Nixon should keep hands off both Cambodia and Laos, and devote his time and energies to getting troops out of Vietnam at an even faster rate.

THE DISTRICT OF COLUMBIA CRIME BILL

Mr. EAGLETON. Mr. President, the District of Columbia crime bill has been very much in the news in recent days.

Two recent articles in the New York Times discuss this subject and in particular point out the observations made thereon by the distinguished Senator from North Carolina (Mr. ERVIN).

Mr. President, I know all of us who are privileged to serve in the Senate recognize Senator ERVIN as one of the ablest constitutional scholars in the Senate.

I ask unanimous consent that the article by Tom Wicker, and the editorial from the New York Times be printed in the RECORD.

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

[From the New York Times, Mar. 29, 1970]

IN THE NATION: WILL THE REAL CONSERVATIVES PLEASE STAND UP?

(By Tom Wicker)

WASHINGTON.—No Southern Senator has been a more vigorous and outspoken opponent of most civil-rights legislation than Sam J. Ervin of North Carolina. But Judge Ervin, a former member of the Supreme Court of that state, always based his opposition on what he considered legal and constitutional grounds, and so it may not be as incongruous as it seems that in recent years he also has emerged as an eloquent defender of American civil liberties.

Last week, employing all the organ tones of one of the most impressive rhetorical talents in the Senate, Judge Ervin went to work on the infamous District of Columbia crime bill passed by the House at the behest of the Nixon Administration—a measure, incidentally, which is something of a model for what the avid crime-fighters of the Administration and Congress have in mind for the rest of the country.

SENATOR ERVIN'S ATTACK

This iniquitous bill, Judge Ervin thundered to the Senate District Committee, is "an affront to the Constitution" and "as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas." It was, he went on in splendid voice, "a garbage pail of some of the most repressive, nearsighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented."

A particular opponent of the Administration's so-called "preventive detention" proposal, Judge Ervin denounced it as well as other provisions—mandatory adult trials for sixteen-year-olds charged with violent crimes, sweeping wiretap and bugging authority, the authorizing of "no-knock" entries by police, and mandatory jail sentences in certain crimes—and said they constituted "broad-scale repudiation of our constitutional traditions."

"This bill," the Senator concluded, "might better be entitled 'A bill to repeal the Fourth, Fifth, Sixth and Eighth Amendments to the Constitution.'" And this attack will not be dismissed lightly, as House and Senate conferees try to reconcile the House bill with a more moderate Senate version; Judge Ervin's credentials as a constitutionalist and a conservative are too highly regarded in Congress for him to be brushed aside as a bleeding heart of a do-gooder.

Moreover, he played the leading role in securing passage of the Bail Reform Act of 1966, which the Nixon "preventive detention" scheme would undermine; and he also has been active in defense of the rights of Federal employes against those who would invade their privacy and insist on unreasonable conformity to arbitrary standards of conduct and attitude. So his credentials also are good on the question of individual liberty against the power of the state.

Those—including me, a fellow North Carolinian—who often have criticized Judge Ervin for his resistance to civil rights legislation, may find his civil libertarianism contradictory; yet, whatever his subconscious or unconscious motives may have been, his opposition to rights legislation always has been presented as opposition to unwarranted Government intrusion on the rights of individuals even in a good cause. It is not so long a jump from that position, however self-serving in the case of civil rights, to one of stout opposition to a bill presented in a good cause—fighting crime—that really would trample without warrant on individual rights. And the individuals who would be most affected by the D.C. crime bill are the blacks who make up 60 per cent or more of the District's population.

AGAINST UNBRIDLED POWER

The point is neither to justify Judge Ervin's position on civil rights nor to maintain that it is negated by his libertarian stance; the point is rather to suggest that a certain kind of old-fashioned conservatism still has its exponents in America, still makes its case fundamentally against unbridled Government power, still believes that in the end it is the individual—not society and not any group—that is the basic unit of value in the human condition.

That kind of conservatism is a far different thing from the simple greed of those who want to be let alone to milk the economy at will, the fixed fiery stare of those who believe that anything goes in the battle against Communism, the hysterical demands of those whose response to temporary stimuli—rising crime, dissent, high welfare costs, higher taxes, college unrest—is the cry for punitive action at any cost.

Judge Ervin's kind of conservatism may have been reluctant to place black men's rights on a par with those of whites, but it is not the kind of conservatism that holds cheap the rights themselves. It is not affected with the myopia that prevents fearful men from seeing that if individual rights are taken away from any man or class of men they are taken away from all; and that once suspended or destroyed they are most unlikely to be recognized again by a state power that will have been loosed from the restraints of the ages.

This is an attitude once widely held in the South, if often honored in the breach. And while that region may be following the Republicans into the great Silent Majority, not so Sam Ervin; he stands by the older view, still speaking out for values proven so long ago that most Americans no longer even seem to know about them.

[From the New York Times, Mar. 30, 1970]

D.C. INJUSTICE BILL

The District of Columbia omnibus crime bill is a stalking-horse for similar legislation on the national level. If it is permitted to go through a House-Senate conference with its repressive features untouched, Congress will have set precedents that it will be sure to regret later on.

There are useful provisions in this lengthy bill, mainly concerning reorganization and consolidation of the District of Columbia courts. In addition, the Federal Government would assume a greater part of the financial burden of new public safety programs in the District.

The objectionable sections in the House versions—following the tough line of the Department of Justice—contain broad wiretapping and "no-knock" search warrant authority, stringent requirements of adult trials for sixteen-year-olds and a change in the burden of proof in juvenile courts, mandatory sentencing and preventive detention. There is a section requiring a citizen suing for false arrest to pay the policeman's attorney—even if the citizen wins the case.

Senator Ervin of North Carolina succinctly describes the Administration-supported House bill as "repressive, nearsighted, intolerant, unfair and vindictive legislation." It contains probable violations of the First, Fourth, Fifth, Sixth and Eighth Amendments.

The District of Columbia crime bill is political legislation with a vengeance. It would inspire new disrespect for the law and seriously interfere with the major function of the courts which is the administration of justice.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore (Mr. BYRD of Virginia). Is there further morning business? If not, morning business is concluded.

CORUNDUM

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business, Calendar No. 715, S. 3083, be laid aside and returned to the calendar, and that the Senate proceed to the consideration of H.R. 16292.

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

The ASSISTANT LEGISLATIVE CLERK. Calendar No. 752, a bill (H.R. 16292) to authorize the disposal of corundum from the national stockpile.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

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

Mr. MANSFIELD. 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. CANNON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CANNON. Mr. President, this bill is the first of 17 bills that are to be considered for disposal, from the national stockpile and/or supplemental stockpiles, of excess materials that are now on hand.

The bill we are now considering is the House bill (H.R. 16292), a companion bill to the Senate bill (S. 3083). It would authorize the disposal of approximately 1,952 short tons of corundum. The total inventory of the material in the national stockpile is 1,964 short tons as of January 31, 1970. This inventory includes a quantity of 12 tons held in the national stockpile in addition to the 1,952 short tons. Since corundum is no longer included in the stockpile list of strategic and critical materials the quantity of 12 short tons is included in the overall disposal program under this disposal authorization.

There is no domestic production of corundum. Free world production in 1969 was estimated to be about 6,000 short tons, with Southern Rhodesia accounting for 5,000 short tons. U.S. imports for consumption during 1969 totaled 2,150 short tons of crude or crushed corundum.

The ACTING PRESIDENT pro tempore. The bill is open to amendment.

AMENDMENT NO. 558

Mr. WILLIAMS of Delaware. Mr. President, I have an amendment to S. 3083 at the desk. I call up the amendment and ask that it be adjusted to fit the House bill.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, line 5, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 3 through 17.

On page 2, line 18 strike "(3)" and insert "(2)".

Mr. WILLIAMS of Delaware. Mr. President, I would hope the chairman, the Senator from Nevada, who is in charge of this proposal, would be willing to accept this amendment. It has been acted on by the Senate, on previous occasions, and a similar amendment has been agreed to.

I see no reason why, in disposing of this material, the Government would not sell it to the highest responsible bidder. When we bought this material and put it in the stockpile, we paid the highest prevailing market prices. On this particular commodity corundum our cost was $195.77 per ton. The prevailing domestic market price ranges from $20 to $125 per ton. Just how we are going to negotiate the sale of this commodity in such a price range, I do not understand.

The foreign price is between $45.60 and $118 per ton, which means that it is considerably higher if we import this commodity. The committee report points out very clearly that there is no domestic production of corundum in this country, so we are importing all of it. That means that whatever we use in this country has to be bought at the world market price, which is $45.60 to $118. Yet, they want to sell it on a negotiated basis for between $20 and $125. I just do not understand why.

I asked the GSA to give me a letter stating their position. I will put the entire letter in the RECORD, but I will read the paragraph which is the most pertinent point about their objections. I might make it clear, as the committee report does, that General Services does object to my amendment requiring sale to the highest responsible bidder on these commodities. I quote from the letter:

Disposals of excess stockpile commodities planned for FY 1971 could be seriously jeopardized because the amendments are likely to meet the opposition of industry groups on the grounds that some subsequent stockpile disposal could disrupt the market.

Since when are we running a stockpile program, both in and out of the Government, for the benefit of industry? I say that as one who would defend private industry as much as any other Member of this body. We bought this material in the competitive market, at the prevailing price; and when we sell it, I see no reason to pass out bargains to a lot of friends at prices below market.

This is a business transaction and Congress should represent the taxpayers.

The reason why this material is short supply at this time is that we have boycotted any purchases from Rhodesia. It seems that of the world production of 6,000 tons, approximately five-sixths is produced in Rhodesia. Since we boycotted these shipments from Rhodesia, all of a sudden we decided we do not need any of this mineral, corundum, in the stockpile, and we are going to dispose of all of it to offset the boycott.

I think we should sell our commodities exactly as we should buy—that is, we should buy them in the open, competitive market at the lowest price possible, and at the same time we should sell them in the market and get the most we can for them.

Nothing in my amendment would disrupt that part of this bill which instructs the General Services Administration to sell this material in an orderly manner which would least disrupt the orderly marketing process in this country. Nothing in this amendment says that they have to dump the entire 1,952 tons on the market in 1 day. It certainly would be foolish for the Government to do it in such a manner. But I think we could have an orderly liquidation, just the same as any private individual would if he owned this commodity. He would dispose of it in the manner which would least disrupt the market, because in that manner he would get the most out of it.

I wonder whether the chairman is willing to accept this amendment.

Mr. CANNON. Mr. President, I am not willing to accept the amendment. The committee has carefully considered this proposal. We held hearings and went into the matter with GSA.

It will be noted that each of the bills before the Senate today specifically provides that disposal of the commodity involved may be made only after publicly advertising for bids with certain exceptions. The principal exception is one that relates to public sales. This is the exception to which the amendments offered by the senior Senator from Delaware are directed. Frankly, I am in sympathy with the objective of these amendments and believe that the sealed bid method of sales is best under ordinary circumstances. But I also know that there must be some flexibility in any disposal or procurement program if the best interests of the Government and all concerned are to be protected.

In this particular sale, GSA plans to initiate sales under sealed bid procedures. Since this material is used by industry only in a limited way and there is only one major consumer in the United States, it may be necessary to negotiate sales, as obviously there would be no possibility of the Government getting the very best price available where there is only one major prospective purchaser.

The General Services Administration carries out the stockpile materials program under the policy guidance of the Office of Emergency Preparedness. The Strategic and Critical Materials Stockpile Act, as amended, specifically requires that disposal sales "be fixed with due regard to the protection of the United States against avoidable loss on the sale or transfer of the materials to be released and the protection of producers, processors, and consumers against avoidable disruption of their usual markets." Furthermore, the Defense Production Act of 1950, as amended, requires that materials acquired under that act be resold under prevalent circumstances at "the current domestic market price for such commodities." Mr. President, I submit that if the General Services Administration, which is charged with the responsibility of carrying out the disposal of surplus stockpile materials, is to properly carry out their responsibility under existing law, there has to be some flexibility allowed in their disposal procedures. It would be a grave error to restrict them to a single method of sale. They do not try to establish markets; they try to follow the markets as they stand. The General Services Administration's consultation with industry and other Government agencies is an integral and important means employed to assure that the disposal programs are designed to comply with those edicts of the law I have referred to, dealing with the avoidance of loss to the Government and avoidance of disruption of markets. It is in this manner that their method of disposal of any one commodity is determined.

The General Services Administration prefers and does use competitive bidding procedures whenever possible. There are situations, however, in which the Administrator of the General Services Administration would have the authority to use other methods of sale if in his judgment sales by the public-advertising-for-bids method would not assure the protection of the United States against avoidable loss and to avoid disruption of the market. From the inception of the major sales program in 1960, the General Services Administration has sold over $3 billion in excess stockpile materials. Their sales program has employed a wide

variety of sales methods and procedures designed to maximize the return to the Government and developed in close consultation with industry. Many materials, minerals, and ores were moved into the marketplace with little or no disruption during this entire period.

Mr. President, of the 17 stockpile disposal bills now before the Senate, the General Services Administration proposes to initiate sales using the sealed bid method in 11 instances; four will be shelf item sales at fixed prices; one will be by negotiated sale; and one is undecided until further consultation is had with the industry to determine the best method of disposal. Now, if 11 of these commodities are to be sold by sealed bids, why not so specify in the bills? Simply because the market can be very fickle and changeable, the future uncertain, and many of these commodities will be disposed of over a long period of time, such as this particular commodity. The sealed bid method may be found to be unresponsive in some instances, and the sales method might have to be changed. For example, in the past, negotiated bulk ore sales have been more successful because of the need to accommodate the long-term planning needs in industry. Factors must be taken into account which vary widely from company to company, such as transportation costs, scheduling and delivery of materials, as well as the age, grade, and condition of the materials. As an example, in the past, long-term sales contracts have been negotiated for ores, such as chromite and manganese, because much of the ore to be disposed of was of a quality which must be blended with newly mined ores to achieve proper production efficiency. Through the negotiation procedure, the Government has received the maximum possible returns and at the same time has permitted industry to introduce the material into their production channels on a planned basis.

There are many stockpile commodities that potential buyers simply would not buy from Government sources unless the Government was in a position to sell in the same manner as industry sells. This is particularly true for those commodities which experience daily and even hourly fluctuations in price. In its past sales programs for rubber and tin, General Services Administration sold these commodities on a daily basis. After an analysis of the day's market, offers to purchase and acceptances were handled by telephone so that the resulting contracts reflected a transaction based on immediate sale at the day's prices. In such rapidly changing markets, the sealed bid procedure is not adaptable simply because it is too time-consuming and will not permit the quick offer and response needed to trade in such markets.

I should like to cite one final example of the kind of long-range disposal program that can be accomplished through prudent negotiation. This relates to the aluminum disposal program. During the 89th Congress, a bill was proposed and passed the Congress to permit the disposal of a vast quantity of surplus aluminum. Sealed bid sales procedures had been tried in an earlier program in an effort to dispose of aluminum. The only responsible bids received were from producers who bid at the current market price with adjustments for freight. In almost every other instance unsatisfactory prices were received from other potential aluminum users. It was apparent that if the aluminum was to be disposed of in the best interests of the Government, other sales procedures must be used. Through negotiation with the major aluminum producers supplying United States needs, an agreement was worked out with these producers to buy the entire Government supply of aluminum over a period of years at the domestic market price at the time of delivery. Under these contracts the companies draw down the aluminum at a flexible rate consistent with the market's ability to absorb the commodity. It is related to the volume of Government business done by these companies in the sale of aluminum products to Government contractors.

In conclusion, Mr. President, I should like to state that unless the amendments offered by the senior Senator from Delaware are defeated, a serious question arises as to whether the Government can continue successfully to carry out a meaningful disposal program to convert unneeded assets of the Government into cash income within the framework of the basic stockpile legislation which requires "that the time and method of disposition shall be fixed with due regard to the protection of the United States against avoidable loss and the protection of the producers, processors, and consumers against avoidable disruption of their usual markets."

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

(At this point, Mr. ALLEN took the chair as Presiding Officer.)

Mr. CANNON. Mr. President, I would point out that this commodity, corundum, has been held to be surplus to our needs, and there is no requirement for it in the stockpile. Therefore, the request, in this instance, is for the disposal of 1,952 short tons.

Mr. WILLIAMS of Delaware. Mr. President, I have listened with interest to the statement which the Senator from Nevada placed in the RECORD. I heard the same argument by GSA on previous occasions. I am always somewhat disturbed when any important official says if he has to sell on competitive bids he does not know how to dispose of the material. I wonder whether we cannot get someone to administer the program who has enough good commonsense and experience in private industry to know that the competitive bidding system does work.

I notice that much is said here about protecting the interests of the industry involved. We in the Senate are supposed to be representing the taxpayers. They paid for this material, and they paid for it at the highest price prevailing. The taxpayers are the ones who would benefit if they could get some extra money out of it.

Speaking of negotiating the price, I should like to mention how this was going to work on a program a couple of years ago, which we were partially able to stop. That was on the material platinum. The same memorandum, practically word for word, was read at that time in opposition to competitive sale of platinum. The GSA said, "You cannot do it." They were proposing and even allocating tonnage to the respective industry and had plans to sell the platinum at an average of $100 per unit below the regular market price, which would have meant that we would have sold it below the market price of around $150 million to $90 million, had the bill gone through. We were able to stop it.

I was talking with a representative of the GSA later, who said, "We are glad you were able to stop it; because we now have to buy the same commodity in the world market and have to pay now more than the price before." If they had sold it before, they would have paid close to $100 million more to buy it back.

Let us not make the same mistake here today. This amendment should be approved.

It is about time someone in GSA recognized that they are working for the taxpayers, that their salaries are being paid by the taxpayers. While we in Congress and those in the administrative offices downtown are supposed to recognize and try to protect private industry as much as we can, but that does not mean we should operate a bargain counter. We bought this material, $8 billion worth of strategic minerals, and they were bought at the prevailing market prices or higher. Much of this was a support program. The stockpile objectives were not that high. That is admitted.

They were bought for one purpose, to support a low domestic market and make a higher market for those producers and those in the industry. It was a support program just the same as an agricultural program in a support program for agriculture. I said then that when we come to the time we have to dispose of the minerals, we will disrupt the market to a certain extent. Under the agriculture program there is in effect a ceiling on the prices of corn, wheat, cotton, and every other agricultural commodity which is stored, as we dispose of them. But I did not hear anyone get up and say when the Government disposes of agricultural commodities that they should negotiate and sell them back to the farmer, so that he in turn can feed it into private industry without disrupting the normal market. We must recognize that as we dispose of these commodities it does disrupt the market and lowers the market. I think to that extent, it will disrupt some of the domestic market in the minerals, but we cannot help that. The bill does caution—and I support that part—that they dispose of it in as orderly a fashion as possible, with the least disruption to the markets but at the same time let us get the most we can get for the taxpayers.

I conclude on this particular item, again, by pointing out that if we defeat this amendment, it will be sold on a negotiated basis in the prevailing domestic market price. This information was furnished under date of April 2, so it must be correct as of this time by GSA. I shall put the whole letter in the RECORD later.

The prevailing domestic price for this material is between $20 and $125 per ton. It is considerably less than the prevailing prices if we have to import it. The 100 percent domestic demand for this commodity is imported. We do not produce 1 pound of it in this country. So, therefore, I do not see why we cannot sell it in competition with the foreign market, at least, and get that much for it. When we bought it, we paid the top prevailing market price in the world market of $195.77 and even if we sell at the highest price we can get today, we stand to lose 60 percent. I am wondering whether that is not about as much or more than the taxpayers can afford. Anyway, I am perfectly willing to call the roll.

Mr. CANNON. Mr. President, I simply would like to say that in the instance of this particular commodity, GSA plans to initiate sales under sealed bid procedures. There is only one major market for it and if that bidder should come in and bids a low price, you can see the position the Government is in. Therefore, the bill itself provides that the Government does not have to accept the bid. The Government can then turn around and negotiate with the major consumer, and obtain a more favorable price over a period of time, if their bid is not accepted in the first instance.

The Senator makes a great to-do about the type of experience we are going through. I would suggest to him, respectfully, that if he does not like the act, then modify the act but do not try to change the bill. The act itself says:

> That no material constituting part of the stockpile may be disposed of without express approval of Congress except where the revised determination is by reason of obsolescense, and so forth . . .

And as I stated earlier, the disposal sales "shall be fixed with due regard to the protection of the United States against avoidable loss and the protection of producers, processors, and consumers against avoidable disruption of their usual markets."

Mr. WILLIAMS of Delaware. Mr. President, the Senator has asked why we did not modify the act. It was because we did not have enough votes to do so. That is what I am trying to do here today.

They buy commodities that we do not need in the stockpile. I will support the purchase of what we need for the benefit of the stockpile to protect the security of this country.

If, as is now argued, there is only one man that could bid, that would mean that there was only one seller. Perhaps that would account for the fact that we paid $195.77 a ton for it when the prevailing price today is from $20 to $125 a ton.

Let us break up this monopoly.

Perhaps that is the reason why we paid twice the regular price for it. I repeat, the Government can reject every one of these bids and they can tell them that if they do not want to bid a proper price, the Government can hold it a little longer and let them try to buy it from the world market where they would have to pay twice the prevailing domestic price.

There is not a pound of it produced in this country. I am not the least concerned about them boycotting the Government on the amount we have. Certainly the Government can get the world market price which they already would otherwise have to pay.

We need a man who would exercise discretion for the benefit of the taxpayers the same as he would if he were to own these commodities himself.

Mr. BYRD of Virginia. Mr. President, will the Senator from Nevada yield?

Mr. CANNON. I yield.

Mr. BYRD of Virginia. Mr. President, would this result in releasing all the corundum?

Mr. CANNON. Yes. The Government has now determined that there is no further need for it. The 1,952 short tons are excess to the stockpile.

Mr. BYRD of Virginia. Mr. President, roughly, how long has it been in the stockpile?

Mr. CANNON. I am sorry that I cannot answer the question specifically. It has been in the stockpile for many years, perhaps since 1949. There was an objective for a long period of time and then it was finally removed and the administration sent up a request for disposal after the board had determined that it was no longer needed.

Mr. BYRD of Virginia. Most of the corundum is obtained from Rhodesia, I understand.

Mr. CANNON. The Senator is correct. Most of it is obtained from the Union of South Africa and Southern Rhodesia. There is only one major user of corundum in the United States.

Mr. BYRD of Virginia. I assume that there are many users worldwide.

Mr. CANNON. I would assume that there are a number. I would not say how many. I would assume that there are several users worldwide. However, there is only one major user in the United States. The chances are that there is not a great multitude of them worldwide because of the limited use of the commodity.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Delaware. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. HUGHES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Alabama (Mr. SPARKMAN), the Senator from Michigan (Mr. HART), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. JORDAN), the Senator from Louisiana (Mr. LONG), the Senator from Georgia (Mr. RUSSELL), and the Senator from New Hampshire (Mr. MCINTYRE) are absent on official business.

On this vote, the Senator from Connecticut (Mr. RIBICOFF) is paired with the Senator from Washington (Mr. MAGNUSON). If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Washington would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Hawaii (Mr. FONG) and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

The Senator from Idaho (Mr. JORDAN), the Senator from Illinois (Mr. PERCY), the Senator from Pennsylvania (Mr. SCOTT) and the Senator from South Carolina (Mr. THURMOND) are absent on official business to attend the Interparliamentary Union meeting at Monaco.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT), the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA), the Senator from Maryland (Mr. MATHIAS), the Senator from Vermont (Mr. PROUTY), and the Senator from Ohio (Mr. SAXBE) are detained on official business.

If present and voting, the Senator from Kentucky (Mr. COOK) and the Senator from South Dakota (Mr. MUNDT) would each vote "yea."

On this vote, the Senator from Colorado (Mr. ALLOTT) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Colorado would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from Hawaii (Mr. FONG) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Hawaii would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Pennsylvania (Mr. SCOTT). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Pennsylvania would vote "nay."

The result was announced—yeas 34, nays 33, as follows:

[No. 112 Leg.]

YEAS—34

Aiken	Dominick	Murphy
Allen	Ellender	Nelson
Boggs	Fannin	Packwood
Brooke	Fulbright	Pastore
Burdick	Goodell	Pearson
Byrd, Va.	Griffin	Pell
Byrd, W. Va.	Gurney	Proxmire
Case	Hansen	Smith, Ill.
Cooper	Hartke	Spong
Cotton	Javits	Williams, Del.
Curtis	Miller	
Dole	Mondale	

NAYS—33

Bayh	Harris	Smith, Maine
Bellmon	Holland	Stennis
Bennett	Hollings	Stevens
Bible	Inouye	Symington
Cannon	Jackson	Talmadge
Cranston	Mansfield	Tower
Eagleton	McGee	Tydings
Eastland	McGovern	Williams, N.J.
Ervin	Muskie	Yarborough
Gore	Randolph	Young, N. Dak.
Gravel	Schweiker	Young, Ohio

NOT VOTING—33

Allott	Hughes	Montoya
Anderson	Jordan, N.C.	Moss
Baker	Jordan, Idaho	Mundt
Church	Kennedy	Percy
Cook	Long	Prouty
Dodd	Magnuson	Ribicoff
Fong	Mathias	Russell
Goldwater	McCarthy	Saxbe
Hart	McClellan	Scott
Hatfield	McIntyre	Sparkman
Hruska	Metcalf	Thurmond

So the amendment of Mr. WILLIAMS of Delaware was agreed to.

Mr. WILLIAMS of Delaware. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MILLER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 16292) was passed.

ASBESTOS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 751, H.R. 16291 and that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 16291) to authorize the disposal of chrysotile asbestos from the national stockpile and the supplemental stockpile.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. CANNON. Mr. President, the chrysotile asbestos to be disposed of is considered nonstockpile grade and, therefore, does not contribute to stockpile needs. The inventory of this material in the Government stockpiles is 14,100 short tons. Of this amount 3,456 short tons is of nonstockpile grade. Of this non-stockpile-grade material, 641 short tons has been previously authorized for disposal and 501 short tons, even though nonstockpile grade, is credited to the objective. This bill would authorize the disposal of the balance of the nonstockpile-grade material. The stockpile objective, established March 5, 1964, is 13,700 short tons.

Mr. WILLIAMS of Delaware. Mr. President, I have at the desk an amendment that would apply to the Senate bill (S. 3087). We are considering the House bill, which, as I understand it, is an identical companion bill; therefore, I call up my amendment and ask unanimous consent that it be adjusted to correspond with the House bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will state the amendment.

The ASSISTANT LEGISLATIVE CLERK. On page 2, line 8, after the word "only", strike out "after publicly advertising for bids" and insert "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 16 through 20.

On page 3, line 1, strike out "(3)" and insert "(2)".

Mr. WILLIAMS of Delaware. Mr. President, this is the same amendment as that previously voted on by the Senate. It would merely provide that, in disposing of this commodity, the Government would advertise it and sell it to the highest responsible bidder. It would leave to the GSA the full authority to transfer any or all of this mineral over to any other Government agency for any price that it so desired, or give it to them if they wished; but, to the extent that it would be sold in the private market, they would have to sell it to the highest responsible bidder, reserving always the right to reject the bids if they were not in what they considered to be the best interests of the Government.

I call attention to the fact that this chrysotile asbestos, when we bought it, cost the Government $648.15 per ton. We paid the regular market price for it when we bought it. The prevailing domestic price for this commodity today is around $200 a ton, but if we import it, it is $425 a ton on the world market, and we do have to import a substantial part of what we use.

So I personally see no reason why we should not, in disposing of it, get the most that we can to protect the American taxpayers.

As I mentioned before, the only argument that I see advanced by the GSA can be summed up by quoting one paragraph from their letter:

> Disposal of the excess stockpile commodities planned for fiscal 1971 could be seriously jeopardized because the amendments are likely to meet the opposition of industry groups on the grounds that some subsequent stockpile disposals could disrupt the market.

Certainly, if the Government disposes of this material, it will disrupt to some extent the market, just as when we dispose of agricultural commodities, it disrupts the market for the farmers. That was to be expected when we started stockpiling these commodities, and there is no way to get around it now.

I wonder if, in the light of the previous vote, the Senator from Nevada would be willing to accept the amendment, and save the time of the Senate.

Mr. CANNON. Mr. President, I am not willing to accept the amendment. The method of disposal was considered by the committee. It was favorably testified to by witnesses who appeared before the committee. They say that in this instance, the GSA proposes to dispose of this material by sealed bids. However, they made very clear that they need flexibility, if they are to carry out the law as it now stands. That certainly is what they should be required to do; they should not create a situation which would disrupt the market in any way, shape, or form.

The same argument I made with respect to the last amendment applies with respect to this one, and I am ready to vote.

Mr. WILLIAMS of Delaware. Mr. President, I shall not delay the Senate. The arguments with respect to the two amendments are essentially the same, except that I would like to point out that, as shown in the committee report, the recommendation from the administration was dated January 15, 1969, in a letter addressed to the Honorable Hubert H. Humphrey, at that time the President of the Senate.

However, I want to make it clear that the present administration is also supporting the bill.

I mention this only to show that the first proposal to sell this material was made about a year ago.

It is interesting to note that in my letter to the GSA, I asked them for the list of commodities they were still buying. This particular commodity we are now proposing to sell as surplus material, which was also proposed to be sold as surplus material last year by the administration then in power, the Government is still buying and putting in stockpile; and, as we bought it and put it in stockpile, it was costing us an average of $600 per ton, and we now propose to sell it for $200 a ton. I just wonder how long the American taxpayers can continue to finance such foolishness. If this was surplus last year, why did they not at least stop buying it? If we are now going to sell some of it—and I am wholeheartedly in favor of selling it—let us get the most we can get for it.

It is still in the bill that it would be disposed of in the manner that would cause the least disruption of the usual markets. In other words, we certainly would not expect them to throw all of this on the market at one time. No private indusrty would do it. They would divide it down to about what the market would absorb, because in that way we would get more money out of it. All that is needed is a little bit of commonsense in disposing of it.

The argument is made that they are going to do this anyway. If they are, what is wrong with an amendment saying that they shall do it according to law?

Mr. MILLER. Mr. President, will the Senator yield so that I may address a question to the manager of the bill?

Mr. WILLIAMS of Delaware. I yield.

Mr. MILLER. I ask my colleague from Nevada if he will supply the information apparently missing from the committee report, in the first paragraph on page 3, under "Fiscal Data"? The second sentence there is apparently defective. It says:

> The present market value of this per short ton.

I am interested in knowing what the market value is, especially in the light of the completeness of the committee report on the previous bill, which gave us the information. I am now reading

from the committee report on S. 3083, which said:

The current market value for all the material in the stockpile ranges from $20 to $125 per short ton.

That indicated to me that there is considerable play in the market, and it was very persuasive to me in supporting the amendment of the Senator from Delaware.

Now, on this bill, the committee report, on page 3, is not complete, because it simply says, as I have pointed out, at the top of page 3:

The present market value of this per short ton.

It does not tell us how much per short ton. I wonder if the Senator from Nevada can furnish that information?

Mr. CANNON. Yes. The present value on the domestic market is $200 per short ton, and on the foreign market about $425 per short ton.

I should like to correct the statement that the Senator from Delaware made when he said we paid $648 a short ton for this material, and we paid the current market price. That is not true. We did not pay the market price. This was a subsidized price, designed to get the producers to begin producing this material in the United States.

The Senator pointed out that we are buying at the same time we are disposing. That is true. We are doing so because this material we are selling is non-stockpile-grade material, and we are attempting to buy stockpile-grade material, but without much success.

Mr. WILLIAMS of Delaware. How did non-stockpile-grade material get into our stockpile, if we did not buy it? We paid the regular price for what we bought.

Mr. CANNON. I do not know. I suppose we bought it. I do not set those objectives.

Mr. WILLIAMS of Delaware. The letter furnished by Mr. Robert L. Kunzig, the Administrator of the GSA, states that we paid an average of $648.15 for what we have in the stockpile, that the prevailing domestic price is $200 a ton, and the foreign price, if imported, is $425 a ton, and the bulk of what we are stockpiling has to be paid for at the foreign price because we do not produce it.

I had asked them with regard to question No. 3, the prices paid in the procurement of any of the listed commodities during calendar years 1966, 1967, 1968, and 1969. I had asked them what we were buying. They stated:

However, only two of the materials listed: asbestos, chrysotile, and manganese, battery grade natural, have been purchased since June 30, 1966.

So they still have been purchasing this material. As the Senator has pointed out, as I understand it, we are still buying domestically at a price higher than we are proposing to sell it.

I recognize that much emphasis is placed in the committee report, that we should protect the industry. But, as I stated earlier, we in the Senate are supposed to be representing the American taxpayers, who pay the cost for this material. We have approximately $8 billion worth of so-called strategic materials; and, as we sell it, we should get the most money we can, with the least disruption as possible to the market. But at least we should remember that we are all working for the taxpayers, and the Government certainly can use this money.

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

Mr. WILLIAMS of Delaware. I yield.

Mr. MILLER. I should like to ask the Senator from Nevada again, so I make sure that I understand his response: He is saying that the second sentence on page 3 would read:

The present market value of this per short ton is $200 on the domestic market and $400 on the foreign market.

Mr. CANNON. It is $425.

Mr. MILLER. I should like to ask the Senator to refer to the committee report on the previous bill to which I referred earlier, and on page 2 of that committee report we find the statement:

The current market value for all the material in the stockpile ranges from $20 to $125 per short ton.

Do I correctly interpret that to mean $20 on the domestic market and up to $125 on the foreign market?

Mr. CANNON. No. The price there ranges from $20 up to $125 on the domestic market, and it ranges from $45.60 up to $118 on the foreign market. The reason for this is that it is not all the same grade. There are different grades, and corundum is now excess to stockpile requirements. That is the reason for the difference in the valuation.

Mr. MILLER. But there is no difference in the valuation with respect to the commodity referred to in the present bill?

Mr. CANNON. No. The commodity in the present bill is below stockpile standards. It does not meet the present stockpile standards and so has one flat value for that particular type and grade.

Mr. MILLER. I appreciate the responses.

I should like to ask the Senator from Delaware or the Senator from Nevada, or both, this question: Under the Williams amendment, would it be a case of where we would dispose of this to the highest responsible bidder, whether it was a responsible bidder on the domestic market or on the foreign market?

Mr. WILLIAMS of Delaware. I will answer that, because I checked with the GSA.

Only if they so decide to sell it. This does not at all interfere with or change the policy of the Government. If the Government was going to accept bids from foreign governments before, they could under this amendment. They do not have to do it.

Mr. MILLER. In other words, under the Williams amendment, the highest responsible bidder refers to the domestic bidder.

Mr. WILLIAMS of Delaware. Not necessarily. It refers to whomever they want to sell it to. But if they are going to sell it on the foreign market, they have to sell it for the most money they can get. They can make the determination.

Mr. MILLER. If they decide to sell it on the world market, it will be to the highest responsible bidder on the world market. If they decide to sell it on the domestic market, it will be to the highest responsible bidder on the domestic market.

Mr. WILLIAMS of Delaware. That is correct.

Mr. MILLER. Why should we not require them to sell to the highest responsible bidder, whichever will produce the greatest amount of income to the United States, whether it is on the world market or on the domestic market?

Mr. WILLIAMS of Delaware. They can do that. But I did not tie it down because they may not want to sell it to Russia or some other country. But they can have discretion. It is my intention that we get the most money we can out of it, and some of these commodities will have to be sold on the world market if we ever get rid of them.

I mention tungsten, for example. We have enough tungsten in the stockpile here to last our Government 25 years. If we are going to get rid of any of it, we will have to sell some of it on the foreign markets, and that may be true with respect to some of the others.

Again, all I am suggesting is that we do not start selling bargains, that we sell it to the highest responsible bidder—and I put the word "responsible" in—and they can make the determination. This is exactly the manner in which we would sell it if we were individuals.

Mr. MILLER. Mr. President, will the Senator yield further?

Mr. WILLIAMS of Delaware. I yield.

Mr. MILLER. Here, again, I should like to address my question to either Senator. I am concerned about what appears to be a very great disparity between the domestic price of $200 per ton and the world price of $425 per ton. I understand that shipping costs are involved. But, offhand, it sounds as though there is a very great spread. That prompts this question: If the world market is $425, would not the domestic price be considerably higher than $200 per ton?

Mr. WILLIAMS of Delaware. It would, unless the Government was putting our material on the market out of the stockpile and holding the domestic market down artificially. That is the point I am trying to prevent. On those commodities on which we have a deficit and will have to import, we will have to pay the world price. I do not see why we cannot at least hold it to the world market price, what it would cost the same consumers if they bought it at the world market price.

To show how this would work, in a case heretofore, which we handled last year, it was platinum. We do not produce any platinum in this country. Platinum was proposed to be sold at $100 lower per unit on the domestic market than the prevailing price on the world market. We were able to stop it here and insist that they get the competitive bids on it. Had we not been able to do that, they would have sold the platinum for approximately $80 million below the world market price. I was told by the General Services Administration a couple of months ago that had that bill gone through and we had disposed of this platinum at $100 below the world mar-

ket price—they are now buying the commodity on the world market—we would be paying $100 more than we sold it for last year.

That is what could happen here without this amendment, if we sell this commodity at $200 now, or around that figure, when our surplus is gone—as it was with platinum, silver, and some of the other commodities—it would move over to the $425 price; and if the Government needed it for the defense program, we would pay $425.

Mr. MILLER. The committee report states:

> The U.S. imports in 1969 totaled 640,000 short tons, mostly chrysotile from Canada.

Would the Senator have any information about the average price that was paid per ton on that 640,000 imported tonnage?

Mr. WILLIAMS of Delaware. I do not know, but $648.15 per ton is the average cost to us.

Mr. MILLER. That is correct. But I point out that I believe the committee report is talking about the amount imported by domestic manufacturers rather than the amount imported for placement in the stockpile.

Mr. WILLIAMS of Delaware. That is correct. I would assume that would be about $425, because that is the prevailing world price. I cannot say what the price was last year, although I assume it would be about the same, because the committee report was based upon a letter of January 15, 1969, addressed to then Vice President Humphrey. But the $425 figure is furnished as of today. The committee report, as the Senator points out, does not show the price at that time. I cannot answer just what it was a year ago.

Mr. MILLER. If the Senator will yield, I should like to ask the Senator from Nevada if he has any information on what price was paid by our domestic importers, what average price was paid, on the 640,000 short tons that we imported mostly from Canada last year.

Mr. CANNON. I have no information on the price paid for that, because that is not the same grade of material as this. It has no relation to this material that is being sold. We acquired this material back in mid-1950. We paid an average of $648.15 because it was being subsidized. It was for the purpose of trying to get that type of industry started in the United States at the time. So we paid far more than the market price, had we been importing it. But we wanted to get a source of material started in this country. So that is the average price paid in the mid-1950's when the material was purchased. The material does not meet stockpile needs so the material we bought last year was of the higher grade material than is proposed to sell here. There is no need in the stockpile for this material.

Mr. MILLER. The Senator knows that I served on the Stockpile Subcommittee at one time, when I was on the Armed Services Committee, so I understand how some of these things can arise, where it appears we paid more money for the original stockpile item than the price on the market today.

What does concern me is the spread between the $200 domestic price and the $425 foreign price which the Senator has pointed out. When we have such a disparity, I can see the problem with respect to the disposal of the surplus items. I can understand the concern of the Senator from Delaware (Mr. WILLIAMS) that we follow the highest responsible bidder approach.

May I say, in addition to that, that if it were not because of this disparity in price, or the disparity in price shown in the previous committee report—in other words, we are talking about very small amounts of play in the market—I do not think I could get too exercised about giving discretion to the administrator to follow the orderly practices and approaches we have generally followed in the past. But when there is this possible spread, then I do get concerned, because there is a great amount of money involved in this. When we realize that we are talking about 20,000 tons, a difference of $100 a ton could be $20 million. I think we are talking about a substantial amount of money.

Mr. CANNON. The answer to that problem in this country is the same I gave to the Senator earlier. It depends on the grade of material. For example, perhaps $200 a ton reflects the estimated market value for excess material in Government inventory considering the grade and cost. The grade and cost is below that of stockpile standards. The price of $425 a ton includes cost, insurance, and freight at European ports or normal port of export for commercial grade material. This is not a commercial grade material. Commercial grade material is the type of material we are putting in the stockpile now. That is the estimated price on commercial grade material in a foreign market.

Mr. MILLER. In view of that information, does the Senator have a comparable foreign price with respect to quality of commodity, one that is comparable to the $200 domestic price he earlier gave us? I asked him what was the domestic price and what was the foreign price, market price for this commodity is $200. and the foreign price was $425. Now, I find that we are talking about apples and oranges, that the $200 relates to an inferior grade, and the $425 apparently relates to commercial quality.

Mr. WILLIAMS of Delaware. He has it wrong. The question I asked from the GSA in a letter dated March 25—I will read the question—I asked him to furnish me with the average cost of this material including the purchase price, transportation, storage cost. That is No. 1. No. 2, the present prevailing price in domestic markets and the prevailing price for similar commodities in the world market—similar commodity—same grade. The answer is that the original cost was $648.15 per ton. The prevailing market price for this commodity, is $200. Prevailing world price is $425, for similar commodities. So let us remember we are talking about the same commodity if we buy it on the world market, a similar commodity to that which is being sold at $425.

My point is, the taxpayer can use the $425.

The request for the information was on March 25, 1970, and the GSA letter is dated April 2, 1970, which is as late as one can get. The information was furnished to me by the GSA.

Mr. President, on this amendment I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAVEL). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Delaware (Mr. WILLIAMS). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Iowa (Mr. HUGHES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. JORDAN), the Senator from Louisiana (Mr. LONG), the Senator from Georgia (Mr. RUSSELL), and the Senator from New Hampshire (Mr. MCINTYRE) are absent on official business.

On this vote, the Senator from Connecticut (Mr. RIBICOFF) is paired with the Senator from Washington (Mr. MAGNUSON). If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Washington would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Hawaii (Mr. FONG), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

The Senator from Idaho (Mr. JORDAN), the Senator from Illinois (Mr. PERCY), the Senator from Pennsylvania (Mr. SCOTT), and the Senator from South Carolina (Mr. THURMOND) are absent on official business to attend the Interparliamentary Union meeting at Monaco.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New York (Mr. GOODELL), the Senator from Maryland (Mr. MATHIAS), and the Senator from Ohio (Mr. SAXBE) are detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "yea."

On this vote, the Senator from Hawaii (Mr. FONG) is paired with the Senator from Illinois (Mr. PERCY). If present and voting the Senator from Hawaii would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from New York would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Pennsylvania (Mr. SCOTT). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Pennsylvania would vote "nay."

The result was announced—yeas 39, nays 32, as follows:

[No. 113 Leg.]

YEAS—39

Aiken	Curtis	Miller
Allen	Dole	Mondale
Allott	Dominick	Murphy
Bible	Ellender	Nelson
Boggs	Fannin	Packwood
Brooke	Fulbright	Pastore
Burdick	Goldwater	Pearson
Byrd, Va.	Griffin	Pell
Byrd, W. Va.	Gurney	Prouty
Case	Hansen	Proxmire
Cook	Hartke	Smith, Ill.
Cooper	Hruska	Spong
Cotton	Javits	Williams, Del.

NAYS—32

Bayh	Holland	Stennis
Bellmon	Hollings	Stevens
Bennett	Inouye	Symington
Cannon	Jackson	Talmadge
Cranston	Mansfield	Tower
Eastland	McGee	Tydings
Ervin	McGovern	Williams, N.J.
Gore	Muskie	Yarborough
Gravel	Randolph	Young, N. Dak.
Harris	Schweiker	Young, Ohio
Hart	Smith, Maine	

NOT VOTING—29

Anderson	Jordan, Idaho	Moss
Baker	Kennedy	Mundt
Church	Long	Percy
Dodd	Magnuson	Ribicoff
Eagleton	Mathias	Russell
Fong	McCarthy	Saxbe
Goodell	McClellan	Scott
Hatfield	McIntyre	Sparkman
Hughes	Metcalf	Thurmond
Jordan, N.C.	Montoya	

So the amendment of Mr. WILLIAMS of Delaware was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill (H.R. 16291) was read the third time and passed.

CHROMITE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 750, H.R. 16290.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 16290) to authorize the disposal of refractory-grade chromite from the national stockpile and the supplemental stockpile.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. WILLIAMS of Delaware. Mr. President, the bill now before the Senate is a House bill and it is a companion for S. 3446, which is No. 717 on the calendar.

I have an amendment at the desk which was related to S. 3446. I call up that amendment now and I ask unanimous consent that if the amendment needs technical change to make it correspond with the House bill, it be so modified. However, it is the same amendment.

The PRESIDING OFFICER. Without objection it is so ordered. The amendment will be stated.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with. It is the same amendment which has already been read twice.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 2, line 9, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 17 through 21.

On page 3, line 1, strike "(3)" and insert "(2)".

Mr. WILLIAMS of Delaware. Mr. President, this is the same amendment again. I have discussed the amendment with the acting chairman of the committee. In light of the preceding votes I am wondering if we could proceed to accept these amendments and take them to conference on the same basis.

Mr. CANNON. Mr. President, I say in response to the Senator that the case made before our subcommittee indicated that the administration needs the flexibility which they requested in disposing of this material. I would say also that previous administrations have likewise had the same flexibility in disposing of these stockpile materials that are surplus to our stockpile needs.

In view of the fact that our colleagues on the other side of the aisle are not willing to support the administration's request for flexibility in these bills, I am willing to accept the amendments and take them to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time and passed.

GRAPHITE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 749, H.R. 16289.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 16289) to authorize the disposal of natural Ceylon amorphous lump graphite from the national stockpile and the supplemental stockpile.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. WILLIAMS of Delaware. Mr. President, this is House bill 16289, and it corresponds with S. 3451, Calendar No. 718.

I have the same amendment at the desk that is related to the Senate bill. I call up the amendment at this time, and I ask that it be related to the House bill, with whatever technical corrections may be necessary to make it correspond with the House bill.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the amendment be considered as having been read.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 2, line 9, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 17 through 21.

On page 3, line 1, strike "(3)" and insert "(2)".

Mr. CANNON. Mr. President, this measure relates only to the disposal of surplus stockpile materials. My position is the same as it was on the last measure. The administration has requested the flexibility and they have said they need it. If our colleagues on the other side of the aisle are not willing to support the administration's request, I am willing to take it to conference.

Mr. WILLIAMS of Delaware. Mr. President, this does not restrict the administration from selling it; it merely requires that in selling it, the sale be to the highest competitive bidder, after receiving competitive bids. I appreciate the position of the Senator from Nevada. I shall not discuss the amendment further, since they are willing to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time and passed.

MOLYBDENUM

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 754, H.R. 16297.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 16297) to authorize the disposal of molybdenum from the national stockpile.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

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

Mr. WILLIAMS of Delaware. Mr. President, this is H.R. 16297, and it is a companion bill to S. 3452, Calendar No. 719.

I have the same amendment at the desk. I call up the amendment under the same circumstances and I ask that it be adjusted to correspond to the House bill.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the amendment be considered as read.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

H.R. 15839

On page 2, line 5, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 13 through 17.

On page 2, line 18, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time and passed.

MANGANESE ORE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 753, H.R. 16295.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 16295) to authorize the disposal of natural battery-grade manganese ore from the national stockpile and the supplemental stockpile.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. WILLIAMS of Delaware. Mr. President, this bill is a companion bill to S. 3456, Calendar No. 720.

I have the same amendment at the desk and I offer it under the same circumstances; and I ask that it be related to the House-passed bill.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the amendment be considered as having been read.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 2, line 10, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 18 through 22.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time and passed.

BAUXITE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 748, H.R. 15998.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 15998) to authorize the disposal of Surinan-type metallurgical-grade bauxite from the national stockpile and the supplemental stockpile.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

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

Mr. WILLIAMS of Delaware. Mr. President, this is a companion bill to S. 3457, Calendar No. 721. I call up the same amendment which is at the desk and ask that it be related to the House-passed bill.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the amendment be considered as having been read.

The PRESIDING OFFICER. Without objection, it is so ordered, and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 2, line 10, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 18 through 22.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time, and passed.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that beginning with Calendar No. 722, H.R. 12941, up to and including Calendar No. 731, H.R. 15839, that that portion of the calendar be considered in sequence without unanimous consent being requested each time.

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

CADMIUM

The Senate proceeded to consider the bill (H.R. 12941) to authorize the release of 4,180,000 pounds of cadmium from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment, with the request that proper adjustments be made to correspond to the Senate bill, and I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 2, line 9, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 17 through 21.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read the third time, and passed.

COBALT

The Senate proceeded to consider the bill (H.R. 15021) to authorize the release of 40,200,000 pounds of cobalt from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I offer the same amendment to this bill.

The amendment offered by Mr. WILLIAMS of Delaware is as follows:

On page 2, line 9, after the word "only", strike out "after publicly advertising for bids" and insert "to the highest responsible bidder after publicly advertising for competitive bids".

On page 2, strike out all of lines 17 through 21.

On page 3, at the beginning of line 1, strike out "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

BISMUTH

The Senate proceeded to consider the bill (H.R. 15831) to authorize the disposal of bismuth from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I previously submitted; and ask unanimous consent that it be printed in the RECORD as if read.

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

The amendment is as follows:

On page 2, line 8, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 16 through 20.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

CASTOR OIL

The Senate proceeded to consider the bill (H.R. 15832) to authorize the disposal of castor oil from the national stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I did to the previous bills. I ask unanimous consent to dispense with the reading of the amendment and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 4, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for the competitive bids,".

On page 2, strike out all of lines 12 through 16.

On page 2, line 17, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

ACID GRADE FLUORSPAR

The Senate proceeded to consider the bill (H.R. 15833) to authorize the disposal of acid grade fluorspar from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I previously offered to the other bills. I ask unanimous consent that the reading of the amendment be dispensed with and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 9, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 17 through 21.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

MAGNESIUM

The Senate proceeded to consider the bill (H.R. 15835) to authorize the disposal of magnesium from the national stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I submitted to the other bill. I ask unanimous consent that the reading of the amendment be dispensed with and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 4, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 12 through 16.

On page 2, line 17, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

TYPE A, CHEMICAL GRADE MANGANESE ORE

The Senate proceeded to consider the bill (H.R. 15836) to authorize the disposal of type A, chemical grade manganese ore from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I submitted to the previous bills. I ask unanimous consent that the reading of the amendment be dispensed with and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 10, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids.".

On page 2, strike out all of lines 18 through 22.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

TYPE B, CHEMICAL GRADE MANGANESE ORE

The Senate proceeded to consider the bill (H.R. 15837) to authorize the disposal of type B, chemical grade manganese ore from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I submitted to the other bill. I ask unanimous consent that the reading of the amendment be dispensed with, and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 10, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids.".

On page 2, strike out all of lines 18 through 22.

On page 3, line 1, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

DISPOSAL OF SHELLAC

The Senate proceeded to consider the bill (H.R. 15838) to authorize the disposal of shellac from the national stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to

this bill. I ask unanimous consent that the reading of the amendment be dispensed with and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 4, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 12 through 16.

On page 2, line 17, strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

The bill was read the third time, and passed.

CHROMITE

Mr. BYRD of Virginia. Mr. President, we have been proceeding a little rapidly. I would like to ask the distinguished Senator from Nevada (Mr. CANNON) if I might put several questions to him in regard to a bill which has already been acted on.

Mr. CANNON. Certainly.

Mr. BYRD of Virginia. It is Calendar No. 717, S. 3446, a bill to authorize the disposal of chromite.

May I ask the distinguished Senator from Nevada if he has a record to indicate when this chromite was first put in the stockpile.

Mr. CANNON. The chromite covered by this bill was put into the stockpile in the mid-1950's.

The material to be disposed of is in excess to stockpile needs. The total inventory of refractory grade chromite as of January 31, 1970, was 1,223,931 short dry tons. The stockpile objective, established January 5, 1967, is 400,000 short dry tons, thus leaving an excess of approximately 826,931 short dry tons, which is covered by this bill.

Mr. BYRD of Virginia. Has any been put into the stockpile in the last 5 years?

Mr. CANNON. I do not have that information.

I may say, as the committee report points out, that refractory grade chromite is that type of chrome ore which is suitable for making bricks and cement used in such high temperature applications as metallurgical furnaces. Consumption of refractory grade chromite has been decreasing in recent years, as a consequence of the decrease in the use of open-hearth furnaces in steel production. Import sources in 1969 were the Republic of South Africa—40 percent—and the Philippines—60 percent.

There has been a continued reduction of use in recent years.

I could not say specifically that there has been no acquisition within the past few years, but it would seem to be highly unlikely.

Mr. BYRD of Virginia. Is Rhodesia one of the major sources?

Mr. CANNON. The import sources in 1969 were the Republic of South Africa—40 percent—and the Philippines—60 percent.

Mr. BYRD of Virginia. Is not Rhodesia one of the chief sources, though, of chromite? I think the figures the Senator is reading are of the chromite imported into the United States.

Mr. CANNON. I do not know who the major producer is.

Mr. BYRD of Virginia. My understanding—and perhaps the Senator has a different record—is that since the United States imposed economic sanctions on Rhodesia, chromite has been obtained from the Soviet Union at a price approximately double the price which previously had been paid for chrome.

I wonder if the Senator from Nevada has any information on that.

Mr. CANNON. I do not have any information other than to say that the entire U.S. supply of refractory grade chromite, which is covered in the bill, comes primarily from the Philippines and some from Africa. So it would appear that none of that grade of chromite is imported from Russia. There is a metallurgical grade of chromite. The import sources to the United States are Turkey, Southern Rhodesia, Union of South Africa, the Philippines, and New Caledonia.

Mr. BYRD of Virginia. That is the metallurgical grade?

Mr. CANNON. That is the metallurgical grade.

Mr. BYRD of Virginia. That is not involved in the legislation considered today?

Mr. CANNON. No. The refractory grade is the one I read.

Mr. BYRD of Virginia. So the metallurgical grade chromite is not involved in any of the bills which the Senator from Nevada is handling today?

Mr. CANNON. No. The majority of the refractory grade chromite comes from the Philippines, with minor quantities from Africa and other sources. That is the refractory as distinguished from the metallurgical.

TUNGSTEN

The Senate proceeded to consider the bill (H.R. 15839) to authorize the disposal of tungsten from the national stockpile and the supplemental stockpile.

Mr. WILLIAMS of Delaware. Mr. President, I submit the same amendment to this bill that I have offered to other previous bills. I ask unanimous consent that the reading of the amendment be dispensed with, and that it be printed in the RECORD at this point.

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

The amendment is as follows:

On page 2, line 8, strike out all after the word "only" and insert the following: "to the highest responsible bidder after publicly advertising for competitive bids,".

On page 2, strike out all of lines 16 through 20.

On page 3, line 1 strike "(3)" and insert "(2)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JACKSON. Mr. President, I would like to propound some questions on the subject of tungsten to the able junior Senator from Nevada, who is in charge of the bill.

The first question is as follows: It is my understanding that the General Services Administration, if this measure is approved, proposes to dispose of tungsten for both domestic consumption and for the foreign market. Is that correct?

Mr. CANNON. Let me explain. There is currently about 83 million pounds of tungsten which is excess to stockpile needs. Of this amount, some 17.4 million pounds is available for immediate release, since it is a part of the DPA stockpile and congressional authority is not required. The GSA plans to offer this for domestic consumption only. The balance they would like to dispose of for both domestic consumption and on the foreign market, but there will be no slighting of domestic consumers.

Mr. JACKSON. Has GSA consulted with industry in regard to the sale of the tungsten material currently authorized for disposal, and will GSA consult with industry regarding the additional material for which legislation has been requested?

Mr. CANNON. By letter of February 24, GSA requested comments and recommendations from the industry relative to the disposal procedure preferred by industry in the Government's disposal of the remaining 17.4 million pounds of tungsten currently authorized for sale. This is in keeping with GSA's practice of consulting with industry.

After careful analysis of the views of industry, GSA, on March 25, announced that the tungsten will be offered for domestic consumption only.

With regard to the additional tungsten for which congressional authorization has been requested, GSA believes that the additional excess is adequate to provide for sales both in this country and abroad. The matter of disposal of this material will be discussed with the industry subsequent to GSA's experience with efforts to market the 17.4 million pounds currently authorized for sale.

Mr. JACKSON. If I remember correctly, in early 1969 it was estimated that the then current figure of 38 million pounds of tungsten available for sale from the stockpile would cover the domestic shortfall between production and consumption for about 12 years. Yet in a year's time we have seen that amount virtually exhausted. How did this come about?

Mr. CANNON. China has traditionally been a major supplier of tungsten ore to both the Communist world and the free world. In 1969, China cut back on sales to the West as well as other Communist countries, thereby forcing European prices up to a point where it was possible to buy U.S. stockpile ore and economically ship it to Europe. By December, there remained only 3 million pounds of ore available from the stockpile, and this was restricted to U.S. consumption.

Mr. JACKSON. What steps will be taken to prevent a similar run on the remaining 66 million pounds which would be authorized for disposal by this measure?

Mr. CANNON. It is my understanding that approximately 15 to 20 million pounds will be set aside for domestic consumption. This amounts to a 4- or 5-year supply that would be in addition to the previously mentioned supply of 17.4 million pounds already earmarked for domestic disposal.

Mr. JACKSON. In determining this breakdown, what provision will be made by GSA to insure that domestic needs will receive priority in disposal?

Mr. CANNON. As I stated before, GSA will consult with industry, and I have the strongest assurance by them that they will remain in close contact with industry in order to work out a disposal program in cooperation with our domestic consumers.

Mr. JACKSON. Be that as it may, I want it firmly established that it is our intent and concern that domestic needs will receive their just consideration when it comes time to dispose of the additional 66 million pounds of tungsten.

Mr. CANNON. I certainly can assure the Senator that that will be done.

I would like to point out that in the March 30, 1970, edition of Metals Week, it was stated that it is quite possible that by the end of 1970 the United States could be self-sufficient in tungsen. New production facilities scheduled to be opened in 1970 could result in U.S. production on a 13 million pound per year basis, which compares favorably with last year's domestic consumption.

Mr. JACKSON. Mr. President, that concludes my questions at this time. I would like to point out, however, that the able senior Senator from Oregon (Mr. HATFIELD) had hoped to be present today to ask some questions about this matter, but he is unavoidably detained. I am advised than an Oregon company, the Wah Chang Co., in Albany, Oreg., is a consumer of tungsten concentrate. I know the Senator is anxious to assure that domestic needs will be met.

Mr. WILLIAMS of Delaware. Mr. President, as the Senator from Washington has pointed out, the Senator from Oregon (Mr. HATFIELD) is unavoidably away from the floor, and is unable to participate in this colloquy.

I am familiar with the interest and concern in this tungsten bill by the senior Senator from Oregon (Mr. HATFIELD). At this point, I ask unanimous consent that a statement by Senator HATFIELD and related material be printed in the RECORD.

There being no objection the statement and related material were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR MARK O. HATFIELD REGARDING THE TUNGSTEN STOCKPILE RELEASE BILL

Mr. President, I would like to point out that we should be aware that a portion of this tungsten has found its way to Eastern Europe in 1969, because of Red China's action in not supplying Eastern Europe.

In 1969, when there was the run on the GSA supply, there were one million one hundred thousand pounds of tungsten metal in concentrates shipped to Eastern Europe. In January, 1970, there were shipments of 567,946 pounds (w). There was virtually none in 1968. I hope that GSA will keep us informed if there are indications that this is continuing.

Mr. President: So as to shed more light on this problem, I ask that there be reprinted at this point in the record, 3 items: first, an estimate of world tungsten reserves in 1965; second, an article from the American Metal Market of February 16, 1970, on tungsten by Walter T. Belous; third, a recent article from Metals Week of March 30, 1970, "Tungsten—The Year the Impossible Happened."

EXHIBIT NO. 1 [1]

World tungsten reserves in 1965

[Estimates of measured, indicated, and inferred ore in million pounds of contained tungsten]

Free world:	
Argentina	8
Australia	38
Bolivia	82
Brazil	40
Burma	76
Canada	16
Cambodia	5
France	2
Japan	2
Malaysia	21
Mexico	2
Nigeria	(2)
Peru	9
Portugal	30
Southern Rhodesia	2
South Korea	106
Spain	10
Sweden	(2)
Tanganyika	(2)
Thailand	8
United Kingdom	6
United States	135
Total free world	523
Communist countries:	
Mainland China	1,877
North Korea	(3)
U.S.S.R.	27
Total communist	1,903
Total world	2,427

[1] Source PB–182–697 "Economic Analysis of The Tungsten Industry." By Charles River Associates, Incorporated. Distributed by: Clearinghouse, U.S. Dept. of Commerce/Nat'l. Bureau of Standards/Institute for Applied Technology.

[2] Less than 1.

[3] Not available.

Source: U.S. Bureau of Mines, Department of the Interior, Mineral Facts and Problems, 1965, (Washington, D.C.: Government Printing Office), 1965.

U.S. Bureau of Mines, Department of the Interior, Commodity Data Summaries, January 1960.

[From American Metal Market, Feb. 16, 1970]

TUNGSTEN—THE IDEA METAL

(By Walter T. Belous, sales manager, Teledyne Wah Chang)

At the outbreak of World War I, Germany was buying large quantities of tungsten for use in high speed cutting tools, driving the price of tungsten ore to over $80.00 per short ton unit. After the war, the price dropped below $10.00, then ranged from $22.00 to $27.00 until the outbreak of the Korean Conflict in 1950. Tungsten demand again surged. The price settled at $65.00, frozen by the U.S. Office of Price Stabilization.

After seeing a low of $8.25 per S.T.U. in 1962 when mainland China flooded the European market, the world price has once again risen to a heady level of $80.00 per S.T.U. The prospect of war and mainland China's position were again at the center of the matter.

RED CHINA HALTS FLOW

In a January 22 Wall Street Journal front page article, it is reported that Red Chinese buyers were seeking key defense materials "the Communist nation, once a major source of antimony and tungsten ore for Free World industrial users has practically halted sales of these and other metals". "There is speculation that China is arming itself with metals and other key commodities because of the serious threat of an outbreak of hostilities with Russia". "China has already completely halted its shipments of tungsten".

As a result, over the past several months there have been consistent reports of Free World tungsten ore, including GSA ore, being sold in Eastern Europe and even to Russia. Obviously, China's position in the tungsten market is very important. Estimates are that over three-fourths of the worlds tungsten reserves are in China. Combined reserves in China, North Korea and Russia are about four times as great as those in the Free World.

Since the United States does not trade with China, we tend to underestimate her activities in the rest of the world. Throughout Europe, China's supply is evidently so substantial that her actions control the market price. For example, in 1966, extracting from the "Tungsten Statistics" published by the UNCTAD on tungsten, imports of Chinese tungsten ore amounted to the following percentages of consumption in the countries listed—

[In percent]

West Germany	55
France	39
Japan	13
Sweden	22
United Kingdom	21

Throughout the 1960's, estimates have been that China has produced about ⅓ of world output. In recent years exports have been reported as declining and the Wall Street Journal article as well as reports in London Metal Bulletin and American Metal Market indicates that currently they are practically nil.

METAL TRADERS ACT

The metal traders, with their extensive worldwide facilities, were the first to spot tightness in the European market and buying pressure from Eastern Europe and Russia. In a matter of weeks they bought out all of the available GSA ore while consumers, in varying degrees, were caught napping, in the false security that ample material was available from GSA at the off the shelf price of $43.00 per unit.

The speed with which GSA ore was grabbed up can be noted by reference to the following table:

TABLE 1.—PURCHASES OF TUNGSTEN CONCENTRATES FROM GSA

[Thousands of pounds—tungsten content]

	1965 thru 1969		
	Consumers	Dealers	Total
1965	843	669	1,512
1966	6,397	242	6,639
1967	4,457	1,934	6,931
1968	1,879	1,345	3,224
1969	6,413	30,880	37,293
Total	19,989	35,070	55,059

	1969		
	Consumers	Dealers	Total
January	408	0	408
February	299	296	595
March	302	381	683
April	43	1,113	156
May	971	7,698	8,669
June	990	2,468	3,458
August	162	78	240
September	278	5,482	5,760
October	1,129	2,412	3,541
November	499	7,838	8,337
December	1,332	4,114	5,446

In the four month period of September through December, dealers bought up 20 million pounds of tungsten in concentrates. That amount equaled the total quantity bought by consumers through all of 1965, 1966, 1967, 1968 and 1969 put together.

Back in mid-1965, the U.S. stockpile contained in excess of 200 million pounds of tungsten in concentrates acquired during the 1951 to 1956 procurement program established to maintain domestic output and provide strategic reserves. (Strategic 120 million pounds, DPA 77.9 million pounds, supplement al 5.8 million pounds.)

GSA SUPPLY DEPLETED

In February 1965, the General Services Administration (GSA) announced a long range plan to dispose of approximately 77.9 million pounds of tungsten in concentrates from the DPA inventory over a 25 year period. By the end of 1969, less than five years later, all of this material had been sold, less about 17 million pounds held back by the Office of Emergency Planning (OEP). Of this 60 million pounds sold, approximately 36 percent has gone to consumers, and 74 percent has gone to dealers. In January, General Services Administration announced that approximately 17.7 million pounds of tungsten held in the Defense Production Act inventory, will be made available for sale in the near future. The tungsten is made up of approximately 1.6 million pounds of natural scheelite, 9.5 million pounds of synthetic scheelite, 3.8 million pounds of ferberite, and 2.8 million pounds of hubnerite. It is expected the offering of this material will be distributed in about 45 days at which time the public announcement will be made of the offering, including specifics on price and terms and conditions of sale. It is believed that this 17 million pounds is the material previously reserved by the Office of Emergency Planning.

In these years domestic tungsten consumption averaged about 14 million pounds vs. domestic mine production of 8 million pounds. The GSA stockpile releases, along with some quantities of foreign ore made up the difference. A stable price of $43.00 (base) prevailed from early 1966 until the end of 1969. The London price fluctuated in a range from about $33.00 to $47.00. In the last quarter of 1969 the shortage developed in Europe. The dealers took advantage of the GSA purchase terms, designed to protect consumers and stabilize the price, which provided for a 5 percent deposit with delivery to be taken within one year. Once the disparity between the London price and the U.S. price was apparent, and GSA was committed to sell at its shelf price of $43.00 with 5 percent deposit, the stampede was on. In the three month period—September, October and November—17.6 million pounds of tungsten were brought up and GSA was sold out of authorized material except for some small quantities which were later reserved for domestic consumption.

SOME OPTIMISM

At this moment, there are still some 85 million pounds of tungsten declared excess to the Government stockpile shelves. The Nixon Administration intends, in its FY 71 budget (starting July) to dispose from the nation's stockpiles, $750 million worth of metals and a few other commodities. Therefore, there is some hope that Congress will authorize sale of additional excess tungsten by the end of the first quarter.

On the other hand, one must realize that there are questions of greater national significance before Congress and the industry's sense of urgency may not be translated into quick congressional action. Senator Brooke of Massachusetts introduced Bill S. 3088 last October 28 to authorize disposal of tungsten from the stockpile. It was referred to the Committee on Armed Services, and to our knowledge, has not yet been acted upon.

Congressman Wolff from New York is expected to introduce similar legislation into the House of Representatives before the end of February. A stipulation that tungsten concentrates authorized for sale by Congress, are to be consumed domestically, will be provision of this bill. Price is the big question that remains at hand.

As late as the last quarter of 1969, the London price was below $50.00. It is only in the last several months that the price has rapidly risen to a current level of $80.00. GSA's policy on price as well as delivery and payment terms, will set the domestic market price and will have great influence on the European market.

DEMAND MAY DROP

Obviously, if the Chinese start to sell large quantities the supply will be increased and the price could come down fairly rapidly. No doubt, we have to anticipate some leveling off in demand as we read a fairly constant stream of lay-off announcements in the automotive and defense related industries.

When General Electric resumes full output, the tightness in product availability in the United States should ease somewhat. However, in the past Union Carbide's mining and milling operations have been hampered by heavy snow accumulations. A recurrence this winter could create further shortages.

In summary, we feel that higher prices are in store for the U.S. market, although the availability of GSA material will keep the U.S. price from approaching the London price.

CONGRESS HAS KEY

We urge all parties having an interest in tungsten to make their opinions on further stockpile releases known to their Congressmen and Senators as well as to the GSA and the Commerce Department. Prompt congressional action should go a long way in removing the uncertainty in the market and avoiding inflationary prices caused by temporary shortages.

[From American Metal Market, Feb. 16, 1970]

A CYCLICAL AND MYSTERIOUS MARKET

(By John P. Ruth, new and rare metals editor)

During recent months the world tungsten ore market has been unusually strong. A recent peak in London for concentrates was about 755 shillings per long ton unit, equal to about $80 per short ton unit, as compared with the last U.S. stockpile sales price of around $43.

Some merchant traders are wary of predicting higher world prices and some hold the opinion that the market could soften somewhat, especially if there should be trends towards world peace. There is some opinion that the Chinese might resume sales should the price go a little above 800s. And forthcoming sales from the U.S. stockpile might also tend to ease the market, but these might be at prices above $43. Some guess it could be released at around $50. Time will tell.

Tungsten experts say that no one really has all the answers why the market has been so bullish in recent months. Among the reasons given are these:

Rising consumption in Western and Eastern Europe.

Probable hoarding of some tungsten materials in Europe, some of which might be in a form converted from material sold by the U.S. government.

The demand-supply imbalance in the U.S., excluding the government reserves.

Rather meager increase in world ore production.

Lack of recent sales from the stockpile and the growing feeling or psychology of shortage.

Halt of selling by the Chinese probably largely because of the Viet Nam war, the possibility of accelerated troubles in the Middle East, coupled with an urge to bull the market.

While tungsten has been used in the past in combat tank armor plate and also in projectiles to pierce armor plate, the latest military concept appears to be that tanks can be neutralized without the use of tungsten, probably by some sophisticated form of "molotov cocktail" or by magnesium fire bombs. Nevertheless, there is still some urge in some parts of the world to hold heavy tungsten during times of war.

NEW GSA SALES

The January 26 announcement by the General Services Administration that more tungsten will be released from the stockpile could help to relieve some of the market pressure. As already noted these sales might be at above $43 per short ton unit and they might be restricted to domestic use.

GSA said approximately 17,700,000 lbs. of tungsten held in the Defense Production Act inventory, will be made available for sale in the near future. The tungsten is made up of approximately 1,600,000 lbs. of natural scheelite, 9,500,000 lbs. of synthetic scheelite, 3,800,000 lbs. of ferberite, and 2,800,000 lbs. of hubmerite. It is expected the offering of this material will be distributed in about 45 days (after Jan. 26) at which time the public announcement will be made of the offering, including specifics on price and terms and conditions of sale.

The tungsten market traditionally has been most difficult to forecast, let alone the influence of government operations. It has been one of the most cyclical and mysterious of the metal markets.

In late 1969, the U.S. ore and concentrate stockpile held about 172 million pounds of contained tungsten, equivalent to about 13 years domestic use. However, there is some opinion that the annual U.S. consumption may more than triple before the year 2000 and that U.S. mine output will probably see no big expansion.

During the last nine months of 1969 the London price moved up from about 370 shillings to over 700 shillings per l.t.u. and reached higher peaks than were attained during the Korean war when the metal had more use in direct military operations than it has today.

Tungsten is used largely in making carbides for tools and dies. If prices should move too high there could be growing substitution such as with titanium carbide. On the other hand, higher prices will tend to bring out more mine production in Canada, Australia, Portugal, Peru and other areas. Most tungsten product prices edged up in the past year.

The export of some of the stockpile material probably after conversion into other forms may have helped to tighten the supply here. U.S. consumers probably had been largely living off the released stockpile material plus the production of Union Carbide. The latter's price for ammonium paratungstate (APT) recently was geared to $54.30 per short ton unit. It is possible that this price might rise.

OLD MINE REOPENS

Last year Ranchers Exploration and Development Corp. of Albuquerque, N. Mex., purchased the Hamme tungsten mine near Henderson, N.C., from Howmet Corp. This mine, which had been closed since February 14, 1963 and allowed to fill with water, was pumped dry. Ranchers conducted evaluation of the tungsten reserves, sank a main shaft, reviewed extractive metallurgical techniques, and made plans to replace the mill equipment which was sold at auction. This property is expected to begin operation fairly soon and when full scale production is reached, could, on the basis of historical data, produce about 1.5-2 million pounds, tungsten content, annually.

U.S. TUNGSTEN STATISTICS

[In thousand pounds of contained tungsten]

Period	Concentrate: Consumption	Concentrate: Imports for consumption	Concentrate: Stocks end of period	Product: Production	Product: Shipments	Product: Consumption	Product: Stocks end of period (producers)
1968	11,038	1,743	574	10,538	23,125	13,108	4,747
1969:							
January	786	144	675	821	1,911	1,082	4,682
February	786	109	677	846	2,081	1,282	4,331
March	1,222	155	817	1,383	2,282	1,248	4,226
April	1,342	181	579	1,402	2,593	1,345	4,415
May	993	209	600	1,044	2,394	1,243	4,076
June	959	169	640	855	1,838	1,220	3,878
July	864	95	581	828	1,714	952	3,859
August	1,241	59	942	1,325	2,515	1,307	3,857
September	1,247	190	854	1,224	2,476	1,287	3,677
October	1,199	50	933	1,224	2,394		3,849
Total	10,639	1,361		10,952	22,198		

[From the American Metal Market, Feb. 16, 1970]

TUNGSTEN PROFILE

Tungsten has the highest melting point (6,170 degrees F.) of any metal. It is the heaviest metal, excluding a few of the platinum group metals. Its name in Swedish means heavy stone. It is not ductile and must be protected from oxidation when heated above about 1,000 degrees. Its chemical symbol is W for Wolfram. Scheele first found the metal in 1781.

SUPPLY

World production of 60 percent WO_3 (tungsten tri-oxide) concentrates during 1969 was about 70 million lbs. to million lbs. of contained W. In 1967, the output was 61.8 million lbs. U.S. production in 1969 was about 9.5 million lbs. But for '66–'68 the average was about 8.5 million lbs. Presently only three domestic mines are in production. World supply is on the tight side, thus caution on stockpile sales is appropriate. Ranchers' Exploration plans to soon start up its tungsten mine in North Carolina. It has not operated since 1963.

China has great reserves and is the world's largest producer. China and Russia probably produce nearly 60 percent of the world output. U.S. imports were mainly from Canada (48 percent), Peru (32 percent), Australia (10 percent), Argentina, Portugal, Bolivia, Korea and Burma. U.S. imports during 1962–69 ranged between 2.7 and about 4.2 million lbs. per year. In 1969 they were about 1.8 million lbs. Exports rose sharply last year, coming mainly from the stockpile. This material now brings high prices abroad.

CONSUMPTION

Annual consumption has been highly cyclical over the past 40 years with peaks during World War II and the Korean "police action." Modern war needs little.

U.S. consumption during 1962–69 ranged between about 11 and 16.8 million lbs. per year. In 1968, it fell to 12 million lbs. or some 50 percent of Free World output. Western Europe consumes over 30 percent.

Yearly estimates

[In pounds]

World Output	70,000,000
China-Russia Output	39,000,000
Free World Output	31,000,000
U.S. Imports	1,800,000
U.S. Output	9,500,000
U.S. Consumption	12,000,000
U.S. Ind'l Stocks	1,200,000
U.S. Government Stockpiles (Est.)	172,000,000

(NOTE.—One ton of 60 percent WO_3 concentrates contains 60 units. On a short ton basis, one unit contains 15,862 lbs. of metal or 20 lbs. tungsten trioxide, i.e., 1 percent of 2,000 lbs. In other words a 60 percent ore contains 60 units of metal oxide. If the unit price is $30, the short ton price for 60 percent ore is $1,800. The principal ores are wolframite and scheelite.)

USES

Carbides (48 percent) such as for cutting tool tips, snow tire studs and ball pen points; high speed and other tool steels (12 percent); wire for electric lamps, metal shapes for space defense (16 percent); high temperature alloys and powder metallurgy processes (19 percent). Usually added to steel in the form of ferrotungsten. Also used in heating elements, flame spraying and plasma coatings, chemicals. The snow tire could be overrated.

GROWTH

In recent years tungsten carbide uses have grown and might account for nearly half of the U.S. tungsten use. Total demand trend has displayed little growth, except for cyclic influences in war periods; had been used in armor piercing projectiles and Polaris rocket nozzles. Slow growth seen for future.

PRICES

Ore prices abroad have a highly cyclical record. Average import price with duty for '60–'64 was under $21. Imported ore prices in 1960 were about $24 per short ton until (15.84 lbs. of metal) and declined to about $16.50 in 1963. They then rebounded to about $22 near the end of that year. In 1965 ore was available at down to 185s. European prices climbed last year to nearly 700s or or over $100 with duty if landed in U.S. Recent U.S. Gov't stockpile sales are indicated at $43 per unit. Some domestic ore went into the stockpile at over $60 per unit.

Tungsten metal power prices have tended to be relatively stable in spite of cyclic ore prices. Carbon reduced powder is in the area of $4.50 per lb. Leading producers value hydrogen reduced powder at about $4.80–5.00 depending on mesh. Ammonium paratungstate sells at a little under $3 per lb. of W. Tungsten carbide sells for about $3.80 per lb. and up. Prices edged up in past 3 years. Ferrotungsten sells at about $3.75–$4.00 (merchant prices could be lower) per lb. of W. Scrap values vary widely in area $2.00 per lb.

U.S. STOCKPILE

Contains some 180 million lbs. in concentrates and ores acquired during 1951–56 procurement program and to maintain domestic output and provide strategic reserve. (Strategic—114.2 million lbs.; DPA—53.4 million lbs.; Supplemental—4.5 million lbs.) This stockpile has been rated at 437 percent of the needed objective but some mineral economists are opposed to imprudent disposal of Government stocks since our domestic mineral reserves appear to be less than a 15-year supply, and far lower than that, should demands rise. The stockpile also has about 2 million lbs. tungsten carbide, 1.5 million lbs. ferrotungsten, 1.6 million lbs. tungsten powder.

OUTLOOK

Difficult to appraise because of complex factors: effect of relaxed Viet Nam war on defense production, U.S. stockpile sales, Sino-Russian sales, speculation in Europe, currency revaluation possibilities, etc. It would appear that metal or alloy demands will tend easy for near term; over long-term stronger prices for metallics are possible. Ore prices could slip. Including U.S. stockpile, there is a surplus in the world supply picture. The import duty on ore was 40 cents per lb. and by 1972 will be down to 25 cents under JFK Round. It had been nearly $8 per s.t. unit.

Metal producers include General Electric, Sylvania, Westinghouse, Fansteel, Kennametal, Wah Chang, Allied Chemical Corp., Molybdenum Corp., Firth Sterling, Union Carbide, M & R Refractory Metals, Chase Brass & Copper, Mercer Alloys and many makers of carbides. About 36 firms in U.S. process ore or tungsten metallics. Some 20 compete in the active carbide market.

Although the unique properties of tungsten in tungsten carbide (the major end use) restrict substitution, a significant supply shortage and corresponding price increase could spur substitution of titanium, tantalum, and zirconium carbides. The development of technology to economically recover extremely low-grade tungsten sources could help meet the forecast demand for 2000 of some 60 million lbs.

[From Metals Week, Mar. 30, 1970]

TUNGSTEN—THE YEAR THE IMPOSSIBLE HAPPENED

1969—The "almost inexhaustible" US stockpile was wiped out last year. The cutoff of Red Chinese selling drove the Eastern Europeans into the Western market, and that set off a run on the stockpile and a sharp surge in foreign prices.

1970—A new stockpile surplus is being cleared for disposal, but there is pressure to keep the ore restricted for US consumption. If that happens, and if China stays out of the market, the foreign market will skyrocket.

"If somebody had told me last March that the GSA stockpile would be sold out by year-end, I'd have told him he was out of his mind. But by late May or June, things were happening so fast that I could see that was exactly what was going to happen."

This is how one of the savviest traders in the tungsten ore business summed up 1969. Here's why: At the start of 1969, there were some 38.3 million lb (W content) of ore available for sale in the stockpile.* That would be enough to support total US consumption for about three years if all domestic production were halted. As it is, domestic production (9.8 million lb in 1969) falls short of consumption by 3 million ppy, at most.

Therefore, the stockpile should have been able to cover that shortfall between US production and US consumption for about 12 years. In 1968, stockpile sales were just about at that shortfall rate—3.2-million lb.

Is it any wonder that the adjective "almost inexhaustible" was so frequently used in discussing the tungsten ore stockpile? Most people in the industry probably couldn't even have accurately guessed the size of the stockpile at the start of 1969. Yes, it was important, but hardly immediately important—like knowing how many years of life the sun has left.

Why then did things turn around so fast?

*The 38.3 million lb was in the Defense Production Act stockpile and could be sold without congressional authorization. Another 100-million lb (W) of ore—later reduced to 68-million—was declared surplus to the strategic stockpile, but an act of Congress would be needed to release all or any of that material.

In a word: China. China has traditionally been a major supplier of tungsten ore to both the Communist World and the Free World.

CHINA PULLS OUT OF THE MARKET

Chinese offerings to the West—made twice yearly at the Canton Fair—had been dwindling in recent years, but with the US stockpile sitting there, no one really missed Chinese ore. But then China apparently cut back deeply on sales to Communist countries as well. No one knows why—production collapse following the "Cultural Revolution"? . . . stockpiling for a war with Russia . . . or the US?—but China was supplying very little tungsten ore to anyone.

Eastern European nations began shopping in Western Europe for supplies, and it wasn't long before things really began to tighten up.

This situation forced the European price up to a point where it was possible to buy US stockpile ore at $43 (per stu of WO_3) and ship it to Europe.

Actually, GSA ore of less than 65% WO_3 could be had for less than $43. Consequently, the London price was being stabilized at about 400s per ltu ($42.68 per stu).

By late May-early June, all of the uncommitted Western supplies had been bought up. And as Eastern European buying got heavier, a run developed on the US stockpile.

By the end of June, some 11-million lb of stockpile tungsten had been sold—more than triple the total sales of 1968. Metal Traders had taken about 4.5-million and Philipp Brothers over 3-million.

The heavy buying continued and by the end of October the U.S. stockpile was completely sold out of high-grade wolframite, thereby losing its effectiveness as a price ceiling for the foreign market. London began to move, and foreign consumers had to pay the merchant price.

At the end of October, London reached $46. By mid-November it was up to $48–50.

On Dec. 1, the GSA stock was down to 7-million lb of off-grade scheelite. Within two weeks that was gone and London had reached 500s ($53.59).

GSA then went hunting through its various depots, turning up first 800,000 lb of wolframite and then 2.4-million lb of other ores. The agency restricted this release to U.S. consumption, so it had little effect on the foreign market.

By mid-January London had reached $75–80. Shortly thereafter GSA turned up another lot of tungsten ore—17-million lb—which no one had known about. The merchant market could hardly disregard such a quantity of ore. London had reached a peak of 730–760s ($78.24–$81.46) by this time, but it went no higher. After several weeks of "wait-and-see," London has begun to move off a bit.

GSA has not yet announced how it will sell this 17-million lb of ore, but early indications are that it will be restricted to U.S. consumption.

ANOTHER 68 MILLION POUNDS AWAITS RELEASE

And beyond this 17-million lb, there is a surplus in the strategic stockpile of about 68-million lb. That surplus was previously set at 100-million lb, and a bill to release the full amount was introduced in Congress last year. Since then, however, the stockpile objective has been increased from 35-million lb to 55-million lb and a re-inventory of total holdings turned up less than was previously thought. Stockpile objectives of tungsten products were also adjusted in early 1970. The tungsten carbide powder objective was cut from 2.4-million lb to 2.2-million, ferrotungsten from 1.9-million lb to zero, hydrogen-reduced powder from 1.8-million to 1.4-million, and crystalline carbide tungsten from 1.3-million to zero. The carbon-reduced powder goal was increased from 590,000 lb to 645-million.

No bills have yet been introduced to release any of these product surpluses, but action is expected later in the year. The ore release bill is finally moving through the congressional maze, with passage expected in a few weeks. The bill has not been amended to reflect the smaller surplus; the adjustment will simply be made by executive order after the bill has been passed. The big question with this release, too, is whether or not it will be restricted to U.S. consumption.

If, in view of the "Great Tungsten Raid of 1969," the government decides to restrict it all to domestic consumers, the foreign market will take off again. Knowledgeable merchants say London could easily reach 1,000s or 1,200s ($107.18–128.62).

But there are also pressures on GSA from the White House to raise $750-million in fiscal 1971 to help President Nixon achieve his projected $1.3-billion budget surplus. If tungsten sales are restricted to domestic consumption, only a few million pounds a year could be sold, and at relatively low prices. By opening the stockpile to all buyers and at "highest bidder" prices, a lot more money could be raised.

It should also be pointed out in evaluating the current tungsten ore market that there is presently no real shortage of ore—here or in Europe. It's just a matter of price.

A last look at the statistics shows that while over 38-million lb of stockpile ore were sold in 1969, only 6-million lb were exported. That left 32-million lb in the U.S. at year-end. Some of this has undoubtedly been exported in 1970, and the great bulk of what remains has been sold for future delivery—GSA permits the buyer a year to take delivery. But it seems safe to assume that a fair amount is still available for sale.

PRODUCT PRICES ALSO TAKE OFF

While the ore market was the big news in 1969, there was also plenty of action in product markets.

General Electric, on May 19, increased its hydrogen-reduced powder prices by 3–8%. The new price range would have been $4.78–5.69 per lb, but when Wah Chang and Sylvania refused to follow, the first attempted powder increase since Jan. 1, 1967, had to be rolled back.

In July, Union Carbide boosted its high-purity Ucar ferrotungsten by 15¢ to $3.86. However, it left its low- and high-moly grades at $3.20 and $3.65.

When the most attractive of the discounted grades of stockpile ore ceased to be available late in the fall, Union Carbide, effective Nov. 1, increased its ammonium paratungstate (APT) produced from GSA ore by $1.60 to $49.60 per stu. Carbide also took this opportunity to increase the price of APT produced from its own mine production. And that increase was considerably bigger—$4.00 to $43.60.

Faced with the higher raw material (APT) costs, Wah Chang decided that powder prices must also go up. It put through a Nov. 1 increase of 31¢ to $4.91–5.75—which was 6–13¢ more than GE had tried for back in May. Sylvania quickly moved to the new levels, but GE waited until Dec. 1 to go along.

Still higher prices may be ahead, since Carbide hiked APT again on Jan. 2, 1970. The hikes were $2.31 to $51.91 on APT from stockpile ore and $2.90 to $46.50 for APT from its own ore. Carbide also hiked Ucar again on Jan. (14¢ to $4.00) and regular grade ferrotungsten (10¢ to $3.75). And its Ucar powder prices were similarly increased to $4.11 for CG grade and $4.26 for MG grade.

For any observer looking back over 1969 and ahead through 1970, the US stockpile so completely dominates the market that there is a tendency to disregard the more modest movements in commercial ore production.

IS U.S. SELF-SUFFICIENCY NEAR?

But it is quite possible that by the end of 1970, the US could be self-sufficient in tungsten. In 1969, production fell 365,000 lb (W) to 9.75-million lb. But this was because Union Carbide—far and away the biggest US producer—had a bad production year in 1969. In February, the company's Bishop, Calif., mine was so badly snowed in that no work took place for six weeks. Then in May, three more weeks of production were lost to a strike.

A normal 1970 year should see over 1-million lb more produced from current miners. And a big new mine is due onstream about August. Ranchers Exploration is reactivating a mine at Henderson, NC, which should produce something like 1.75- to 2.50-million ppy. This would outpace Amax, currently the second largest producer. And another smaller property—Rose Tungsten Mine, in Arizona—is just starting up. Rose will likely produce about 500,000 lb of tungsten contained in concentrate.

Consequently, US production could top a 13-million-ppy rate by yearend. Last year consumption was 12.7-million lb.

In view of this, the government might feel that at least a portion of its huge stockpile surplus could be freed for export sale. Therein lies the key to tungsten prices for 1970 and beyond.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill (H.R. 15839) was read the third time, and passed.

Mr. MANSFIELD. Mr. President, that concludes the consideration of the stockpile bills.

I ask unanimous consent that the Senate companion bills to the stockpile bills—S. 3038, S. 3087, S. 3446, S. 3451, S. 3452, S. 3456, and S. 3457—be indefinitely postponed.

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

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield?

I referred, during the colloquy on this stockpile bill, to a letter signed by the Administrator of the GSA, Mr. Robert L. Kunzig, under date of April 2. I ask unanimous consent that my letter of March 25, 1970, addressed to Mr. Kunzig, the Administrator, asking certain questions relating to these bills, and his reply thereto of April 2, together with an attachment, be printed in the RECORD at this point.

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

MARCH 25, 1970.

Mr. ROBERT L. KUNZIG,
Administrator, General Services Administration, Washington, D.C.

DEAR MR. KUNZIG: There are a series of bills on the Senate Calendar, the purpose of which is to authorize the sale of the following surplus minerals:

S. 3083. Sale of Corundum

S. 3087. Sale of chrysotile asbestos

S. 3446. Sale of refractory grade chromite.

S. 3451. Sale of natural Ceylon amorphous lump graphite

S. 3452. Sale of molybdenum

S. 3456. Sale of natural battery grade manganese ore

S. 3457. Sale of Surinam-type metallurgical grade bauxite

H.R. 12941. Sale of 4,180,000 pounds of cadmium

H.R. 15021. Sale of 40,200,000 pounds of cobalt

H.R. 15831. Sale of bismuth
H.R. 15832. Sale of castor oil
H.R. 15833. Sale of acid grade fluorspar
H.R. 15835. Sale of magnesium
H.R. 15836. Sale of type A chemical manganese ore
H.R. 15837. Sale of type B chemical grade manganese ore
H.R. 15838. Sale of shellac
H.R. 15839. Sale of tungsten

In this connection will you please furnish me the following information:

1. The average cost of this material including purchase price, transportation, and storage costs.

2. The present prevailing price in domestic markets and a prevailing price for similar commodities in the world markets.

3. List of all purchases including dates, amounts, and prices paid in the procurement of any of the aforementioned commodities that have been made during calendar years 1967, 1968, and 1969.

I would appreciate this information as promptly as possible since the Senate does want to complete action on these bills.

Yours sincerely,

JOHN J. WILLIAMS.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 2, 1970.

Hon. JOHN J. WILLIAMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: Thank you for your letter of March 25 concerning several stockpile disposal bills presently under consideration in the Congress.

The enclosed table includes data requested in your questions 1 and 2 concerning the average acquisition costs, storage costs, and present prevailing market prices for the commodities listed in your letter. With regard to question 3 and prices paid in the procurement of any of the listed commodities during calendar years 1967, '68, and '69, the information is not readily available and will be forwarded to you as soon as possible. However, only two of the materials listed; asbestos, chrysotile and manganese, battery grade natural, have been purchased since June 30, 1966.

I would like to take this opportunity to express GSA's (General Services Administration) concern regarding your proposed amendment to the stockpile disposal bills as reported in the Congressional Record of March 24. As you know, GSA has serious reservations concerning our ability to implement disposal activities under the restriction established by the proposed amendments. It is our judgment that limiting GSA's commercial sales of excess stockpile materials only to the sealed-bid method would seriously impair our ability to accomplish an effective disposal program.

Disposals of excess stockpile commodities planned for FY 1971 could be seriously jeopardized because the amendments are likely to meet the oppositions of industry groups on the grounds that some subsequent stockpile disposals could disrupt the market.

Since 1960, GSA sales of stockpile materials totaling over $3 billion have been made using several sales methods designed to maximize the return to the Government, in coordination with industry recommendations and with little or no market disruption. The success of the program to date can be attributed largely to the fact that the Government was able to shape its sales efforts closely to regular industry marketing procedures and to utilize sales procedures designed to promote interest in Government materials and offset disadvantages the Government experiences as a supplier.

An excellent example of the kind of orderly long-range disposal programs that can be accomplished through prudent negotiation is the Government's aluminum disposal program. The major aluminum producers supplying the United States agreed to buy the entire Government excess aluminum over a period of years at the domestic market price at time of delivery and at a flexible rate consistent with the market's ability to absorb the commodity and related to the volume of the Government's purchase of aluminum products.

Limiting the Government to the use of only one sales method for commercial sales involving over 50 different excess stockpile materials, as these amendments would do, would uniquely restrict GSA's ability to carry out its responsibilities. Unless the disposal bills are passed without amendments as presented, a serious question arises as to whether the Government can successfully carry out a meaningful disposal program directed at converting unneeded assets into cash income within the framework of the basic stockpile legislation and the individual stockpile disposal bills which require "That the time and method of disposition shall be fixed with due regard to the protection of the United States against avoidable loss and the protection of producers, processors, and consumers against avoidable disruption of their usual markets."

I believe that our sales policies have successfully realized maximum returns to the Government consistent with our obligation to avoid disruption of markets. I want to assure you, Senator, that the disposal of materials covered by the bills presently before the Congress will be carried out as carefully, efficiently, and effectively as possible.

We welcome the opportunity to comment on stockpile related matters and will be glad to provide you with any additional information you may desire.

Sincerely,

ROBERT L. KUNZIG,
Administrator.

GENERAL SERVICES ADMINISTRATION COST AND PRICE DATA

[Key: ST, short tons; LB, pounds; SDT, short dry tons; LT, long tons; STU, 20 pounds of WO_3 (15.8595 pounds of tungsten metal)]

Commodity	Unit	Average acquisition cost	Annual storage costs for excess	Prevailing market price	
				Domestic [1]	Foreign
Corundum	ST	$195.77	$13	$20.00—125.00	$45.60—118.00
Asbestos, chrysotile	ST	648.15	16,100	200.00	425.00
Chromite, refractory	SDT	24.60	66,200	30.00	20.54—23.22
Graphite, ceylon	ST	217.33	1,300	180.00	191.80
Molybdenum	LB	1.01	4,100	1.72	1.76—1.75
Manganese, battery grade	ST	119.89	7,000	95.00	55.72—62.15
Bauxite, surinam grade	LT	15.68	411,400	15.00	15.35
Cadmium	LB	1.80	4,100	4.00	3.70—3.85
Cobalt	LB	2.21	26,120	2.20	2.22
Bismuth	LB	2.14	480	6.00	7.30
Castor oil	LB	.25	9,080	.145	0.121
Fluorspar, acid grade	ST	52.43	12,750	57.50	40.70—47.15
Magnesium	ST	726.00	27,400	726.00	790.11
Manganese, chemical grade:					
Type A	ST	68.44	6,710	70.00	41.00—55.00
Type B	ST	67.46	3,950	50.00	31.00—45.00
Shellac	LB	.50	13,500	.15	.30
Tungsten	STU	54.00	64,520	46.00—55.00	60.00—80.00

[1] Reflects estimated market value for excess materials in Government inventory considering grade and quality.
[2] C.I.F. European ports or normal port of export for commercial grade material.

LEGISLATIVE PROGRAM

Mr. AIKEN. Mr. President, I should like to ask the majority leader what the program is for the rest of the day, for the rest of the week—and for the rest of the spring, if he knows—but for today and the rest of the week, anyway.

The PRESIDING OFFICER (Mr. GRAVEL). The Senate will be in order, so that Senators may hear the response of the majority leader.

Mr. MANSFIELD. Mr. President, may I say, in response to the question raised by the distinguished Senator from Vermont, that the rest of the schedule for this week and the next, subject to change as far as order of consideration is concerned, would be, first, the consideration of S. 3387, which I shall ask be made the pending business, then Senate Resolution 211, by Senator BROOKE and others; Calendar No. 733, S. 721, a bill to safeguard the consumer by requiring greater standards of care in the issuance of unsolicited credit cards; Calendar No. 755, H.R. 14705, an act to extend and improve the Federal-State unemployment compensation program; Calendar No. 747, S. 3637, a bill to amend section 315 of the Communications Act of 1934 with respect to equal-time requirements for candidates for public office; and Calendar No. 712, S. 1148, a bill to amend the Revised Organic Act of the Virgin Islands.

Then next week, perhaps on Monday, Calendar No. 650, H.R. 11102, which is the Hill-Burton Construction Act. And, finally, a bill just recently reported, Calendar No. 756, H.R. 16612, an act to amend the District of Columbia Bail Agency Act to provide additional funds for the District of Columbia Bail Agency for fiscal year 1970.

Mr. JAVITS. Mr. President, will the Senator yield briefly?

Mr. MANSFIELD, I yield.

Mr. JAVITS. I hope the Senator will keep a place on the schedule for what we need to do about the railroad strike, which is impending on April 11th unless we take some action or unless the parties settle it. We had a hearing this morning, I might tell the Senator, which indicates that at best, they have not settled. I do not know whether the prospects are good or bad, but I do think the leadership should be informed that the Committee on Labor and Public Welfare will need some accommodation for that.

Mr. MANSFIELD. I appreciate the remarks just made by the distinguished senior Senator from New York, I was aware, from conferences with him and the chairman of the committee (Mr. YARBOROUGH), that such might be the case, and the Senator may recall that I put the schedule out as very tentative. Of course, if no settlement is reached in the proposed railroad strike by the 11th, the Senate will be prepared to face up to its responsibility.

Mr. JAVITS. I thank the Senator.

OUR DEMOCRACY'S MISSION: GREATEST GOOD FOR GREATEST NUMBER; LET US NOT PERMIT IT TO BE WEAKENED BY ILLEGAL STRIKES AGAINST OUR GOVERNMENT

Mr. RANDOLPH. Mr. President, during more than 25 years as a Member of Congress, in the Senate and the House of Representatives, I have held membership on the committees of both Houses which have jurisdiction over matters of labor and matters connected with the employment of postal workers and classified career employees of our Government.

I rise today to reaffirm what I have often said: that I understand and appreciate the cause and the rights of the worker in private industry, and the cause and the rights, the problems, and the responsibilities of persons who are engaged in public employment.

The right and, yes, the need of people to organize and participate in collective bargaining with their employers have always had my full support. This includes not only the employees of private business, industry, and commerce; it applies also to employees who work within the Federal Government, and, of course, public employees at all levels of government—State, county, and local, as well.

I understand the responsibility which labor and management share to assure that workers in both public and private sectors have adequate pay, benefits, and job security as well as suitable healthful working conditions. But, Mr. President, during the past few years, and this year more than heretofore, we have faced a compelling question involving the rights and responsibilities of employees who are within the structure of governmental service.

The people of our country know about the postal service employees and the air traffic controllers and their problems, and about the problems they have been creating, too. Regardless of what we call it—a walkout, a sick-in, or a strike—we know that the off-the-job actions of these Federal employees, especially in recent days, have added to the severity of the problems facing Federal officials and the Congress and to the problems of the vital function of handling the mails, and the movement of people and products by air.

The actions of which I speak are in violation of title 5, section 7311, of the United States Code, and I read in part:

> An individual may not accept or hold a position in the government of the United States or the District of Columbia if he participates in a strike or asserts the right to strike against the government of the United States or the government of the District of Columbia.

In these comments, Mr. President, I am reaffirming my beliefs and prior public statements. Within reasonable limits, public employees should have the right to organize and to bargain collectively. Those officials responsible for major operations within government—such as the Postmaster General and the Secretary of Transportation—have the obligation to recognize such employee rights and to negotiate with the appropriate representatives of public employees within their areas of jurisdiction and responsibility.

But, when any substantial number of public employees—such as the letter carriers and other postal workers and the air traffic controllers—disrupt public services to the extent that we have experienced during the past 2 weeks in contravention of the provisions of title 5 of the United States Code cited, real negotiations or collective bargaining are out of order, if not illegal, until the employees are back on the job and their services are restored in good order.

I reemphasize: I am opposed to strikes by public employees at any level of government, and I say thi not only because Federal employees, especially, are prohibited by law from participating in or asserting the right to strike against the Government, but also because the obligations of those in public positions go well beyond any obligations incurred in the private sector.

The overriding requisite is on public employees to provide uninterrupted service to the people. I emphasize, however, that this does not mean that public employees forfeit the right to redress of grievances, job security, and improved working conditions so long as they do not violate the law against striking. This law clearly mandates them to remain on the job until their grievances are redressed.

Superior officers of public employees in the executive establishment at the policymaking level have the responsibility to negotiate the grievances of those employees and to keep the Congress, through appropriate committees, fully informed. If the pace of redress by the executive and/or the legislative is unsatisfactory to the public employee, the law denies him the right to strike but certainly does not present any bar against his being represented in negotiations with his Government while he stays on the job.

Good administration and lawmaking—the kind that anticipates public employee needs in terms of justice and equity—must be practices by the executive branch and the Congress to prevent illegal work and service disruptions and to prevent resignations in excess of normal. We must all do better—executive, legislative, and public employees alike.

The public cannot and will not, I am sure, tolerate any repetition of the postal service disruptions so recently experienced. Nor will the public countenance much longer the disruptive subterfuge practiced by the too large segment of the air traffic controllers who followed the bad advice of a leadership that has taken them down the same devious route of action before.

With postal service now restored in reasonable good order, as a member of the Senate Post Office and Civil Service Committee and as a Senate member of the House-Senate conference on pay legislation, I feel sure that we could work out with dispatch, and to a considerable degree, the grievances of the postal employees. But the problem faced by the executive branch and the Congress is far broader than that of postal employees because, at the White House and throughout the executive establishment, and in both Houses of the Congress, we have responsibility to work out solutions embracing equity and justice for all Federal employees—and this is a complicated assignment.

As for the case of the air traffic controllers, who admittedly have problems peculiar to their category of Federal employees, but with an "overly sick" minority creating an unfortunate overabundance of ill will for the controllers as a whole, I believe the Wednesday, April 1, 1970, editorial in the Washington Post, "Curing the Air Controllers' Sickness," provides a plausible analysis.

I request, Mr. President, unanimous consent to have that editorial printed in the RECORD to follow my remarks.

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

[From the Washington (D.C.) Post, Apr. 1, 1970]

CURING THE AIR CONTROLLERS' SICKNESS

It is hard to know how to take F. Lee Bailey's call for the "sick" members of the Professional Air Traffic Controllers Organization to go back to work. Mr. Bailey has said so much in the last few days and so little of it has made sense that we feel tempted to look for traces of insincerity in his "sincere" call for an end to this illegal, jurisdictional strike.

Nevertheless, taking Mr. Bailey's statement at its face value, we hope that those controllers who have called in sick will now find they are well and that the air traffic situation will quickly return to normal. Too many Americans have already been inconvenienced too much by what was essentially a power play by Mr. Bailey and the organization he heads. The role of air traffic controllers is so vital and so delicate, in terms of the lives of the thousands of people who fly daily, that it ought not to be placed at the mercy of old-fashioned union strife. The energies of the controllers and their labor organizations, it should be added would be better spent on setting right their legitimate grievances.

It was possible, in the summer of 1968, to have considerable sympathy for the air traffic controllers when they used a slowdown to dramatize the shortcomings of the safety system they operate. They sold their case well then and much has been done to begin to bring the air traffic system up to the standards it must have. If this Easter-weekend sickness had been more directly related to those safety problems it would have received wider sympathy, from the public as well as from the controllers than it did. But this was not a safety strike. It was a strike over the FAA's refusal to recognize Mr. Bailey's union as the bargaining agent for the controllers and over the transfer of three of the union's most active members out of the Baton Rouge, La., control center. These things ought to be settled without calling into play the ultimate weapon in labor negotiations—the strike. We suspect that this weapon was used in a desperate gamble by Mr. Bailey to make or break the union he heads—he said as much himself at one point—and he may well have broken his own organization in the process.

Mr. RANDOLPH. Mr. President, I think it is important that we recognize our individual responsibility. We need to recommit ourselves to an understanding of the problems of Federal employees. I know that their needs are very considerable—in some instances compelling—and I have attempted earnestly, I hope affirmatively, in my individual capacity as

a Member of Congress, to understand and meet these requests and appeals.

Our mission continues to be to provide and to assure the greatest good for the greatest number of our people. We have to continue to make this form of government work. If what we have seen in the last few days and weeks in this country prevails, the deterioration of our democracy will have set in—make no mistake about it. It is dangerous, and we must understand it.

So, without attempting to wave any flag, I think we must consider that if we permit the actions to be repeated, we will further weaken the fabric of our country, the safety and welfare of all our people. The disruptive influence of strikes in the two instances I have mentioned are not against industry, business, or commerce. With all our shortcomings to meet the needs, these strikes, by whatever name they are called, are illegal. They are strikes against all the people—not just the Government, but the people.

So I think that we in the Committee on Labor and Public Welfare and in the Committee on Post Office and Civil Service need to give prompt and more exhaustive study to the problems of the employees who, I repeat, have not only the right but also the responsibility, if they so desire, to organize and to present their appeals with strength before the committee and Congress.

But, Mr. President, I repeat: Our mission in this democracy continues to be provide and to assure the greatest good for the greatest number of our people. Let us make our democracy work; let us not permit it to be weakened—and our people's safety and welfare threatened—by deliberate disruption of vital services by actions of some Federal employees who strike against their Government in violation of the laws governing their employment.

ORDER FOR PRINTING OF H.R. 4249, TO EXTEND THE VOTING RIGHTS ACT OF 1965

Mr. HART. Mr. President, I ask unanimous consent that the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, be printed as it passed the Senate.

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

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 227) to provide for loans to Indian tribes and tribal corporations, and for other purposes, and it was signed by the Acting President pro tempore (Mr. BYRD of Virginia).

THE MIDDLE EAST: WHAT POLICY FOR THE UNITED STATES

Mr. JAVITS. Mr. President, I call the attention of the Senate to a speech which I made in New York on Tuesday. It relates to the problem which we now face in the Middle East and the escalating conflict there.

I ask unanimous consent that my speech, entitled "The Middle East: What Policy for the United States" be printed at this point in the RECORD.

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

THE MIDDLE EAST: WHAT POLICY FOR THE UNITED STATES?

The challenge to U.S. Mideast policy is to maintain a distinction between priorities based on a proper perspective and urgencies derived from tactical crises. President Nixon's "interim decision" denying additional jet aircraft sales to Israel is an attempt to maintain this kind of distinction but it is a course of great potential danger.

An arms limitation agreement is clearly a policy which the U.S. is following in the Mideast. An agreement, or understanding, on arms limitation requires the cooperation of the Soviet Union. The Soviet decision to provide advanced surface-to-air missiles to Egypt—and the necessary technical personnel to man these new weapons—coming on the heels of France's deal to sell over 100 Mirage jets to Libya invalidates the premise that U.S. "restraint" in selling arms to Israel will influence the USSR to curtail its provision of arms to Israel's Arab enemies.

According to press reports, some officials believe that President Nixon's refusal to sell additional jets to Israel now is justifiable because the Soviet Union has apparently limited its response to President Nasser's request for more arms to the provision of the advanced SAM–3 missiles—a "defensive" weapon. However, Israel does not see the SAM–3 as a "defensive" weapon but rather as a key element in President Nasser's offensive strategy of a war of attrition. Israel has vowed that it will attempt to prevent installation of the new Soviet SAM–3s.

So long as President Nasser maintains his public repudiation of the 1967 ceasefire line and pursues a war of attrition against Israel—while refusing to negotiate or respond to terms for a settlement—Israel has little choice but to maintain its security by military means.

Given the important consideration of lead time for delivery and deployment of such complicated weaponry as Phantoms and Skyhawks, there is very little time available for the Administration's effort to enlist Soviet cooperation in arms limitation through a policy of denying arms to Israel for "demonstration effect."

Certainly the search for an arms limitation agreement will continue to have a high priority according to present U.S. policy. But a U.S. policy of arms denial to Israel for "demonstration effect" could soon come into conflict with a higher priority—the necessity to maintain Israel's deterrent military strength.

Israel is determined to be self-reliant for its own security. It does not want to be—and should not be—the security client or protectorate of anybody, including the United States. Given the tragic lessons we have learned over the past decade, it is difficult to overemphasize the U.S. interest in maintaining Israel's security self-reliance and deterrent strength.

The Middle East is a vast area encompassing in its broadest sense the whole sweep from North Africa to Pakistan. Only a part of the Middle East is involved in the struggle of Israel's Arab neighbors to deny its survival. Really speaking, that is a subregional dispute, although the Soviet Union's involvement of itself on the Arab side has given it broader significance.

All kinds of things are happening in other parts of the Midwest. Turkey, Iran and Pakistan are making very substantial economic progress and have joined together in regional economic development organization of their own. In the Persian Gulf the small sheikhdoms, in anticipation of Britain's withdrawal at the end of 1971, are seeking a confederation to protect themselves against Nasserite revolution and Soviet big-power pressures. Lebanon, Tunisia and Morocco have preferred to concentrate on internal development rather than squander their resources on vain military adventures along the Nasser pattern.

The Middle East is an area in ferment and part of that ferment is the struggle of benighted peoples to break out the grip of poverty and stagnation. I believe there are many openings for the United States to encourage and assist this process. I have long advocated the formation of a broad, regional economic organization in the Mideast, which Israel need not be part of. Viewed in broad perspective, the real movement in Mideast history in the second half of the 20th century is the search for modernization and reform—not for bloody dreams of revenge as conjured up by radical Arab leaders.

Israel is a great source of ferment in the Middle East. Some of the more near-sighted Arab leaders have sought exclusively to emulate Israel's mastery of sophisticated weapons and military tactics. But over the long run I am confident that Israel's greatest impact will be the example it provides of economic, scientific and cultural achievement—and the practical success of Israel's commitment to democracy and social justice. In this perspective, Israel is an invaluable asset to the long-term interests of the Middle East itself, for peace and development. That is why the U.S. should not be intimidated by threats of hostility from the radical Arab states if it continues its friendship with Israel. For the long term this is our best bet, in the interest of world peace and progress.

As Dr. Chaim Weizmann often said, the Arab-Israel dispute in its totality was not a clash between right and wrong but a clash between two rights. This is especially true with respect to the Palestine refugee problem which has so-bedevilled the search for a Mideast peace. But, so long as this human problem remains a political football in the hands of radical Arab political leaders there is little hope of a solution.

Life has been very harsh for the refugees—largely because that is the way radical Arab politicians insisted it be, for their own political purposes. Now those who sowed the seeds of discord, and nourished them for twenty years, are reaping the whirlwind.

Out of the refugee camps a new guerrilla movement has grown. Its doctrine is hatred of Israel and its methods are terrorism. The threat to Israel is a real one. But the greater threat is to the Arab governments which have kept the Palestinians in refugee status for twenty years, cynically manipulating their lives and emotions and aspirations in the tragic notion that this will bedevil Israel.

Yet, there may be a positive side in the longer run to the growth of Palestinian nationalism and self-assertion. The Palestinians may now take responsibility for their own fate, which has been controlled by neighboring Arabs with other axes to grind for some twenty years. Perhaps an end to the Palestine refugee problem can only come when the Palestinians themselves reject a perpetuation of their refugee status and—after a futile test of arms with Israel—seek a just and honest solution to the problem which they symbolize.

As with so many of the problems of the Mideast, the U.S. must keep its cool and not be rushed into seeking instant solutions or into charging off in all directions.

UNITED STATES-JAPAN TEXTILE AGREEMENT

Mr. JAVITS. Mr. President, shortly before the brief Easter recess, I spoke here on the continuing difficulty in reaching a textile agreement with Japan.

It should be a matter of widespread concern that both the Japanese textile industry and the American textile industry now have publicly rejected compromise proposals advanced by Donald Kendall designed to bridge this increasingly dangerous impasse.

As I stated in my speech on March 25:

The time is now ripe for the responsible political leaders in the United States and Japan who must make the overall determination as to the national interest of their countries, as distinct from regional or special interests, actively to involve themselves in this issue and to make a textile agreement.

The recent public statements by the United States and Japanese textile interests rejecting the "Kendall proposal" make this involvement of President Nixon and Prime Minister Sato all the more urgent. If they do not "bite the bullet" and settle this matter now on the highest level a trade war may soon be upon us.

I urge them to do this to avoid what would otherwise be a very dire situation.

I ask unanimous consent that newspaper accounts relating to the rejection of the Kendall proposal by the United States and Japanese textile industries and the press release of the ATMI on this matter be printed in the RECORD, as well as the perceptive and disturbing article which appeared in Saturday's Washington Post entitled "Textile Battle Arouses Japan Against United States."

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

[From the New York Times, Mar. 30, 1970]

TEXTILE PRODUCERS ADAMANT IN JAPAN

FUKUI, JAPAN, March 29.—A leader of Japan's textile industry says it will never accept American demands for over-all control of textile shipments to the United States.

Toyosaburo Taniguchi, president of the Japan Textile Federation, spoke at a news conference this weekend in Fukui, a major textile-producing city.

"The Textile makers are fully prepared for a protracted war with the United States over its demand for voluntary controls on Japanese exports of synthetic and woolen textiles," he said.

Mr. Taniguchi said his industry had rejected the so-called Kendall proposal advanced by Donald M. Kendall, chairman of the Emergency Committe on American Trade.

This proposal would have Japan impose restraints on textile exports to the United States for up to one year and, after that, restraints only on items where injury to American producers is found.

[From the New York Times, Mar. 31, 1970]

MAKERS OF TEXTILES REJECT KENDALL PLAN

(By Edwin L. Dale, Jr.)

WASHINGTON, March 30.—A group of 11 textile organizations, headed by the American Textile Manufacturers Institute, rejected today the so-called Kendall plan for limitation of textile imports from Japan.

The plan, which had won some support in the Japanese Government, was turned down last week by the Japanese textile industry. It would provide "comprehensive," or across-the-board limitations on textile exports from Japan for up to a year pending determination of injury to specific sectors of the United States industry because of rising imports.

After that, controls would be limited to the injured sectors.

The plan was presented to Japanese officials by Donald Kendall, chairman of Pepsico and head of the Emergency Committee on American Trade. It was never officially endorsed by the Nixon Administration.

Now it has been rejected by the industry groups on both sides.

"It is the only thing we and the Japanese can agree upon," remarked an official of the Textile Manufacturers Institute today.

LIMITATIONS POSSIBLE

As the impasse over textiles continues the chances increase that Congress will impose import limitations by law, even though such an action would be a violation of the rules of the General Agreement on Tariffs and Trade. The House Ways and Means Committee is expected to open hearings on trade legislation next month.

Today's statement by the 11 textile organizations referred to news stories from Tokyo on the Kendall Plan. It said, "If the news stories are correct, what has been referred to as the Kendall Plan is totally unacceptable to the American fiber-textile-apparel industry."

The statement said the plan "would only compound the problems which exist today and make it all the more difficult to reach a reasonable solution . . . it would be tragic if such a proposal had either the official or unofficial backing of our Government."

The statement concluded with a reiteration of the industry's view that negotiations for a voluntary agreement are getting nowhere and that "appropriate legislation" is required.

AMERICAN TEXTILE GROUPS OPPOSE IMPORT CONTROL PROPOSAL

WASHINGTON, March 30.—Trade associations representing all major sectors of the fiber-textile apparel industry today rejected a plan for import controls discussed in Tokyo last week.

A joint statement was issued here today by the American Apparel Manufacturers Association, American Textile Manufacturers Institute, American Yarn Spinners Association, Apparel Industries Inter-Association Committee, Man-Made Fiber Producers Association, National Association of Wool Growers, National Association of Wool Manufacturers, National Cotton Council, National Knitted Outerwear Association, National Knitwear Manufacturers Association and Northern Textile Association.

The statement said: "According to news dispatches from Japan, Mr. Donald M. Kendall, Chairman of the Emergency Committee for American Trade, has been involved in discussions with Japanese government and textile interests on a proposal to limit textile exports to the United States.

"If the news stories are correct, what has been referred to as the Kendall plan is totally unacceptable to the American fiber-textile-apparel industry.

"This type of an arrangement would not solve the problems faced by the American textile industry nor would it serve the long-range best interests of Japan and other textile exporting nations. It would only compound the problems which exist today and make it all the more difficult to reach a reasonable solution. It is most unfortunate that the domestic industry did not have an opportunity to apprise Mr. Kendall of its position before the plan was unveiled.

"The newspaper reports indicate that there is no Administration sanction of the Kendall plan. We commend the Administration for this position. It would be tragic if such a proposal had either the official or unofficial backing of our government.

"The approach embodied in the "Kendall plan" is completely inconsistent with the needs of the industry. Restraints on U.S. textile imports must be comprehensive, covering all articles. To be effective, they must involve governmental action and responsibility. If these objectives cannot be achieved through negotiations, and apparently they cannot, our only alternative is to seek a legislative remedy.

"We are asking the Administration and Congress to join in the enactment of appropriate legislation."

[From the Washington Post, Mar. 28, 1970]

TEXTILE BATTLE AROUSES JAPAN AGAINST UNITED STATES

(By Selig S. Harrison)

TOKYO, March 27.—The glow of good feeling toward Washington apparent here since the White House pledge to return Okinawa four months ago has now been almost completely dissipated by the bitter struggle building up between Japan and the United States over economic issues.

In contrast to most Americans, who think of trade disputes as something for the financial page, Japanese newspaper readers follow each new triumph or setback in overseas trade and investment with close attention.

This is not only because economic access abroad is a life and death matter for Japan as an island nation. In 1970, a year of rising nationalism here, economic conflict automatically takes on political overtones, with a newly aroused public calling on the government to show that Japan is big enough and strong enough to stand its ground.

Sen. Strom Thurmond (R-S.C.) made his import quota bill last week a direct political challenge in Japanese eyes when he suggested that the return of Okinawa should be reconsidered if Japan does not agree to textile export restraints.

Angry critics in his governing Liberal Democratic Party as well as in opposition ranks are demanding that Prime Minister Eisaku Sato ignore congressional threats and suspend further diplomatic exchanges on a textile compromise until a new atmosphere for "honorable" negotiations exists. But meanwhile, the protectionist clamor is growing, and the Nixon Administration is warning Sato that quota legislation will be unavoidable unless Japan makes a major conciliatory gesture.

The critical issue in the increasingly tense domestic infighting here over textiles is whether Sato made a secret promise of textile concessions as part of the Okinawa bargain. Sato aides hint cautiously that he did and stress that textile curbs would therefore be a "special" political concession.

As evidence that textile restraints would not set a precedent for future demands to curb other exports, they point to President Nixon's reference to textiles as a "special problem" in his Feb. 6, 1969 press conference and his avowals of support for free trade principles in his November trade message to Congress.

Hardliners in the textile industry and the Diet (Parliament) echo the charge made by the Asahi Shimbun this week that Sato "bungled diplomatically on the grand scale" if he gave any form of textile commitment to Mr. Nixon.

They ridicule the notion that the protectionists in Washington can be deflected from new moves going beyond textiles once they have tasted blood and predict that electronics or shoes will be next.

Leading textile executives who met here this week for an anti-Sato rally contended privately that the basic causes of protection-

ism will persist whether or not the industry makes conciliatory gestures this year and that the real issue is simply whether or not Mr. Nixon is prepared to fight for free trade. By resisting Sato's pleas for voluntary across-the-board, one-year restraints they maintained, the industry is making it easier for Mr. Nixon to do what he has to do anyway.

JAPANESE DISTRUST

The diehard determination of the textile men here despite a continuing government effort to evolve some form of compromise formula is rooted in distrust growing out of the history of earlier trade negotiations with the U.S.

When Japan agreed to voluntary curbs on cotton textiles in a 1962 agreement with the Kennedy Administration, it is recalled, the U.S. pledged that "since these measures are intended to deal with the special problem of cotton textiles, they are not to be considered as lending themselves to application in other fields."

Thurmond's charge in his Senate speech last week that the Japanese acted with deliberate "cunning" by switching to exports of synthetics to evade the cotton agreement brought retorts here that the U.S. has been "tricking" Japan into purportedly temporary curbs since 1956 without the slightest intention of letting them remain temporary. Now at last, the textile men say, Japan is powerful enough in the over-all world trade picture to resist Occidental chicanery.

Diplomatic observers point out that the textile fight is likely to cost the U.S. dearly here even if the industry does finally give ground by agreeing to one-year curbs covering something less than the full range of 28 disputed items.

Apart from the psychological strains resulting from mounting charges and countercharges of bad faith, the U.S. has already been greatly weakened by its textiles stand in its effort to induce significant concessions liberalizing trade and investment access to Japan. The Japanese can now point to U.S. inconsistency even if Sato never does make serious concessions on textiles and use this as a rationale for continued restrictions on imports.

LINKED WITH OKINAWA

Sato finds himself in a tight political corner now that the issue has been linked in the public mind with Okinawa and is not likely to treat the textile industry too roughly.

The industry grew up with little government support, in any case, and is less vulnerable to administrative and fiscal pressures than many Japanese industries. Since much of the industry is widely dispersed in small units. It will also not be easy to channel credit and compensation in the special subsidy program now being devised as bait to induce acceptance of a compromise.

The most difficult task facing the Prime Minister is stripping the textile issue of its nationalist psychological electricity. In a Diet speech last week, Sato tried to combat the image of a persecuted Japan bravely resisting mighty America, depicting Japan as the economic big brother and the U.S. as the hapless victim of a difficult inflationary period in which it needed the consideration of its better-situated friends.

Privately, Sato reminds leading businessmen and politicians that Japan is still heavily dependent on U.S. goodwill in many key areas despite its enhanced economic power and cites the burgeoning nuclear power program here geared almost entirely to the U.S. for its supply of enriched uranium. Atomic Energy Commission Chairman Glenn Seaborg was in Tokyo this week for negotiations on a new uranium supply agreement as if to dramatize this dependence.

The new atmosphere of recrimination and counter-recrimination surrounding the textile clash has stirred up deep emotions that will not be easily dispelled by a temporary compromise agreement.

There is no open talk yet of a trade war, but the president of one of the big trading combines observed pointedly in an interview that for all of its reliance on the U.S. market, Japan would not be the only one to lose if a vicious circle of retaliation ever got started and could always buy its cotton, tobacco and soybeans elsewhere, not to mention industrial machinery. He also recalled coldly that Japan yielded to restraints on silk and other textile exports once before nearly four decades ago.

"One thing leads to another," commented President Nixon's informal emissary in the textile negotiations, Pepsi Cola President Donald Kendall. "I would hate to see a trade war get started. It could happen all too easily, and before you know it we'd be right back in the 30s."

PROMISES AND REALITIES

Mr. JAVITS. Mr. President, Milan B. Skacel, the president of the Chamber of Commerce of Latin America, has written a perceptive monthly letter on the need for a new, low-key approach to our relations with Latin America. In this letter, entitled "Promises and Realities," Mr. Skacel outlines five key areas to which President Nixon has addressed himself and which may hold the key to more effective cooperation between the countries of all the Americas in the decade of the 1970's.

I ask unanimous consent that this monthly letter be printed in the RECORD.

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

PROMISES AND REALITIES

(By Milan B. Skacel)

New York, February 1970 . . . The era of extravagant promises and lofty pledges to remake the world is coming to an end. In the twilight of heroic rhetoric, people are taking stock of actual accomplishments in an atmosphere of disillusionment, uneasiness and growing bitterness. What has happend to the hopes the industrialized countries had awakened among the people from the developing areas? Where are the vaunted panaceas for the economic and social ills of the world?

A closer look at Latin America reveals the basic symptoms of a common *malaise* that has spread throughout the world. There is a growing credibility gap between nations, between national leaders and their compatriots, between government and private enterprise. The poignant fact is that we in the United States have been largely instrumental in aiding and abetting this development.

No nation has given more of itself than the U.S. in the past twenty-five years. Our rehabilitation of Europe, far-flung foreign aid, and myriad humanitarian projects attest, even in the opinion of some cynics, at least to enlightened self-interest. Unfortunately, our generosity has been matched and frequently surpassed by our reluctance to recognize our own limitations. The image we have managed to convey in the process has been one of a country with unlimited resources, an infallible problem solver, and a nation on a perpetual crusade on behalf of those less fortunate.

The Alliance for Progress is a case in point. An imaginative, constructive program, it was so overplayed since its very inception that tangible accomplishments were lost in a sea of self-pity at the realization that we could not "remake" Latin America in one single decade. With our Madison Avenue approach we had aroused unwarranted expectations; when the "miracle" did not come to pass, our credibility suffered—as did that of the governments associated with us in this venture.

Since 1961, the U.S. has contributed close to $10 billion to Latin America, most of it in the form of loans. U.S. businessmen have invested an estimated $3.4 billion in the area during the same period. Combined with local effort, this aid has had a tangible impact. Great strides have been made in the economic and social sectors—including new schools, hospitals, roads and dams. Yet, because of the bombastic promises and attendant high expectations that had characterized the Alliance at its onset, these results were not dramatic enough to sustain public enthusiasm and official support. Today the Alliance lingers on, but, its dedicated staff notwithstanding, few consider it *the* vehicle for Latin American development.

The lesson to be learned from the experience with the Alliance is not its "failure." In fact, the Alliance—in the opinion of many—has performed close to realistic expectations. The lesson is the inherent danger in impairing the effectiveness of a worthwhile program by selling it to the public as a passkey to the door of earthly paradise.

We have allowed ourselves to drift into an age in which a glib phrase is king. One slogan has become worth a thousand man-hours. No matter the painstaking effort and the *actual* length of time needed to carry out a far-reaching program. Let's give them a pretty package, and hope for the best.

It is true that this approach, in the short run, may serve to alleviate existing pressures on a government. As any new plaything, it tends to quiet down those clamoring for change and often buys those in power additional time. But the awakening is rude indeed, and the credibility gap grows in direct proportion.

The Nixon approach to Latin America may be a departure from the grandstand play so popular in the past. Since we are not privy to the President's thoughts, it is difficult to assess accurately the practical implications of his Latin American policy. There are several areas, however, which may provide a fair indication of the President's intentions and objectives:

1. The Alliance for Progress. Is the President going to revamp its structure, or is the Alliance going to be allowed to die of a slow death? If so, what—if any—alternate vehicle is Mr. Nixon considering?

2. U.S. Private Investment. There is an urgent need to redefine, through bilateral negotiations between the U.S. and each of the Latin American countries in question, the status of U.S. private investment. This will be a thorny business, since it must involve some sort of accommodation between local nationalism and the right of private capital to have its assets protected against uncompensated expropriation.

3. Hemisphere Security. The 1965 crisis in the Dominican Republic brought into sharp focus the need for an effective machinery within the Organization of American States to cope with similar situations. Unless the U.S. is willing to intervene unilaterally, should a problem of that magnitude again arise, new ways and means of enforcing collective security must be explored without undue delay.

4. Exchange Programs. Much has been done in this area, but an expansion would seem useful. All too few potential Latin American leaders, especially from the younger generation, possess on-the-spot knowledge of our institutions at work. The ignorance of Latin American and its problems among our future leaders is generally abysmal.

5. Trade. Latin America's portion of the

U.S. market has dropped from 21 per cent in 1960 to 12 per cent last year. Congress concurring, a way must be found, and soon, to help reverse this trend. Foreign trade accounts for less than 10 per cent of our gross national product (GNP), but for many Latin American countries it is their lifeline. No meaningful economic development can be expected without a substantial increase in exports.

By addressing himself to these issues in a low-key but forceful manner, the President may help usher in a new era in U.S.-Latin American relations. By eschewing pleasing but ineffectual pronunciamentos, Mr. Nixon may play a key role in closing the credibility gap and steer our cooperation with Latin America toward a more genuine partnership.

THE PRESIDENT'S STATEMENT ON THE NOMINATION OF G. HARROLD CARSWELL

Mr. JAVITS. Mr. President, the letter written by the President to the Senator from Ohio (Mr. SAXBE), and printed in yesterday's RECORD, raises a serious challenge to the authority and responsibility of the Senate.

The Constitution is clear that both the President and the Senate have responsibilities in the appointment of the U.S. Supreme Court Justices. Certainly the President proposes nominees, and I know of no Senator who has or would challenge his right to do so. The President may propose any number of them in succession; the Senate can propose none. I point out that this is the second nomination by the President for the same seat.

The President in his letter—and I have the greatest respect for him and speak with the greatest respect—implies that we who oppose the Carswell nomination—and I am one of them—have somehow assumed the right to substitute our own nominee for that of the President. This is clearly not so. I have heard not one single suggestion from any Senator in the opposition that any particular individual would be a better nominee than Judge Carswell. This is not our responsibility, nor have we attempted to assume it. We are simply performing the duty assigned to us by the Constitution—that of reviewing the credentials of a nominee of the President.

But equally clear, we have a responsibility—and a particularly grave one in cases of an appointment for life—to review those appointments and to advise and consent. This is one of the basic "checks and balances" of Federal power under the Constitution. We would be abdicating our responsibility if we were to rubberstamp all Presidential appointments on the theory that we are not to—and I quote the President—"substitute—our—own subjective judgment for that of the person entrusted by the Constitution with the power of appointment." The Constitution does not entrust that power entirely to a single American—the President. On the contrary, it specifically directs 100 other elected Americans—the Senators—to exercise their judgment as well on the wisdom of the appointment.

Indeed, we as Senators cannot be all that threatening to the President's appointive power in view of the thousands of his nominees whom we approve routinely. It is our constitutional duty to assert our rights to advise and consent with conviction—and not to be held only to a test of "name, rank, and serial number" of the President's nominee when we feel that we are being asked to approve an unqualified candidate to a lifetime place in the judiciary. Our constitutional duty to assert this prerogative is equal to that of the President's to assert his prerogative in making appointments.

The President's letter begs the question by conceding that "if the charges against Judge Carswell are supportable, the issue would be wholly different." Of course, we—and I use the word editorially because I do not attempt to speak for any other Senator—believe the charges are supportable.

We are not convinced that the charge of "lack of candor" is baseless simply because Judge Carswell changed his testimony on the golf club issue under vigorous questioning and after being confronted with written documents which contradicted his earlier testimony.

We do not dismiss this same charge because it was not mentioned in the committee report, because information about the ABA Committee's meeting with Judge Carswell the very night before his testimony was not available to the committee.

We are not as impressed with Judge Carswell's role as a founder of the law school at Florida State University when nine of 15 members of that faculty have publicly opposed his appointment to the Supreme Court.

We are concerned about his, at least, unwitting reservations at his confirmation hearing regarding his repudiation of his 1948 speech, when his judicial and private actions since 1948 show no real commitment to the equal rights for all Americans.

Mr. President, again I use the word "we" editorially. I do not speak for any other Senator.

In summary, the President should accept the fact that we must perform our constitutionally mandated duty, and that he is not the first President whose nominees to high office have failed of confirmation, including the President's immediate predecessor and even including Dwight D. Eisenhower, venerated and revered as he was in this country. Nor will he be the last.

And finally, witness the swift and nearly unanimous confirmation of Chief Justice Burger for whom practically every Senator who now opposes Judge Carswell voted. The President may rest assured that he will have the votes for a qualified nominee, even from those of us who may differ with him philosophically.

AMENDMENT OF THE RURAL ELECTRIFICATION ACT OF 1936, AS AMENDED

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 644, S. 3387.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 3387) to amend the Rural Electrification Act of 1936, as amended, to provide an additional source of financing for the rural telephone program, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. TALMADGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TALMADGE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. TALMADGE. Mr. President, it was my privilege on February 4 to report for the Committee on Agriculture and Forestry an original bill (S. 3387) to amend the Rural Electrification Act to provide an additional source of financing for the rural telephone program.

This bill is a revised version of S. 1684, introduced by the Senator from South Dakota (Mr. MCGOVERN), and S. 2202, introduced by the Senator from Kansas (Mr. DOLE). Senators MCGOVERN and DOLE are to be commended for their efforts in securing passage of legislation to improve rural telephone systems. Senator DOLE has been engaged in the support of such legislation since 1966 when, as a member of the House Agriculture Committee, he supported a bill to create a rural electric and rural telephone bank. I am happy that the Senate Agriculture Committee was able to agree upon a bill which resolves the major problems involved in establishing a source of supplemental financing for rural telephone systems.

The rural telephone program came into being with the enactment of an amendment in 1949 to the Rural Electrification Act. At that time, only 39 percent of America's farms had telephones. Service was being provided generally in rural areas by hundreds of small telephone companies that had their beginnings earlier in the century. By 1949 most of them were using plants that were no longer providing satisfactory service and required extensive replacement and modernization. In attempting to find the financing required to do the job, these small companies learned that banks and insurance companies were not interested in lending substantial sums to small companies with equity interests largely represented by telephone facilities that would have to be junked in the modernization process.

In passing the telephone amendment to the Rural Electrification Act, Congress stated:

It is hereby declared to be the policy of the Congress that adequate telephone service

be made generally available in rural areas through the improvement and expansion of existing telephone facilities and the construction and operation of such additional facilities as are required to assure the availability of adequate telephone service to the widest practicable number of rural users of such service.

The rural telephone program celebrated its 20th anniversary last October. By December 31, 1969, loans totaling $1,683,425,643, had been made to 865 systems in 46 States.

Since the beginning of the program, telephone service has been furnished or improved for more than 6 million people in over 2 million rural establishments. The percentage of farms in the country without telephone service has decreased from 61 percent in 1949 to 18 percent today. This record is impressive and misleading at the same time. The percentage of farms without telephone service is a poor indication of the present financial needs of these rural telephone systems. When many rural subscribers had to share their telephone lines with up to 25 other familes, reducing the number of parties on the line to no more than eight constituted substantial improvement in the quality of service. This type of improvement encouraged greater utilization of telephone facilities so that today it has become increasingly difficult for a party line subscriber to make or receive a call. These difficulties have led to the growing demand for upgrading of service. This gives rise to the need for large amounts of additional credit.

The population explosion is another factor that places increasing financial demands on rural telephone systems. As more and more people look toward rural America as a better place in which to live and work, what was once farm and range land is becoming the site for new towns and cities and industrial developments. These newcomers want for themselves top-quality telephone service requiring an expansion and further improvement of existing telephone systems in rural areas.

The increasing financial needs of these rural telephone systems is evidenced by the level of loan applications carried over from year to year. On June 30, 1968, REA had 312 telephone loan applications on hand totaling $302 million. This backlog of pending applications increased to $346 million on June 30, 1969.

REA recently reported that as of December 31, 1969, the amount of telephone loan applications on hand had reached $394 million. The total backlog now exceeds three times the annual level of loans authorized by Congress in appropriation acts in recent years.

Applications received in the first 6 months of this fiscal year totaled $97 million. Additional applications totaling $103 million are expected in the current 6-month period ending June 30, 1970. Within the next 15 years, it has been estimated that the rural telephone systems financed by REA will need more than twice the $1.7 billion loaned in the first 20 years of the rural telephone program. For some time now, it has been obvious that another source of financing must be developed to supplement the present direct loan program.

On March 13, 1969, the House Committee on Agriculture reported H.R. 7, a bill to amend the Rural Electrification Act of 1936 to provide an additional source of financing for the rural telephone program. The Senate Committee on Agriculture and Forestry held a hearing on November 6, 1969, on S. 1684 and S. 2202, two bills similar to H.R. 7. These bills listed a total of 38 Senators from both sides of the aisle as their sponsors. The hearing revealed that these bills had extensive support from all elements of the telephone industry, including both borrowers and nonborrowers from the Rural Electrification Administration. After careful consideration of a number of suggestions and recommendations received in the course of the hearing, the Committee on Agriculture and Forestry decided to report an original bill, which we believe satisfactorily resolves all the major problems discussed at the hearing.

The bill as reported by the committee will establish a rural telephone bank to provide supplemental financing for rural telephone systems. The new financial institution will be similar to the Federal land bank in the farm credit system. It will begin operations as an agency of the United States, but upon retirement of the class A stock representing the Government's investment it will become a private financial institution owned and controlled by its borrowers. The farm credit system pattern has successfully demonstrated that Treasury-financed institutions can, in a reasonable time, repay the Government's investment and become self-sustaining enterprises.

S. 3387 adds two new titles to the Rural Electrification Act of 1936. The new title III would establish a rural telephone account while the new title IV creates a rural telephone bank.

The rural telephone account will include that part of the net collection proceeds from telephone loans under the present direct loan program which the REA Administrator deems necessary to pay for the investment by the United States in class A stock of the bank. To help the bank get started, section 406 of the bill authorizes an appropriation from this account of amounts not in excess of $30 million annually for the purchase of class A stock until the amount of this stock totals $300 million.

The bank created by title IV would also issue class B stock to recipients of its loans. Each borrower would be required to invest an amount equal to 5 percent of the loan it receives from the bank in such stock, excluding so much of the loan as was made for the required purchase of such stock. Class B stock would receive no dividends but holders of such stock would be entitled to patronage refunds in class B stock under conditions to be specified by the bylaws of the bank. Class C stock will be available for purchase by entities eligible to borrow from the bank or organizations controlled by them and would be entitled to dividends which cannot exceed the bank's current average rate on its debentures until all class A stock has been retired.

With this capital as seed money, the bank is authorized under section 407 to obtain funds through the sale of debentures. Until all class A stock has been retired, the terms and conditions of these debentures are subject to the approval of the Secretary of the Treasury. The amount of debentures outstanding may not exceed eight times the paid-in capital and retained earnings of the bank. These debentures will not be tax exempt or guaranteed by the United States. These provisions make it necessary for the bank, in order to comply with section 401(b) and conduct its operations to the extent practicable on a self-sustaining basis, to limits its loans to those borrowers which have the capability of paying the higher interest rates which the bank will have to charge.

Operation on this basis will do much to conserve the limited amounts which are being made available annually for the direct loan program for those borrowers which do not have the capability of paying the bank's higher interest rates. The bill, as reported by the committee, establishes guidelines for the determination of which borrowers will receive loans under the direct loan program and which borrowers will be referred to the bank for part or all of their requirements at a higher rate of interest.

All loans for telephone systems with an average subscriber density of three or fewer per mile would be made under the existing 2 percent program unless the borrower elected to take a bank loan and could meet the bank's eligibility requirements for such a loan. A system with greater density would not be eligible for a 2-percent loan if its net worth exceeded 20 percent of its assets unless it could not receive a loan from the telephone bank or other reliable sources at reasonable rates and terms.

With respect to borrowers which would be eligible for either a bank loan or a loan under section 201 under these provisions, REA would determine the highest practicable effective interest rate the borrower could pay on the new loan and still meet the bank's interest coverage requirements. If the borrower could pay more than 2 percent and meet this test but not as much as the bank's lowest rate, REA would make a loan for enough of the funds required at 2 percent to reduce the borrower's composite interest rate of present and proposed loans to a level which would meet the bank's interest coverage requirements and qualify the borrower for a bank loan covering the largest practical amount of the new fund requirement. The committee contemplates that the blending of section 201 loans and bank loans in this manner will provide considerable latitude in tailoring interest rates to the borrowers' ability to pay, weaning borrowers from the 2-percent program as fast as they are able to pay higher interest rates and funds become available to the bank.

I believe it appropriate to further explain the following statement on page 4 of the committee report on this bill:

In order to provide still greater latitude in tailoring interest rates to the borrower's ability to pay and available funds, the committee contemplates the blending of section 201 loans and bank loans to result in an average rate of interest which reflects the borrower's ability to pay.

It was the intent of the committee that this legislation expedite loans to prospective borrowers under section 201 of the act by making supplemental loans available and that the administration of the bank should in no way delay or hinder the making of a loan to a prospective borrower who cannot bear an interest rate in excess of 2 percent.

The purpose of the bank is to obtain the optimum use of loan funds, and that purpose is expressed on page 5 of the committee report as follows:

Section 408(b)(2) provides that funds to be loaned under the act to any borrower shall be loaned under the bank loan provisions in preference to section 201 if the borrower is eligible for such a loan and funds are available therefor. In determining whether loan funds were available for a bank loan, the Administrator could look at all of the expected demands for funds for the fiscal year and plan for the optimum use of loan funds from both sources.

The bank funds and the funds for the 2 percent loans under section 201 would be kept completely separate, and separate loans would be made by the bank and by the Administrator under separate loan contracts and using separate mortgages. Any loan under section 201 authority would have to meet all of the requirements applicable to loans under that section and would bear interest at 2 percent per annum. Loans by the bank would have to meet all requirements for bank loans which, in no event, can be less than 4 percent per annum. There is nothing in the bill, however, to prevent the making of separate 2 percent loans under section 201 and bank loans under section 408 to the same borrower.

No language or example in the committee report should be construed to change the concepts cited in the above paragraph. The examples cited in the committee report are intended to show how a borrower's ability to pay interest can be met through a combination of existing section 201 loans and proposed bank loans.

Let us take the example set out in paragraph 1 on page 4 of the committee report. There the borrower can afford overall interest of 3 percent. If all of his requirements were to be met by section 201 loans, the funds available under section 201 would be diminished by the full amount of his requirements. If, however, as suggested in this example, half of his requirements were to be met by a loan from the bank at 4 percent, the section 201 funds would not be diminished by that much of his requirements and there would be that much more left for other borrowers entitled to section 201 loans. We would expect this example to be the most likely of the examples shown in the report.

Now let us look at the second example on page 4. There the borrower can afford to pay 4 percent. Since the bill requires that all of the funds loaned to him must come from the bank if adequate funds are available, the Administrator would have no authority to make a section 201 loan to him if bank funds were adequate. As shown by the table on page 6 of the report, about $42 million worth of loans could be made by the bank at 4 percent since the average cost of that money to the bank would be about 3.71 percent. The ability of the bank to make this volume of loans at this rate of interest is another example of blending, this time of different funds available to the bank.

The bank achieves its capability to make low-interest loans through a blending of the several sources of funds available to it. In this example the bank is able, blending first, low-interest funds received for class A stock—appropriated by the Federal Government—and class B stock—subscribed by the borrowers—with second, capital from the private money market, to make $42 million in loans at a blended rate of 4 percent. Looking at the chart on page 6 we see that if this blended rate is set at 6 percent, the bank could lend nearly $90 million. It is probable, of course, that many borrowers will not be able to pay more than 2 percent and that many borrowers who can qualify for bank loans, under the criteria established within the bill, will be able to afford only the lowest allowable bank interest rate.

In the Senate committee hearing on this bill almost every Senator expressed strong views regarding the importance of the rural telephone 2-percent lending program and emphasized that this program must not be endangered. I have made this clarifying statement to insure that the intent of the committee is clear.

Until such time as the Government's investment is fully retired, the telephone bank would have 13 directors, including the REA Administrator, the Governor of the Farm Credit Administration, three employees from offices of the Department of Agriculture other than REA, two public members who are not Federal employees, and six members to be selected or elected from the directors, managers, and employees of eligible borrowers and organizations controlled by such entities. As soon as all class A stock has been retired, the board would be reduced to eight and consist only of the REA Administrator, the Governor of the Farm Credit Administration, and the six directors elected by the borrowers.

S. 3387 provides for the retirement of this stock as soon as practicable after June 30, 1984, and specifies that the minimum retirement after that date and after class A and class B stock totals $400 million shall equal the amount of class B stock sold by the bank during that year. As indicated previously, each borrower is required to purchase class B stock in order to obtain a loan. Systematic retirement of the Government's investment is thus assured.

I ask unanimous consent to have inserted in the RECORD at this point the section-by-section analysis of S. 3387 from Senate Report No. 91-653.

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

SECTION-BY-SECTION ANALYSIS

The bill consists of five sections as follows:

Section 1. Declaration of policy.

Section 2. Addition of the following to the Rural Electrification Act of 1936—

TITLE III

Sec. 301. Rural telephone account.

Sec. 302. Deposit of account moneys.

TITLE IV—RURAL TELEPHONE BANK

Sec. 401. Establishment, general purposes, and status as instrumentality of United States.

Sec. 402. General powers.

Sec. 403. Agency of the United States until conversion to private ownership.

(*a*) Subject to Secretary of Agriculture.

(*b*) Use of REA facilities and employees.

(*c*) Wholly-owned Government corporation.

(*d*) Appointment and compensation of officers.

(*e*) Tort claims and litigation.

Sec. 404. Governor.

Sec. 405. Board of directors, bylaws, meetings, annual report.

Sec. 406. Capitalization, retirement of U.S. investment, dividends, patronage refunds.

Sec. 407. Borrowing power.

Sec. 408. Lending power.

Sec. 409. Telephone bank receipts.

Sec. 410. Conversion to private owernship.

Sec. 411. Liquidation.

Sec. 412. Borrower net worth as a bar to 2-percent loans.

Section 3. Technical amendments.

Section 4. Right to amend.

Section 5. Effective date.

Section 1. Policy.—Section 1 of the bill declares it to be congressional policy to provide sources of supplementary financing to meet growing capital needs of rural telephone systems through establishment of a rural telephone bank, with the objective that the bank will become entirely privately owned, operated, and financed. The Congress also finds many rural systems require financing under title II of the Rural Electrification Act.

Section 2. New titles.—Section 2 amends the Rural Electrification Act of 1936, as amended, by adding thereto two new titles, titles III and IV.

Title III relates to the creation of a rural telephone account and contains two sections.

New Section 301. Rural telephone account.—Section 301 of this title provides that the rural telephone account shall include so much of net collections from telephone loans made under section 201 of the act, received on and after July 1, 1968, as the REA Administrator determines necessary to provide for investment by the United States in capital stock of the bank in accordance with section 406(a).

New Section 302. Deposit of account moneys.—Section 302 requires moneys in the rural telephone account to remain on deposit in the Treasury until disbursed.

Title IV relates generally to the establishment and operations of the Telephone Bank.

New Section 401. Establishment of Rural Telephone Bank.—Section 401 of this title establishes the Telephone Bank as a corporate body and instrumentality of the United States, outlines its general purposes, and authorizes the bank to make payments in lieu of property taxes on its real and tangible personal property.

New Section 402. General powers.—Section 402 describes general corporate powers of the Telephone Bank.

New Section 403. Agency of the United States until conversion to private owner-

ship.—Sections 403, 404, and parts of 405 contain special provisions governing the Telephone Bank until it is converted to private ownership, control, and operation under section 410(a). Until that time, and not thereafter, section 403 provides that the Telephone Bank shall be an agency of the United States subject to supervision and direction of the Secretary of Agriculture (but not entitled to transmission of of its mail free of postage or to the priority of the United States in the payments of certain debts); it may, without cost, partially or jointly utilize facilities and employees of REA or other Department of Agriculture agencies; it shall be subject to the Government Corporation Control Act as if it were a "wholly owned Government corporation"; it may appoint and fix the compensation of its officers and employees without regard to civil service or classification laws; and it shall be subject to specified tort claims legislation and to supervision of certain litigation by the Attorney General.

New Section 404. Governor.—Section 404 provides that the REA Administrator shall serve as Governor of the Telephone Bank, and that the Governor shall perform the bank's functions except for matters specifically reserved to the board of directors.

New Section 405. Board of Directors.—Section 405 provides for a 13-member board of directors for the Telephone Bank, consisting of the REA Administrator and Farm Credit Administration Governor; five members designated by the President to serve at his pleasure (three from the Department of Agriculture outside REA and two from the general public); and six additional members, initially appointed by the President to represent the rural telephone systems, then elected (three each from cooperative and commercial entities) by eligible bank borrowers and their organizations, and finally by non-Government stockholders (holders of class B and class C stock).

New Section 406. Capitalization, retirement of U.S. investment, dividends, patronage refunds.—Section 406 describes the capitalization of the Telephone Bank. Three classes of stock are authorized. These are class A, class B, and class C. There are authorized to be appropriated, as the capital to be furnished by the United States, amounts not to exceed $30 million annually, until the purchase of class A stock equals $300 million. This capital will be furnished from net collection proceeds in the rural telephone account. "Net collection proceeds," are defined as principal and interest payments on account of telephone loans made by the REA Administrator under section 201 of the act, less the amount of interest payable to the Secretary of the Treasury on loans to the REA Administrator for telephone purposes. On or before July 1, 1974, the Secretary of Agriculture will prepare for the President a report to be submitted to Congress containing recommendations concerning the continued capitalization of the bank by the United States. Class A stock, issued to the United States, will be retired by the Telephone Bank as soon as practicable after June 30, 1984 unless the bank's board of directors determines that such retirement will impair the bank's operations. A minimum amount of annual retirement is required, however, after this date and after the bank's capital from issuance of class A and class B stock totals $400 million.

A cumulative 2-percent return on class A stock is payable annually into miscellaneous receipts of the Treasury. Class B stock will bear no dividends and will be held only by borrowers of the bank who will be required to invest in such stock 5 percent of amounts borrowed for telephone purposes from the bank. Class B stockholders will be entitled to patronage refunds in the form of class B stock. Dividend-bearing class C stock will be available for purchase by borrowers from the bank, by entities eligible to become borrowers, and by organizations of such borrowers and entities. Class B and C stock will be voting stock, but no holder will be entitled to more than one vote. Class B and class C stockholders which are owned or controlled by the same entity are limited to one vote, regardless of the number of stockholders. Provision is made for special fund equivalents for entities not authorized under State law to acquire bank stock.

New Section 407. Borrowing power.—Section 407 authorizes the bank's board of directors, after consultation with the Secretary of the Treasury, to obtain funds through the public or private sale of telephone debentures of the bank, the amount of such debentures outstanding not to exceed eight times the paid-in capital and retained earnings of the bank. Telephone debentures will not be guaranteed by, or constitute obligations of, the United States.

New Section 408. Lending power.—Section 408(a) authorizes the Governor of the Telephone Bank to make loans on behalf of the Telephone Bank, in conformance with policies approved by the bank board, to corporations and public bodies which have obtained a loan or loan commitment pursuant to section 201 of the act. Such loans may be made for the same purposes and under the same limitations for which loans may be made under section 201 of the act, and for the purchase of class B stock. In addition, loans may also be made for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities or systems, in order to improve the efficiency, effectiveness of financial stability of borrowers. In connection with loans for these latter purposes, if the loan is for the acquisition of telephone facilities, the acquisition must be approved by the Secretary of Agriculture, the location and character thereof must be such as to improve the efficiency, effectiveness or financial stability of the borrower's system, and in respect of exchange facilities for local services, the size of each acquisition may not be greater than the borrower's system at the time of its first Telephone Bank loan, taking into account the relative number of subscribers served, miles of line, and plant investment.

Section 408(b) provides that the bank loans shall be on terms and conditions determined by the Governor, subject to the following restrictions:

(1) All bank loans shall be fully amortized over a period not to exceed 50 years.

(2) Bank loans are to be made in preference to REA loans if the borrower is eligible for the bank loan and funds are available therefor. However, loans under the act for facilities for telephone systems with an average subscriber density of three or less per mile shall be made under section 201 of the act, but such loans may be made by the bank at the borrower's option.

(3) Bank loans, to the extent practicable, shall bear interest at the highest rate meeting the requirements of paragraph 4 below, consistent with the borrower's ability to pay this rate and the achievement of act objectives, but not less than 4 percent per annum.

(4) The Governor must certify that the loan security is reasonably adequate and the loan will be repaid within the time agreed; and that the borrower has the capability of producing net income or margins before interest of at least 150 percent of the interest requirements on all its outstanding and proposed loans. This percentage may be raised by the bank board in order equitably to allocate available funds among borrowers or to improve marketability of the bank's debentures. The net income or margin requirement may be waived by the Governor in specified circumstances.

(5) Bank borrowers must obtain certificates of convenience and necessity from State regulatory bodies having authority to issue such certificates, and the Governor of the bank shall make nonduplication determinations where there is no such State regulatory body legally authorized to issue such certificates.

(6) Defines "telephone service," when used in section 408, as having the same meaning as prescribed for this term in section 203(a) of the act.

(7) Use of any loan funds from the bank or from REA to finance certain political activities is prohibited, and borrowers shall agree not to engage in such political activities during the term of such bank or REA loan. Since section 408(b)7 refers to "any loan made under this act," it is intended to apply to all loans made under the Rural Electrification Act, including loans made under sections 4, 5, 201, and this section. A provision contained in S. 1684 and S. 2202 for accelerated maturity in the event of a violation of this provision has been omitted from the reported bill, since such violations are subject to criminal penalties under sections 600, 601, 610, 611, and 612 of title 18, United States Code.

(8) No telephone bank or REA telephone borrower shall, without the approval of the Governor or the Administrator, as the case may be, dispose of its property, rights, controlling interest, or franchises, or merge or consolidate, until it has repaid all its indebtedness to the bank or REA. Approval of the disposition of all, or substantially all, such rights or interests, or of mergers or consolidations, shall be conditioned upon agreement to pay rates of interest required for new loans under the act and upon refinancing to the extent required to effect this result.

Section 408(c) provides for adjustments, on an amortized basis, in the schedule of repayments on bank loans.

New Section 409. Telephone Bank receipts.—Section 409 provides that any receipts from the activities of the bank shall be available for the bank's obligations and expenditures.

New Section 410. Conversion to private ownership.—Section 410, covering the conversion of the bank's ownership, control, and, operation to private ownership, provides that whenever all class A stock issued to the United States has been fully redeemed: The REA Administrator ceases to be Governor of the bank, such Governor to be thereafter selected by the bank's board of directors; the number of board members is reduced from 13 to eight, the five members designated by the President ceasing to be members; and the bank ceases to be an agency of the United States, but continues in perpetuity as an instrumentality of the United States. After all class A stock of the United States has been fully retired, the bank shall cease to be subject to the restrictions in the provisos of section 408(a)(2), but not to the review by Congress of its operations.

New Section 411. Liquidation.—Section 411 specifies the priorities of the various classes of stockholders and others in the case of liquidation or dissolution of the bank.

New Section 412. Borrower net worth as a bar to 2-percent loans.—Section 412 prohibits the Administrator from making REA loans to any telephone company which, in the prior year, had a net worth in excess of 20 percent of its assets absent a finding that the company could not obtain a loan from the Telephone Bank or other sources under reasonable rates and conditions.

Section 3. Technical amendments.—Section 3 of the bill amends the provision in section 3 of the Rural Electrification Act which requires all principal and interest collections on loans made by the REA Administrator to be remitted to the Secretary of the Treasury, by excepting from this requirement collections paid into the rural telephone account pursuant to section 301.

It also amends section 201 of the present act to permit public bodies to obtain REA telephone loans.

Section 4. Right to amend reserved.—Section 4 of the bill expressly reserves the right to repeal, alter, or amend this act.

Section 5. Effective date.—Section 5 of the bill provides for the legislation to take effect upon enactment.

Mr. TALMADGE. Mr. President, telephone service available to our rural citizens today is far from satisfactory. Although eight telephone subscribers per rural line was considered a substantial improvement over service available when the telephone amendment to the Rural Electrification Act was passed in 1949, I do not believe any family today, urban or rural, would consider telephone service adequate if it must be shared with seven other families. In my view, good telephone service is a vital necessity if we are to make rural areas attractive enough to slow the trend of migration into the Nation's crowded urban areas. Effective telephone services are a must if we expect new businesses and industries to provide employment opportunities in rural areas.

Enactment of S. 3387 therefore merits every Senator's attention and support because its benefits will extend directly or indirectly to all parts of the country. And best of all, it will benefit the Treasury and the taxpayers by providing the vehicle essential for channelling private capital into the rural telephone industry.

Mr. DOLE. Mr. President, I compliment the junior Senator from Georgia on his statement and express my appreciation for his efforts on behalf of S. 3387, to amend the Rural Electrification Act to provide an additional source of financing for the rural telephone program. As chairman of the Agricultural Credit and Rural Electrification Subcommittee of the Senate Agriculture Committee, his leadership and understanding of the complicated sections involving capitalization of the bank during the hearings and in executive session proved to be of invaluable assistance during our deliberations.

As the Senator from Georgia pointed out, I have long been interested in supplemental financing for rural telephone systems. Mr. President, on May 20, 1969, I introduced S. 2202 similar to S. 3387, with 11 cosponsors. That bill was modeled after H.R. 7 which was reported favorably by the House Agriculture Committee but is still pending in the House Rules Committee.

I am gratified that the concepts provided in S. 2202 received favorable consideration by the Senate Agriculture Committee. This legislation means much to rural America. If we are to relieve the population pressure on our urban centers, we must make it possible for people in rural America to obtain basic services.

The original REA loan program has benefited many people. The Nation's farms receiving service have risen from 38 percent in 1949 to approximately 82 percent today. REA loans build and improve more than 500,000 route miles of telephone service to approximately 2,400,000 subscribers in rural areas. In my State of Kansas, as of February 1, 1970, REA loans to telephone borrowers provide modern telephone service for an estimated 112,200 rural subscribers on over 36,486 miles of line. First-time service is being provided for 28,427 of these subscribers and improved service for 83,773.

When the REA telephone loan program was authorized by Congress in 1949, 68.3 percent of the farms in Kansas had telephones, and much of this was obsolete service. Today, 90 percent of the State's 89,450 farms, as well as many rural homes and businesses, have telephones, and a much greater proportion is modern dial service.

The first REA telephone loan made in Kansas was approved April 17, 1951, for the W. E. G. Dial Telephone, Inc., Gardner, Kans. From that time until February 1, 1970, REA had approved $73,873,865 in loans to 37 borrowers in Kansas, including 26 commercial companies and 11 cooperative associations. The borrowers had reported to REA by January 1, 1969, that they had placed in operation 311 automatic dial exchanges serving rural subscribers.

The repayment record of REA borrowers is excellent. By January 1, 1970, the Kansas borrowers had made $20,596,309 in payments on the $64,301,402 in loan funds advanced to them by REA. The payments included $10,222,906 repaid on principal as due, $1,212,598 of principal paid ahead of schedule, and interest payments of $9,160,805. No borrower was overdue in its payments.

REA originally established a standard of eight subscribers per rural line but with the increased use resulting from dial service, these systems must now be upgraded. While REA telephone borrowers have received loans for over $16 billion since the beginning of the program, they will need more than twice this amount in the next 15 years. The REA telephone systems cannot go directly into the private money market because most of them operate under a very low subscriber density handicap. REA telephone borrowers have an average subscriber density of 3.8 subscribers per route mile of line as compared to a subscriber density of 16 per mile for the total independent telephone companies and over 40 per mile for Bell system companies.

Because of the need to modernize, loan applications to the REA have increased. However, budget demands make it impossible to approve the pending applications under section 201 of the act. As a result, the Secretary of Agriculture reports the total backlog of applications has increased from $302 million of June 30, 1968 to $394 million by December 31, 1969, three times the appropriation for fiscal 1969. Kansas has 14 applications pending totaling $9,041,000. Mr. President, I ask unanimous consent that a compilation of telephone loan applications pending as of September 30, 1969, be made part of the RECORD along with a breakdown of REA telephone appropriations since 1964.

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

UNAPPROVED REA TELEPHONE LOAN APPLICATIONS ON HAND SEPT. 30, 1969

[Dollars in thousands]

State	Number	Amount
Alabama	11	$16,373
Alaska	1	173
Arizona	2	3,795
Arkansas	7	3,729
California	5	4,850
Colorado	4	2,145
Connecticut		
Delaware		
Florida	3	5,859
Georgia	11	10,785
Hawaii		
Idaho	2	1,156
Illinois	10	3,686
Indiana	7	7,136
Iowa	17	8,353
Kansas	14	9,041
Kentucky	9	12,212
Louisiana	8	10,893
Maine	2	2,017
Maryland	1	848
Massachusetts		
Michigan	9	9,447
Minnesota	29	36,188
Mississippi	4	3,761
Missouri	12	12,808
Montana	4	2,970
Nebraska	10	9,698
Nevada		
New Hampshire	1	655
New Jersey	2	3,567
New Mexico	3	2,637
New York	4	3,813
North Carolina	16	30,140
North Dakota	10	16,929
Ohio	1	300
Oklahoma	16	8,199
Oregon	6	4,746
Pennsylvania	14	17,245
Rhode Island		
South Carolina	17	20,073
South Dakota	8	10,364
Tennessee	12	9,925
Texas	27	19,746
Utah	2	1,600
Vermont		
Virginia	4	6,180
Washington	4	2,060
West Virginia	1	1,400
Wisconsin	26	25,701
Wyoming	2	350
Puerto Rico		
Total	358	363,553

REA telephone appropriations

Year:	*Millions*
1964	$70.0
1965	70.0
1966	97.0
1967	117.0
1968	120.6
1969	125.0
1970 (recommended budget and passed by House and Senate)	125.0

Mr. DOLE. Mr. President, S. 3387 would create a rural telephone bank for the purposes of supplying capital not available from the section 201 program or on the commercial market. This has been well explained by the junior Senator from Georgia. Many REA telephone systems do not need to rely on the 2-percent loan program, but they are not capable of paying commercial interest rates. Under this legislation there would be a compromise and borrowers would pay the highest practicable interest rate on their loans. This is certainly a much sounder approach than requiring the rural telephone companies to defer modernization because of the limited money available in the section 201 program.

I might say that there is general agreement on the necessity for passage of this legislation. The senior Senator from Oklahoma (Mr. HARRIS), the junior Senator from Georgia (Mr. TALMADGE), the junior Senator from Kansas, and other Senators have introduced similar legis-

lation. I understand the senior Senator from Oklahoma intends to offer an amendment deleting subsection 7 of the bill, a provision similar to a section in S. 2202 which I introduced and similar to a provision in S. 1684, cosponsored by the senior Senator from Oklahoma. Hopefully, when that amendment is offered, we can reach an acceptable compromise.

This bill creates a bank which will eventually be privately owned and operated. All that the rural telephone systems are asking for is an opportunity. This is a worthy objective, one that I hope the Senate will endorse.

Mr. BURDICK. Mr. President, I am very heartened by the words which my distinguished colleague from Georgia has had to say on this bill.

I am glad that he has noted that it was not the intent of the Senate Agriculture Committee that the 2-percent lending program be diminished in any way by the rural telephone bank.

In this matter of blending I believe there is more than enough authority within the bank itself to achieve a blended low-cost interest rate by using the low interest class A and class B stock.

There is no doubt that the rural telephone industry needs the supplemental financing which this bill provides. But we must never forget that there is also a continuing and critical need among rural telephone companies—both proprietary and cooperative—for continuing financing under the 2-percent REA loan program.

I would envision that when this bank becomes operational, it will operate in tandem with the 2-percent program: the bank helping those companies which can afford higher interest rates and the 2-percent program assisting those which cannot.

What I do not envision is this bank taking over all of the functions of the 2-percent program. And I think we in Congress must make it perfectly clear to the administration that we intend there to be both a viable 2 percent program as well as a bank. I think Congress would look with grave disfavor on any move to eliminate the 2-percent program in favor of a single higher interest rate program.

RURAL TELEPHONE BANK ESSENTIAL FOR FIRST CLASS SERVICE

Mr. YARBOROUGH. Mr. President, the creation of a rural telephone bank is an essential step toward providing first-class rural telephone service throughout rural America.

The bill, S. 3387, creates a rural telephone bank to provide supplemental financing for rural telephone borrowers. It is an urgently needed complement to the present Rural Electrification Administration's telephone program. Recently, the REA has not been able to satisfy all the requests for capital from its telephone borrowers. The backlog of loan applications carried over from year to year has been growing rapidly.

Under this bill, the Government would initially capitalize the rural telephone bank. The bank would be authorized to obtain funds from non-Federal sources to be used in making loans to telephone borrowers of REA. Over a period of years the Government investment would be retired and the bank would then be converted to private control. This financing plan is an adaptation of the Federal land bank system which has demonstrated its capability as a means of completely freeing a lending program from reliance on Treasury financing over a period of years.

The need for this supplemental financing program is dramatically demonstrated by considering the tremendous backlog of telephone loan applications before the REA. These loan applications on file now total $394,209,000 and another $103,300,000 is expected to be received before the end of this fiscal year. The 1970 budget for this program is only $123,300,000. This small amount will hardly make a dent in the nearly $500 million total which has been and will be requested this year. Imediate action is necessary to relieve this intolerable situation. We cannot continue to force our farm people to accept second-class telephone service.

Mr. GORE. Mr. President, will the Senator from Texas yield?

Mr. YARBOROUGH. I yield to the distinguished Senator from Tennessee.

Mr. GORE. What is likely to occur with respect to the unmet needs?

Mr. YARBOROUGH. Without this bank, and considering the small amount requested in the budget and the small amount to be appropriated, three out of four of the farms and ranches would be without adequate telephone service. A great number are on eight-party lines, on which one can seldom break through when there is need for a doctor, a fire department, or a law enforcement officer.

One of the handicaps that drives people off the farms is the lack of communication. The purpose of the bill is to enable people to borrow money to build the lines. When the amount of Federal funds is so small, it is not possible to get funds to build the lines.

Mr. GORE. Under what theory is the appropriation for so worthy a purpose denied?

Mr. YARBOROUGH. I am not the Bureau of the Budget, nor am I on the same wavelength as the Bureau of the Budget, but the real reason is, I think, that we are putting $36 billion down a rathole in Southeast Asia. That expense is eating up the funds for hospitalization, for example. The Bureau of the Budget has wiped out all money for the Hill-Burton Act and all money for libraries. It has several times wiped out all requests for libraries and secondary schools, and now it has taken on the rural telephones. The whole quality of American life is being pulled down by the unwise expenditure of funds in the wrong areas.

Mr. GORE. I understand there was a plan to end the Vietnam war.

Mr. YARBOROUGH. We heard about that in 1968. We lost the election by less than one-half of 1 percent on the basis of a plan, to be unveiled after the election, this plan to end the war in Vietnam. It is now more than 14 months since the inauguration of the President, and that plan has not been unveiled.

The casualty lists are going up. We still have, according to the latest published reports, 450,000 men in Vietnam. I suppose that does not include those in Laos and Cambodia or on the ships at sea, and at other points where they may be deployed.

The casualties continue, and the expenses go on. The terrible loss of American life goes on. This loss of life is, of course, the worst expense of the Vietnam war.

But even if we had not lost so many dead and wounded, the economic cost alone would be devastating. It is pulling down the quality of American life. The Vietnam war is costing about $3 billion a month, $100 million a day.

The cost of running the war in Vietnam for 5 days would be enough to put a telephone in every farm and ranch in America.

Mr. GORE. The Senator refers to the number of casualties in Vietnam. Did he notice the report of 40 American boys killed in Vietnam yesterday, and several times that many wounded, some of them undoubtedly, for life?

Mr. YARBOROUGH. Yes, the figures are terrible. The lists of wounded show 500 to 1,000 a week, which would run to about 3,000 a month. Yet right in the midst of that, 2 weeks ago, the Veterans' Administration announced that it was discontinuing 5,000 beds in veterans hospitals. I have letters on my desk and have received numerous phone calls, as I am sure every other Senator has, saying, "Please get the beds back. We need them for the increasing number of wounded."

To answer the distinguished Senator's inquiry, 12.5 percent of those wounded are probably permanently disabled. Never before, in any war, have there been so many who are totally disabled.

According to the casualty lists, more than 300,000 men have been killed or wounded in Vietnam. In Korea, 157,000 were killed or wounded. In World War I, 314,000 were killed or wounded, and we had 2 million men fighting in France at that time. The Vietnam casualty list is well over 300,000 at this time. The total is fast approaching the number of casualties we suffered in World War I and is double the number of casualties in the Korean war. The war in Vietnam is now spreading into Laos and Cambodia. It is becoming a three-country war.

Mr. GORE. Does the Senator realize that under the formula called "Vietnamization," which has been the policy of our Government since June of last year, we have suffered more than 40,000 American casualties?

Mr. YARBOROUGH. I had not realized there were that many casualties, but I am not surprised. Figures are strange. The administration has quit announcing the casualty figures regularly as it formerly did. They are not given on a regular weekly basis. They are supplied irregularly. Sometimes we learn how many have been killed, but then have to wait another week to find out the number wounded. There is a strange change of pace in reporting casualties in Vietnam.

Mr. GORE. It occurs to me that Vietnamization for Vietnam and the Nixon doctrine for other countries in Asia are absolutely incompatible.

As we have unilaterally withdrawn or reduced forces in South Vietnam, North Vietnam, we are told frequently by the press and by official reports, has stepped up her infiltration into South Vietnam. Then we were told, I believe by President Nixon, that the North Vietnamese have sent 67,000 troops in Laos; and now we are told there are many thousands in Cambodia, both outflanking the position of our forces in South Vietnam.

I am glad that the United States has not moved ground troops into Laos and Cambodia and I commend the President upon this restraint. I do not know, however, how we draw a distinction between warfare by planes and warfare by tanks. I do not know how we draw a distinction between an American soldier who is killed in air combat service and one killed in ground combat service. Either is war.

But the point I started out to make is that, rightly or wrongly, to announce to the world that American troops will not be used to defend Laos and Cambodia operates as an invitation to the North Vietnamese to outflank our position in South Vietnam, or outflank the position of the Vietnamization effort. I say the two are incompatible. What is called for is a compromise peace settlement in Indochina, not only in Vietnam but in Laos and Cambodia as well. We have had the Vietnamization policy or strategy since last June. It has not ended the war. It is a semantic cover for continuing the war.

Mr. YARBOROUGH. The distinguished Senator from Tennessee, as a member of the Committee on Foreign Relations, of course, has available to him a considerable amount of information that those of us not on that committee do not have available. I congratulate him on his elucidation of this matter, and his furnishing information on it to the Senate.

Reverting, Mr. President, to the subject of my remarks, I want to emphasize the importance of the REA telephone program in my State. We still have more family farmers in my State than there are in any other State in the Union. We have not gone to corporate agriculture, as have some of the States further west from Texas. We have tried to support and maintain a family farm economy as a basic, bedrock support for democracy.

In my State, there are 67 separate borrowers under this program, both cooperatives and private telephone companies. We have the highest number of subscribers under this program of any State in the Union. We have a rather large population, and a greater proportion of our people are in rural areas than there are in any other State. Texas has more rural families than any other State, and more rural family farm operators.

The REA-financed telephone service in my State has more than 189,000 subscribers. Texas' cumulative loan total of more than $139 million is the largest among the States.

We need this service for our farms and ranches, and the telephone cooperatives in Texas are joining in the effort to secure passage of this bill, so that they can go into the private money markets and borrow money. They realize, with the existing budgetary situation, that they are not going to be able to get enough loan funds from the Federal Government—in fact, only about one dollar out of each four needed to provide services can be supplied through the REA telephone loan program.

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

Mr. YARBOROUGH. I yield.

Mr. DOLE. I think the Senator makes a good point. I note that Texas, as of September 30, last year, had some 27 applications pending, involving almost $20 million.

I think it is well to point out that Congress has recognized the increasing need in this field, because the appropriations for the REA telephone system have increased from $70 million in 1964 to a budget request of $125 million for fiscal 1970. So there is a recognition on the part of Congress of the need to beef up and improve the system.

Mr. YARBOROUGH. I thank the Senator for calling our attention to the fact that Congress has recognized this need. I feel that Congress would meet the need, except for the budgetary problem we are under, and the tremendous cost of our overseas adventures. So we turn, at this point, to the private money market, as so many of the Fedreal farm loan programs have done.

Mr. President, every Federal farm loan program ever started by Congress has succeeded. The production credit associations, the farm loan banks—everyone of these programs has succeeded. They have paid for themselves and have become operative, and the REA system has succeeded as well.

The able Senator from Georgia is to be commended for his leadership on this bill. It is an honor to be a cosponsor with him. He has shepherded it through the committee and out to the floor. It has taken a lot of work to get it through. This is a very meritorious measure. Representative POAGE had a similar bill in the House of Representatives in the last Congress, and it was bitterly opposed by people who apparently did not want these REA telephone cooperatives and small telephone companies to bring telephone lines into the rural areas.

The Senator from Georgia is due much credit for his work on this matter. He has brought to the Senate a clean committee bill, worked out as a result of many hearings and many hours of negotiation. I commend him for his legislative expertise in having brought this bill to the floor of the Senate, which has been sought unsuccessfully in a number of Congresses in the past. We have never been able to advance such a bill heretofore.

I urge my fellow Senators to join me in supporting this essential legislation.

Mr. President, I yield the floor.

Mr. COOK. Mr. President, I should like to commend the distinguished Senator from Georgia and the distinguished Senator from Kansas in regard to this act because what the Rural Telephone Act has done for the Commonwealth of Kentucky really has been an absolute miracle.

I should like to make it clear that when we talk in terms of figures and the fact that Congress has continued to increase the fund, that really is not quite correct, because in 1962, Congress appropriated $132.5 million for the program; in 1963 it dropped to $80 million; in 1964 it was around $70 million; in 1965 it was around $70 million; In 1966 it went up to $97 million; in 1967 it was $117 million; and in 1968 it went up to $120 million. It now stands at the figure of $125 million a year.

Mr. President, I might suggest to you that the $125 million represents less than one-third of the applications presently pending. The State of Kentucky presently has nine applications pending for over $12 million.

I can only say that to create the facility within the industry for it to borrow from its own creation, a creation of Congress, to borrow as against its own means to produce an income and the funds in that bank, will place an obligation on the system throughout the Nation to see to it that if there is need for $300 or $400 million, that that amount of money will be available in the system, that that amount of money can conceivably be available in the bank and it will not be necessary continually to see that an appropriation by Congress—which, by the way, is paid back to the Federal Government—is less than one-third of what is really needed.

If it is the desire of Congress and the desire of the administration to diffuse the great population of this Nation away from the cities to maintain people in rural America, nothing can be stronger, nothing can be more factual in the establishment of that population than a strong rural telephone system for this Nation.

I can only say that I want to congratulate the members of the Committee on Agriculture and Forestry and the members of the subcommittee which established this, and I hope that, within a short period of time. I say this to the distinguished Senator from Georgia, that this same type of bank will be available to the entire REA system, and that the entire system can work out its problems with the Securities and Exchange Commission, as it has already worked out this problem with the Internal Revenue, and establish creation of a bank so that it will not be necessary for some of the most major improving conditions in this country by way of REA and the rural telephone system, it will not be necessary for them to look at a fund that is less than one-third of what they really need.

Thus, I congratulate them and say to them again that so far as their efforts are concerned, I can only say that I hope

it has become obvious to every Member of the Senate, and that this action will receive the overwhelming endorsement of the Senate.

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

Mr. COOK. I yield.

Mr. DOLE. With reference to the whole concept of rural electric cooperatives, I share the view the Senator expresses. I hope that perhaps this time next year, Congress will be acting on an REA electric bank bill.

The primary opposition to it comes from the private power industry which is concerned not only about the 2 percent money provision but also other features of the REA electric proposal which has been proposed both in the Senate and the other body a number of times.

I have said many times to my friends in the power companies that this offer is a real effort to move away, if you please, from the 2-percent money. We recognize that this is no longer a realistic program. If the Government cannot borrow money at 2 percent, it cannot be expected to loan it at 2 percent or make a 2-percent loan except in hardship cases because of the density and other factors.

I share the view expressed by the Senator on this subject and am well aware of his continued interest in the program and would point out to him that this is an opportunity not only to provide better service for our REA system, the independent telephone systems and the commercial systems, but it is also a step in the right direction and does require, where we are able, that we pay either the going rate of interest or some in-between rate of interest.

This one feature itself is certainly a major improvement over the present restrictive system, which restricts loans to $125 million a year, when we have about $360 million in loan applications pending. We need about three times the money supply. Perhaps we can generate that supply to satisfy the growing demand by virtue of this type proposal.

Mr. COOK. I want to thank my friend from Kansas and say further to him on this discussion that I am very much pleased that the chairman of a committee that is presently working on the establishment of an REA bank, James Smith, who is general manager of the Kentucky REA's, should be commended for the work he has done in this field. I can only say that I wish them as much success in the immediate future as the rural telephone system will receive as a result of the actions of the subcommittee and the actions of the committee on Agriculture and Forestry.

Mr. President, I yield the floor.

Mr. HARRIS. Mr. President, for myself, and on behalf of the distinguished Senator from Texas (Mr. YARBOROUGH), the distinguished Senator from Hawaii (Mr. INOUYE), I send to the desk an amendment to S. 3387, which would strike subparagraph (7) of paragraph B under section 408 of the bill, and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. On page 18, after line 12, strike out:

(7) No portion of any loan made under this Act shall be used to finance any political activities prohibited under sections 600, 601, 610, 611, and 612 of title 18, United States Code, and prior to the making of any loan the borrowing entity shall agree in writing not to engage in any such prohibited political activities during the term of such loan.

On page 18, at the beginning of line 20, strike out "(8)" and insert "(7)".

Mr. HARRIS. Mr. President, the specific wording which by this amendment I move to delete from the bill as reported by the committee reads as follows:

No portion of any loan made under this Act shall be used to finance any political activities prohibited under Sections 600, 601, 610, 611, and 612 of Title 18, U.S. Code, and prior to the making of any loan the borrowing entity shall agree in writing not to engage in any such prohibited political activities during the term of such loan.

Mr. President, I have been a cosponsor of legislation to provide for the establishment of a rural telephone bank since its inception. I, of course, support the general provisions of S. 3387, and I realize the importance of making available additional growth capital to meet the growing needs of providing telephone service in the rural sections of America.

I commend the distinguished Senator from Georgia (Mr. TALMADGE), and members of the Committee on Agriculture and Forestry for what is basically and generally a very much needed and good piece of legislation.

Mr. President, I cosponsored legislation like that before us today containing language similar to the present subparagraph 7. My attention had not, until recently, been focused on this objectionable provision and its discriminatory impact.

Further, Mr. President, since that legislation was originally introduced, the committee report on S. 3387 has expanded the effect of the objectionable section 7, as shown at page 10 of the report, paragraph 7, to all REA borrowers, not just to rural telephone borrowers.

It is unfortunate that we find one provision, one isolated sentence, in the rural telephone bank bill which, in my opinion, is discriminatory and intimidating. The language I referred to would, in my opinion, discourage individual citizens of this country from exercising their right to participate in the operation of their government and in the selection of their public officials.

In zealous response to a complaint, the REA Administrator last year issued a bulletin entitled "Prohibitions Against Political Activities by REA Borrowers." I am sure it will not be necessary to again go into this matter which was so well aired by the Subcommittee on Conservation and Natural Resources of the Committee on Government Operations of the House of Representatives, in its report dated October 7, 1969. As Members of the Senate will recall, the Subcommittee on Conservation and Natural Resources held very thorough hearings on the matter of political activities by borrowers of the REA, and, subsequently in its report, directed the Administrator of REA to rescind the bulletin which he had issued and which contained substantially the same language which I seek to delete from the legislation we are considering here today. The findings of the Subcommittee on Conservation and Natural Resources are as applicable as they were when the report was submitted on October 7. At that time the subcommittee stated in effect that it is superfluous to say that the millions of rural people who own the rural electric and rural telephone systems in nearly every State in the Union must not use the loan funds they obtain from the REA for political activities prohibited under sections 600, 601, 611, and 612 of title 18 of the United States Code.

In the first place, these provisions of the code have been in existence since 1907 and have proven sufficient. To my knowledge there have been 15 cases tried under this portion of the code in the last 3 years. There were 14 convictions and one found not guilty. None of these were rural electric or rural telephone cooperatives.

In the second place, every REA borrower signs a loan contract and mortgage which specifically states that he must comply with "all valid laws, ordinances, regulations, and requirements." In the hearings last year before the House Government Operations Subcommittee, Howard V. Campbell, Assistant General Counsel for the U.S. Department of Agriculture, specifically agreed that these loan documents signed by REA borrowers apply to the laws on political activities. Let me quote from page 13 of the House report No. 91–550 concerning the testimony of Assistant General Counsel Campbell in response to a question asked by Mr. Indritz, counsel for the committee.

Mr. INDRITZ. Let me quote some of the terms which are in the general forms of REA's loan contracts and mortgages, and if I am in error in quoting them, please so state: Article II, section 5, of the standard mortgage form for electric borrowers—and there are similar provisions in the standard contract forms applicable to telephone borrowers—provides: "The mortgagor * * * will comply with all valid laws, ordinances, regulations, and requirements applicable to it * * *". Does that provision include Federal law?

Mr. CAMPBELL. In my opinion, yes, sir.

Mr. INDRITZ. Would it also include the Federal laws relating to political activities?

Mr. CAMPBELL. In my opinion, yes, sir.

Thus, Mr. President, it was made abundantly clear during the testimony of Mr. Campbell, the Assistant General Counsel for the U.S. Department of Agriculture, that under the terms of the mortgage contract REA borrowers already agree to abide by all Federal laws, which clearly would include the provisions of the Corrupt Practices Act which the language under subparagraph 7 of this bill restates.

Third, Mr. President, it is my opinion that subparagraph 7 is discriminatory because no other lending agency in the Federal Government finds it necessary specially to recite reference to the Federal Corrupt Practice Act in its instructions to borrowers or to require them to pledge in writing that they will obey the laws of the Nation. The Subcommittee on Conservation and Natural Resources of the House Government Operations Committee conducted a very thorough poll of Federal lending agencies to determine whether or not they required their borrowers to sign any statement guaranteeing that they would not participate in any political activities prohibited under the Federal Corrupt Practices Act. The results of that poll appear on pages 53 through 57 of the hearings by the House Government Operations Committee, and I ask unanimous consent that the result of that poll be printed at this point in the RECORD.

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

(SUMMARY OF RESPONSES TO SUBCOMMITTEE QUESTIONNAIRE)

FEDERAL LENDING AGENCY REGULATIONS, POLICIES, OR CONTRACT PROVISIONS PROHIBITING BORROWERS FROM ENGAGING IN POLITICAL ACTIVITIES, OR IMPOSING SANCTIONS FOR VIOLATIONS OF ANY CRIMINAL LAW

Agency	Type of assistance and statutory authority	Number of borrowers	Funds outstanding	Does agency have regulations, policies, or contract provisions on such assistance covering— Political activities by borrower?	Sanctions against borrower for violating any criminal law?
DEPARTMENT OF AGRICULTURE					
1. Agricultural Stabilization and Conservation Service.	(a) Commodity loans. 15 U.S.C. 714 et seq	[1] 800, 000	$3, 701, 600, 000	No	No.
	(b) Storage facility and equipment loans. 15 U.S.C. 714 et seq.	[1] 42, 000	155, 800, 000	No	No.
	(c) Long-term dollar credit sales loans. 7 U.S.C. 1701–1710.	[2] 47	1, 199, 300, 000	No	No.
2. Farmers Home Administration	(a) Operating loans. 7 U.S.C. 1941–46			No	No.
	(b) Farm ownership loans. 7 U.S.C. 1922–23, 1925, 1927.			No	No.
	(c) Soil and water conservation loans. 7 U.S.C. 1924–25, 1927.			No	No.
	(d) Land conservation and development loans. 7 U.S.C. 1924–25, 1927; 40 U.S.C. App. 203.			No	No.
	(e) Water and waste disposal system loans and grants. 7 U.S.C. 1926–27.			No	No.
	(f) Loans to rural groups for soil and water conservation and shifts in land use. 7 U.S.C. 1926–27.			No	No.
	(g) Rural housing loans. 42 U.S.C. 1472, 1487			No	No.
	(h) Sec. 504 loans. 42 U.S.C. 1474			No	No.
	(i) Labor housing loans and grants. 42 U.S.C. 1484, 1486, 1487.			No	No.
	(j) Rental and cooperative housing loans. 42 U.S.C. 1485, 1487.			No	No.
	(k) Economic opportunity loans. 42 U.S.C. 2841–2855.			No	No.
	(l) Rural renewal and resource conservation and development assistance. 7 U.S.C. 1011(e).			No	No.
	(m) Grants for comprehensive water and sewer plans. 7 U.S.C. 1926.			No	No.
	(n) Watershed protection and flood prevention loans and advances. 16 U.S.C. 1004, 1006a.			No	No.
Totals for all 14 FHA loan programs		416, 000	5, 000, 000, 000		
3. Rural Electrification Administration	(a) Electric system loans	990	5, 000, 000, 000	Yes	(See note at bottom of page.)
	(b) Telephone system loans. 7 U.S.C. 901 et seq	857		Yes	
DEPARTMENT OF COMMERCE					
1. Economic Development Administration	(a) Public works loans. 42 U.S.C. 3141	112	43, 000, 000	No	No.
	(b) Business loans. 42 U.S.C. 3142	104	83, 000, 000	No	No.
	(c) Technical assistance with repayment loans. 42 U.S.C. 3151, 3185.	35	350, 000	No	No.
2. Maritime Administration	Mortgages on the sale of Government-owned ships. 46 U.S.C. 1158, 1275(c).	13	75, 865, 000	No	No.
EXPORT-IMPORT BANK OF THE UNITED STATES	Direct loans; guarantees of loans by U.S. commercial banks; insurance of exporter credits. 12 U.S.C. 635.	4, 000	5, 400, 000, 000	No	No.
FARM CREDIT ADMINISTRATION (COOPERATIVE FARM CREDIT SYSTEM)	(a) Federal land bank mortgage loans to farmers. 12 U.S.C. 771.	[3] 398, 351	6, 126, 368, 946	No	No.
	(b) Production credit association short- and intermediate-term loans to farmers. 12 U.S.C. 1131g.	[4] 303, 940	3, 861, 201, 425	No	No.
	(c) Federal intermediate credit bank loans. 12 U.S.C. 1031.	[5] 567	3, 654, 307, 011	No	No.
	(d) Banks for cooperative loans. 12 U.S.C. 1134c, 1134j.	2, 918	1, 576, 959, 525	No	No.
FEDERAL HOME LOAN BANK BOARD (FEDERAL HOME LOAN BANK SYSTEM)	Federal home loan bank loans. 12 U.S.C. 1340	2, 300	6, 413, 000	No	No.
GENERAL SERVICES ADMINISTRATION	(a) Guaranteed loans under defense production contracts. 50 U.S.C. Appl. 2091, 2093.	1	6, 000, 000	No	No.
	(b) Advance payments under general supply and service contracts. 41 U.S.C. 255.	1	58, 500, 000	No	No.

[1] Loans made in fiscal year 1969.
[2] Number of countries.
[3] Number of loans.
[4] Members of production credit associations.
[5] Number of institutions financed.

Subcommittee note: With regard to the question of whether REA has loan contract provisions which apply sanctions to any borrower who engages in political activities or violates any criminal law, the REA's response to the subcommittee stated:

"3 (a). * * * There are no loan contract provisions relating to this policy or to political activities.

* * * * * * *

"(f). The bulletin merely states an REA policy. It carries with it no sanctions whatsoever.

"(f) A violation of the bulletin would not constitute an act of default under any loan contract.

"(ii) A violation of the bulletin would not enable REA to require the borrower to dismiss any of its employees.

"4. REA has no regulations, policies or contract provisions which would apply any sanctions mentioned in subparagraphs 3(f)(i); 3(f)(ii) to any borrower because of the violation of any criminal law."

However, in his testimony at the subcommittee hearings (see pp. 47–48), Assistant General Counsel Howard V. Campbell stated that the existing REA standard loan contract and mortgage provisions require the borrower to "comply with valid laws, ordinances * * * applicable to" the borrower, and that violation of a statute prohibiting political activities could be declared an act of default under the contract and result in termination of the contract, acceleration of repayment date, and other sanctions permitted under the contract. This was confirmed by Administrator Hamil at the hearings (see p. 49).

The full text of the REA response to the subcommittee's questionnaire is reprinted as app. 2 of this hearing record.

(SUMMARY OF RESPONSES TO SUBCOMMITTEE QUESTIONNAIRE)—Continued

FEDERAL LENDING AGENCY REGULATIONS, POLICIES, OR CONTRACT PROVISIONS PROHIBITING BORROWERS FROM ENGAGING IN POLITICAL ACTIVITIES, OR IMPOSING SANCTIONS FOR VIOLATIONS OF ANY CRIMINAL LAW—Continued

Agency	Type of assistance and statutory authorrity	Number of borrowers	Funds outstanding	Does agency have regulations, policies, or contract provisions on such assistance covering— Political activities by borrower?	Sanctions against borrower for violating any criminal law?
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE[1]					
1. Office of Education	(a) National defense student loans. 20 U.S.C. 427	100 institutions	$10,999,000	No	No.
	(b) Cuban student loans. 22 U.S.C. 2601	11,000 students	17,000,000	No	No.
	(c) Insured student loans. 20 U.S.C. 1071, 981 (repealed by sec. 116(c)(1), Public Law 90-575).	33 State agencies (including District of Columbia), 1 private nonprofit agency, on behalf of 22 States, District of Columbia, the Virgin Islands, and Puerto Rico.	18,620,000	No	No.
	(d) Higher education construction loans. 20 U.S.C. 743, 746.	368 institutions	318,000,000	No	No.
	(e) Instructional equipment loans. 20 U.S.C. 444	410 schools	2,700,000	No	No.
	(f) Loans for instructional equipment in arts and humanities. 20 U.S.C. 951, 952, 961.	7 schools	83,400	No	No.
2. Public Health Service	Health education loans:				
	(a) Health professions education fund loans. Public Law 89-751.	91 institutions	23,728,000	No	No.
	(b) Nurse training fund loans. Public Law 89-751.	222 institutions	11,582,000	No	No.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	(a) Urban renewal loans. 42 U.S.C. 1450	700	$300,000,000	No	No.
	(b) Low-rent public housing loans. 42 U.S.C. 1409	1,100	90,000,000	No	No.
	(c) Public facilities loans. 42 U.S.C. 1491	1,200	350,000,000	No	No.
	(d) Public works planning loans. 40 U.S.C. 462	5,600	65,000,000	No	No.
	(e) Senior citizens' housing loans. 12 U.S.C. 1701q	300	373,000,000	No	No.
	(f) College housing loans. 12 U.S.C. 1749	2,140	3,000,000,000	No	No.
	(g) Rehabilitation loans. 42 U.S.C. 1452b	3,800	43,000,000	No	No.
	(h) Alaska remote housing loans. 42 U.S.C. 3371	1	650,000	No	No.
	(i) Assistance to nonprofit sponsors loans. 12 U.S.C. 1701(b).	19	300,000	No	No.
	(j) Government National Mortgage Association special assistance loans. 12 U.S.C. 1720.	111,000	$2,400,000,000		
	(k) Government National Mortgage Association management and liquidation loans. 12 U.S.C. 1721.	246,000	1,980,000,000	No	No.
DEPARTMENT OF THE INTERIOR[2]	(a) Rehabilitation of Guam loans. Public Law 88-170	1	$20,773,922	No	No.
	(b) Alaska public works loans. Public Law 81-264	10	664,000	No	No.
	(c) Small reclamation project loans. Public Law 84-984.	38	71,186,000	No	No.
	(d) Distribution systems loans. Public Law 84-130	10	64,301,000	No	No.
	(e) Rehabilitation and betterment loans. Public Law 81-335.	30	57,100,000	No	No.
	(f) Mineral exploration loan. Public Law 85-701	98	2,444,500	No	No.
	(g) Defense minerals exploration loans. Public Law 81-774.	33	2,823,200	No	No.
	(h) Fisheries loan fund. (Commercial fishing vessels or gear.) 16 U.S.C. 742c.	378	9,200,000	No	No.
	(i) Indian business enterprises. 25 U.S.C. 470	62	21,800,000	No	No.
	(j) Indian Cooperative Assocations loans. 25 U.S.C. 482.	5	1,000,000	No	No.
	(k) Indian Credit Associations loans. 25 U.S.C. 482	9	1,700,000	No	No.
	(l) Loans to individual Indians for housing and education. 24 U.S.C. 482.	230	600,000	No	No.
	(m) Expert assistance to Indian organization for Indian Claims Commission presentation. 25 U.S.C. 70n-1.	25	700,000	No	No.
INTERSTATE COMMERCE COMMISSION	Loan guarantees for railroad improvement or maintenance. 49 U.S.C. 1231 (authority expired in 1963).	(3)	(3)	No	No.
SMALL BUSINESS ADMINISTRATION	(a) Regular small business loans. 15 U.S.C. 636(a)			No	No.
	(b) Disaster loans. 15 U.S.C. 636(b)			No	No.
	(c) Economic opportunity loans for small businesses. 42 U.S.C. 2901, et seq.			No	No.
	(d) Loans to small business investment companies. 15 U.S.C. 683(b).	100,000	1,900,000,000	No	No.
	(e) Loans to State development companies. 15 U.S.C. 695.			No	No.
	(f) Loans to State and local development companies. 15 U.S.C. 696.			No	No.
DEPARTMENT OF STATE[4]	Emergency loans to American citizens stranded abroad. Sec. 4(a) of Public Law 84-885; 22 C.F.R. 71.6.	1,168	934,428	No	No.
DEPARTMENT OF THE TREASURY[5]					
VETERANS' ADMINISTRATION	(a) Direct loans. 38 U.S.C. 1811	[6] 300,000	1,300,000,000	No	No.
	(b) Vendee account loans (purchase money mortgages on sales of property acquired by prior foreclosure). 38 U.S.C. 1820.	[6] 244,000	1,300,000,000	No	No.

[1] The number of borrowers for each category of loan made by HEW represents the aggregate since the beginning of the program.
[2] The number of borrowers supplied by the Interior Department is for fiscal year 1969 only.
[3] Not given.
[4] The number of borrowers and funds outstanding supplied by the State Department are for fiscal year 1969 only.
[5] Treasury loans are limited to those made to other Federal agencies for the purpose of financing the credit programs of those agencies and for other purposes authorized by law.
[6] Number of loans cumulative to date.

Mr. HARRIS. Mr. President, it is significant to note that that poll shows that no other Federal agency has such requirements as is proposed under section 7 of S. 3387. What is there about rural electric and rural telephone systems that might make them less likely to be law abiding? What is it that should make us more suspicious of these borrowers than we are of others who borrow from the Federal Government? This provision in the bill, if it is permitted to stay, will tend toward intimidation of the officers, employees, and members of these rural telephone and rural electric systems.

I submit, Mr. President, that we in Congress have a responsibility to encourage, not discourage, every individual citizen of this country to take an active part in his government and in the election of his public officials. We should not write a provision into this bill that sounds as if we are warning them against participating in the orderly process of government.

The last paragraph of the House Report No. 91–550, on page 10 states:

> Politics means the management of public affairs. To exclude citizens from political activity is to exclude them from self-government. The deep purpose of our Declaration of Independence was to break a self-perpetuating aristocracy's monopoly on politics, and confirm the right of the whole people to participate in the political process. And the great current of American history ever since, marked by such milestones as the Constitution, the Bill of Rights, the Civil War Amendments, and the 19th, 23d and 24th amendments, has been to further extend and guarantee the right, and duty, of our citizens to perform political activities.

Thus, Mr. President, I submit that the language contained in subparagraph 7 of the bill we are considering here today by centering on political activities of REA borrowers, and by singling out only this prohibition from all the limitless range of human conduct, brands it as an assault on the very basis of the American faith.

The freedoms essential to the working of the American system—government of the people, of assembly, of association, of participating in community affairs, campaigning, contributing, and voting for or against those who would govern us—are fragile and sensitive. I submit that we must protect these freedoms and these rights and that we must not discourage our citizens from participating in those activities which are guaranteed them. I hope the amendment will be agreed to.

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

Mr. HARRIS. I yield.

Mr. DOLE. Mr. President, we generally agree on the purpose of the original language. As the Senator pointed out, in the bill he cosponsored with the Senator from Texas and the Senator from Hawaii, identical language appears on page 21 of that bill.

In addition to the language contained in the pending bill, there was one other sentence:

> If the Telephone Bank Board finds a violation of this provision to have occurred, it shall so notify such borrower in writing and thirty days thereafter such loan shall become due and payable in full.

I point that out and point out the language in the committee bill to make it clear there is a general understanding that these, as well as other corporations, should be bound by the statutes contained in the Federal Corrupt Practices Act. I refer to sections 600, 601, 610, 611, and 612 of title 18 of the United States Code.

Mr. HARRIS. Mr. President, is it the Senator's position that the REA borrowers would not be subject to these provisions were it not for the enactment of subparagraph (7)?

Mr. DOLE. I do not know. That is the language contained in the proposal I introduced and in the proposal the Senator from Oklahoma introduced. I believe we have some common ground.

I trust we can agree that these sections do apply without the necessity of any additional language.

This question was raised in the committee by the chairman of the committee, the chairman of the subcommittee, and by Mr. Campbell, who was there during the executive session—the same Mr. Campbell referred to in the Senator's statement, and this language referred to a surplusage—that they are covered by the general sections in the Corrupt Practices Act.

Mr. HARRIS. I do not believe Mr. Campbell said perhaps it was surplusage. Does the Senator from Kansas believe these borrowers would be bound by those provisions of the present law anyway, or that they would not be bound by them except by the enactment of subparagraph 7?

Mr. DOLE. It is my feeling they would be bound.

Mr. HARRIS. That they would be bound.

Mr. DOLE. Does the Senator agree?

Mr. HARRIS. I think they would be and, therefore, I say to the Senator that it is obvious that the only result that could be achieved by the inclusion of this highly objectionable subparagraph 7, on which my attention has only recently been focused by REA borrowers who very stringently resent this kind of provision and who have recently said so to me and asked that it be stricken, would be intimidation. The intent of subparagraph 7 is to go beyond the law and would discourage them from doing what they lawfully can do. What other result does the Senator see?

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

Mr. HARRIS. I yield.

Mr. DOLE. Perhaps the original purpose, as I understand it, was that we were developing a new program, launching a telephone bank program initially involving Federal funds; and there was some evidence that in the past, in both political parties, there had been certain political activities carried on by certain cooperatives. The original language was to make clear to all that they are no different than other corporate business enterprises and to make known that Congress would feel they were bound by the act.

Mr. HARRIS. The bill before the Senator applies to rural telephone cooperatives. Is that right?

Mr. DOLE. Yes.

Mr. HARRIS. But is it not true that this report makes this language applicable to all REA borrowers?

Mr. DOLE. I agree we are dealing with the telephone bank bill and we should limit provisions to the telephone bank lending program. I assume the Senator refers to subsection (7) on page 10 of the report. I would agree with the Senator that since we are dealing specifically with the telephone bank program, the provisions should be restricted to telephone bank loans.

Mr. HARRIS. I call attention to the act, subparagraph (7), the objectional language which the REA borrowers who contacted me in my home State and elsewhere find so very objectionable and discriminating. It applies to all borrowers under the act. The Senator will note that the language states:

> No portion of any loan made under this act shall be used to finance—

I take it that is an amendment of the existing law having to do with all REA borrowers. Does not the Senator feel that is one other illustration of how fooling around here with something, as the Senator said, does not change the law? The law already applies to borrowers of the Federal Government, and we would pick out this one type of borrower of all the borrowers, listed on nearly 6 pages, of the House Government Operations Committee hearings, that were polled, of other type borrowers from agencies of the Federal Government who have not been made to sign any such discriminatory and demeaning provision. Does the Senator feel the language in the bill now before us should be changed?

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

Mr. HARRIS. I yield.

Mr. DOLE. I would say the underlying emphasis should be placed on the fact that the REA Administrator understands that sections of the Corrupt Practices Act apply to cooperatives. I understand the junior Senator from Oklahoma will indicate the present Administrator was not certain these laws did apply to cooperatives and that they were to be treated like other corporations.

Mr. HARRIS. Does the Senator say the present REA Administrator does not know these provisions in the law apply to cooperatives? Is that the Senator's statement?

Mr. DOLE. I think he understands it now, but there has been some confusion. This colloquy may replace the necessity of language in the bill.

Mr. HARRIS. I think so, too. If the Senator is as convinced that that is the law as I am, and that the law does apply to these cooperatives, and if he is convinced the Administrator agrees with us presently, I would hope the Senator agrees with me there is no reason under the sun, that I can see, why we should do something here we have never done with

respect to all other borrowers of Federal agencies, and require a statement which these borrowers find to be very discriminatory and objectionable. I hope the Senator might join in that position.

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

Mr. HARRIS. I yield to the Senator from Oklahoma.

Mr. BELLMON. I thank my senior colleague.

Mr. President, I have in my possession a letter signed by the Administrator of the Rural Electrification Administration, David Hamil. The letter is dated April 25, 1969. I would like to read certain portions of the letter for the RECORD. Mr. Hamil states:

> This is in further reference to my telephone conversation with your office regarding the use of corporate funds . . . in making contributions for political purposes.
>
> When this matter was called to REA's attention in September, 1968, the office of the Inspector General, Department of Agriculture, was requested to make a complete investigation of alleged irregularities in the affairs of the company.

This is the point. The letter states:

> This investigation was made and the results indicated that political contributions were made with corporate funds in 1966 and 1968.

This makes the point I wish to raise:

> The investigation did not disclose that the contributions violated Federal statutes.

Here is the Administrator of the Rural Electrification Administration in April of 1969 saying that he knows there were political contributions made with corporate funds from an REA borrower to a political campaign, and yet he said it did not violate Federal statutes. If the Administrator did not realize this and the corporate borrower did not realize this, there is need for this matter to be cleared up.

The problem seems to be a lot of RTA borrowers do not seem to consider the funds they borrow from the Government under these programs to be really Federal funds and covered under the statutes listed in the bill; namely, sections 600, 601, 610, 611, 612 of title 18. It is my feeling that the colloquy we have had here today in which both sides admit these types of contributions are illegal and specifically prohibited accomplished a great purpose.

After the receipt of this letter, at a later date, Mr. Hamil did publish two bulletins, REA Bulletin No. 110–3 and No. 410–3, one to the electric corporations and one to the telephone corporations; and on June 30 there were subsequent Bulletin Nos. 110–3 and 410–3. This superseded the one he issued on necessary to so notify his borrowers. they are covered by these sections of the law.

Apparently this is when he realized they were covered and found it was necessary to so notify his borowers. One of his problems is that it is not only cooperatives but also corporations in some areas that are eligible to receive funds under the RTA bank bill. These are the ones that occasionally do not realize the restrictions my senior colleague feels are already in the law.

I agree that these types of activities are prohibited and I can see no harm in making it specific in legislation that it is not the intent of Congress for these funds to be used for political purposes.

There is no portion of the language in the bill that in any way restricts individuals. It only applies to cooperatives and corporations that borrow from REA; and nothing is intended to intimidate or control actions of individual members or sections of the country.

I am one who believes that citizens ought to be more active, not less active, politically; but I do feel that when the Government puts up money to build telephone systems or rural electrical systems, the money should be used for that purpose, and not for political purposes.

Mr. HARRIS. I want to ask my distinguished colleague, so I may understand, and to make the record clear, this question: The Senator from Oklahoma, as I understand him, believes that each section recited in subparagraph (7) in the bill before us already applies to REA borrowers. Is that correct?

Mr. BELLMON. It is my belief they apply, but that this application is not generally understood, or previously was not understood, by the Administrator of REA or by many of the borrowers.

Mr. HARRIS. But the Senator does agree with me that those sections recited in that subparagraph do already apply to REA borrowers. Is that correct?

Mr. BELLMON. It is my belief that those sections certainly should apply and that this language makes it absolutely clear that they do apply. I can see no objection to having the language in the bill.

Mr. HARRIS. Does the Senator have any question that these sections apply to cooperatives?

Mr. BELLMON. Based on the letter I have from Mr. Hamil, Administrator of the REA, that there is real reason to believe——

Mr. HARRIS. I thought the Senator said that the REA Administrator, by his most recent statements, had made clear that these provisions do apply, exclusive of any new legislation, to REA borrowers. Is the Senator changing his position, or what I understood to be his position?

Mr. BELLMON. The Senator is correct. Mr. Hamil, after being in office for some time, came to realize that they do apply. My reason for wanting to put the language into law is that many of the borrowers apparently do not have that information except by the bulletins of May 19, 1969, and June 30, 1969.

Some day we are going to have new administrators, and certainly new managers of co-ops. If this is crystal clear, it will help keep them out of trouble in the future.

Mr. HARRIS. The Senator will correct me if I am wrong. I take it, then, that the distinguished junior Senator from Oklahoma agrees with me and the distinguished Senator from Kansas (Mr. DOLE) that those provisions recited in subparagraph (7) do now, without additional action by the Congress, apply to REA borrowers, and that the Administrator of REA does presently so agree? Is that his statement?

Mr. BELLMON. That is correct, and I believe we should put the language in the bill so it will be crystal clear.

Mr. HARRIS. I understand the Senator's position as to why it ought to be done, but I wanted to be sure of that first.

I yield now to the Senator from Kansas (Mr. DOLE).

Mr. DOLE. Mr. President, I wonder if we could have inserted at this point in the RECORD the memorandums from the REA administrator referred to by the junior Senator from Oklahoma.

Mr. HARRIS. Mr. President, I have no objection, if the junior Senator from Oklahoma will put in the most recent one which rescinds the others as well as the others. I think that would be fine.

Mr. President, I ask unanimous consent that that be done.

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

[From the U.S. Department of Agriculture, Rural Electrification Administration, May 19, 1969]

REA BULLETIN 110–3 (ELECTRIC), REA BULLETIN 410–3 (TELEPHONE)

Subject: Prohibition Against Political Activities by REA Borrowers

I. *Purpose*: To set forth REA policy prohibiting REA-financed corporations from engaging in political activities which violate Federal statutes and similar activities with respect to state and local elections, whether or not specifically prohibited by state law.

II. *General*:

A. Specified types of political activities are prohibited by the following sections of Title 18, U.S. Code:

1. Section 600, Promise of employment or other benefit for political activity;

Section 601, Deprivation of employment or other benefit for political activity;

3. Section 610, Contributions or expenditures by national banks, corporations, or labor organizations;

4. Section 611, Contributions by firms or individuals contracting with the United States; and

5. Section 612, Publication or distribution of political statements.

B. At least once each year, the board of directors of an REA-financed corporation should ask its attorney to outline, for the board, the application of these and similar state statutes to the corporation, its officers, and employees.

III. *Policy*: It is against the policy of REA for REA-financed corporations to engage in:

A. Political activities prohibited by the sections of Title 18, U.S. Code, listed above.

B. Similar activities in connection with state or local elections, whether or not specifically prohibited by state law.

IV. *REA Loan Contracts*:

A. Federal statutes and many state statutes make prohibited political activities criminal acts which can result in fines on the corporation and fines, prison terms, or both on individuals who participate in the prohibited activities.

B. REA loan contracts will contain provisions making violations of Federal and state laws against political activities acts of default under the loan contract and mortgage. In addition to other remedies available to REA under the loan contract and mortgage, any such violation will give REA the right to require the dismissal of any employee who knowingly participates in an act which violates, or causes the corporation to violate, any of the cited Federal statutes or similar provisions of state statutes.

DAVID A. HAMIL,
Administrator.

[From the U.S. Department of Agriculture, Rural Electrification Administration, June 30, 1969; Supersedes 5/19/69]*

REA BULLETIN 110–3 (ELECTRIC), REA BULLETIN 410–3 (TELEPHONE)

Subject: Political Activities by REA Borrowers.

I. *Purpose:* To set forth REA policy relative to REA-financed corporations' engaging in political activities which violate Federal or State statutes.

II. *General:*

A. Federal statutes and many state statutes make prohibited political activities criminal acts which can result in fines on the corporation and fines, prison terms, or both on individuals who participate in the prohibited activities.

B. Specified types of political activities are prohibited by the following sections of Title 18, U.S. Code:

1. Section 600, Promise of employment or other benefit for political activity;

2. Section 601, Deprivation of employment or other benefit for political activity;

3. Section 610, Contributions or expenditures by national banks, corporations, or labor organizations;

4. Section 611, Contributions by firms or individuals contracting with the United States; and

5. Section 612, Publication or distribution of political statements.

C. At least once each year, the board of directors of an REA-financed corporation should ask its attorney to outline, for the board, the application of these and similar state statutes to the corporation, its officers, and employees.

III. *Policy:* It is against the policy of REA financed corporations to engage in:

A. Political activities prohibited by the sections of Title 18, U.S. Code, listed above.

B. Political activities prohibited by state law.

DAVID A. HAMIL, *Administrator.*

Mr. DOLE. Perhaps we can work out some accommodation. That is the reason why I interrupt the Senator from Oklahoma. There is agreement—and perhaps the Senator from Georgia would respond—that the referred-to sections of the Corrupt Practices Act in title 18 of the United States Code do apply to REA borrowers. There has, without question, been some misunderstanding, at least in the office of the REA Administrator, as to whether or not these apply.

As I understood the junior Senator from Oklahoma, there is no question about that now based on the recent memorandums issued by the present REA Administrator.

We are making legislative history. I feel quite certain the present Administrator, and any succeeding Administrator, will take note of what was said on the floor by all Senators engaged in the colloquy. I feel certain they are going to apply the sections of the United States Code referred to, as well as any other sections that may apply to any of the private corporations.

Does the Senator agree that we are saying that any section of law which applies to any political activities of private corporations also applies to REA borrowers?

Mr. HARRIS. The law is the law. All that has been gone into two or three times. We all agree what the law is, and I believe that we agree that this language is surplusage.

I would point out that, regardless of the bulletins that have been put into the RECORD at the request of the distinguished Senator from Oklahoma and the distinguished Senator from Kansas, in testimony before the House Government Operations Committee, Mr. Hamil stated as follows, as appears on page 41 of those hearings:

Mr. HAMIL. Congressman, when you have made an error in this business, you might just as well admit it. I have already admitted, from my viewpoint, this was an error. It should not have been in there, but it was. And I have withdrawn it.

I think it is very clear what the law is. The Administrator first went too far, backed up, and ultimately rescinded the bulletins of May 19, and June 30—referred to by my colleague, Senator BELLMON, as I understand it. I think this provision is obviously not necessary. Everybody agrees that these provisions of the United States Code already apply to REA borrowers, that the Administrator agrees that that is so; therefore I see no reason why the Senate ought not to accede to the request of these borrowers and eliminate this objectionable, intimidating, and discriminatory language.

Mr. President, I ask unanimous consent that a letter making such a request that I received from Mr. Robert D. Partridge, general manager of the National Rural Electric Cooperative Association, be printed at this point in the RECORD.

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

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
Washington, D.C., April 2, 1970.

Hon. FRED HARRIS,
Washington, D.C.

DEAR SENATOR HARRIS: In answer to your question regarding our position in the past on the political intimidation provision contained in Sec. 408(b)7 of S. 3387, NRECA has opposed, and does today strongly oppose this concept as unnecessary duplication of existing law.

The political intimidation provision first appeared on August 18, 1966, as one of seven amendments to Committee Print No. 2 of H.R. 14837, a supplemental financing bill for both rural electric and rural telephone systems. These amendments were adopted by the House Agriculture Committee's Subcommittee on Conservation and Credit, which subsequently deadlocked by a vote of 5 to 5 on a motion to report the bill to the full Committee. These amendments were included in Committee Print No. 3 of this supplemental financing bill.

On August 26, 1966, NRECA sent a Legislative Information memo to the NRECA State Legislative Leaders and the NRECA Board of Directors, reviewing the seven amendments adopted by the Subcommittee. That memo stated: "We favor none of the seven amendments adopted . . ." (copy enclosed).

During the first session of the 90th Congress, the bill was introduced once more, again with several undesirable amendments. We joined with REA in going along with several of these strictly in the hope of getting a bill to the House floor. The compromise was just too much for our Board of Directors to accept, however, and we rejected the bill, and subsequently the Rules Committee also rejected it.

I should say that the evil implications of the political intimidation provision were not as apparent then as now. The pressures that have been and are being placed upon our free press, radio and television, labor unions and foundations are examples of a developing climate that can be expected to erode the rights of individual citizens as guaranteed under our Constitution.

As you know, a House Government Operation Subcommittee delved into this matter last year, after REA had issued a policy bulletin on political activities to its rural electric and rural telephone borrowers. This policy bulletin would have had the same effect of political intimidation as Sec. 408(b)7 of S. 3387.

On October 7, 1969, the House Government Operations Committee issued a report on its hearings and investigations into this matter. The report stated that the "fundamental vice" of the REA Administrator's political activities policy bulletin was that it frightened the directors, officers and employees of all REA-financed corporations from engaging as individual citizens in any political activities. The report noted that "the courts have recognized that the chill of the threat often causes substantial, immediate and irreparable injury to the exercise of the basic rights of a free citizen in a free America".

The House Government Operations Committee recommended that the REA bulletin on political activities be promptly rescinded. REA complied.

Our basic concern over the political intimidation language in the Rural Telephone Bank bill is summed up by the following paragraph from the House Government Operations Committee Report:

"Politics means the management of public affairs. To exclude citizens from political activity is to exclude them from self-government. The deep purpose of our Declaration of Independence was to break a self-perpetuating aristocracy's monopoly on politics, and to confirm the right of the whole people to participate in the political process. And the great current of American history ever since, marked by such milestones as the Constitution, the Bill of Rights, the Civil War amendments, and the 19th, 23rd, and 24th amendments, has been to further extend and guarantee the right, and duty, of our citizens to perform political activities. Thus, the focus of the REA bulletin on political activity, singling out only this for prohibition from all the limitless range of human conduct, brands it as an assault on the very basis of the American faith."

I hope this information will be useful to you.

Sincerely yours,
ROBERT D. PARTRIDGE,
General Manager.

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

Mr. HARRIS. I yield to the Senator from Texas.

Mr. YARBOROUGH. Is it not true that under the language of the bill, page 18, subsection (7), as pointed out in the report from Senate Committee on Agriculture and Forestry on this measure, at page 10, this provision would refer not only to rural telephone loans but to all REA loans?

Mr. HARRIS. The Senator is quite correct.

Mr. YARBOROUGH. Is it not true that the REA borrower would be the only one who borrows money from the Federal Government under any law who would have to come in and make this kind of affidavit, a written promise that he will not engage in any such prohibited political activities during the term of such loan? It puts every REA borrower

*Revised to eliminate language which was being misunderstood as prohibiting employees from engaging in lawful community and political activities.

under a Hatch Act. What does "entity" mean? It says "borrowing entity." It reduces people on these farms to second-class citizens or worse. Why should these farmers be reduced to a status to which no other Federal borrower is subjected? It is a reflection on them. I resent it for the people in my State because we have more REA borrowers than any other State.

The law already says that they cannot use this money for political activities. It is wrong to do so. It ought to be stopped if it is so used. But that is true of every Federal borrower. Why should more be required of this kind of Federal borrower than any other borrower from the Federal Government? No borrower from the Federal Government, except an REA borrower, would be required to fill out these papers. I think it places an REA borrower in a special category to have him pledge in writing that he will not engage in prohibited political activities during the term of such loan.

It does not say he shall not use this money to engage in such prohibited political activities, but that he shall agree in writing not to engage in any such prohibited political activities during the term of such loan.

What does a man out on the farm think "prohibited political activities" means? This bill contains such technical language that it would take a Philadelphia lawyer to interpret it. The rural citizen might well take it to mean that if he told his neighbor who he was going to vote for, he would be in violation.

Mr. President, this reduces every farmer and rancher using the system to a status not suffered by anyone else in our body politic.

I represent a State that has more people who use REA facilities than any other State in the Union and that has more farm families than any other State. About 12.5 percent of all farm families in the Union live in my State.

On behalf of those people, who would be reduced to a status that no other group of American citizens are subjected to, I resent this implication that they are not worthy of being treated like everyone else in the body politic.

Mr. President, the distinguished senior Senator from Oklahoma (Mr. HARRIS) has proposed a very sound amendment to the rural telephone bank bill, S. 3387, and it is with pleasure that I join him as cosponsor of this amendment.

My support for the basic bill is clear, for I have cosponsored the legislation to establish a rural telephone bank since it was originated. In order to provide first-class telephone service to our rural citizens, it is essential that we act to provide this supplemental financing through the rural telephone bank.

Our proposed amendment deletes unnecessary and objectionable language now in the bill which would single out this particular group and would require borrowers to pledge in writing that they will not violate provisions of the Corrupt Practices Act by using the borrowed funds to finance political activities.

Mr. President, this law prohibiting such conduct has been on the books for many years, and it is clear. It applies to a great number of individuals and organizations. There is absolutely no reason to single out this one group of borrowers and try to humiliate and intimidate them by saying that they must not violate this particular law. Every REA borrower is already required to sign a loan contract and mortgage which states that he must comply with "all valid laws, ordinances, regulations and requirements."

The inclusion of this objectionable and superfluous language would establish an absurd precedent. If it were a sound principle, which it is not, then we should itemize every Federal law and regulation which the borrower should not violate, and we would end up reprinting the entire United States Code and the Code of Federal Regulations in almost every bill we pass.

Mr. President, the REA telephone program is of great importance to the farmers and ranchers of Texas. Our State has probably benefited more from this program than any other State. Many thousands of Texans are concerned with the REA telephone program as officers, employees, members, and subscribers.

Texas is the leading participant in the program. As of July 1, 1969, Texas has over 189,420 subscribers in the rural telephone program, the largest number of persons served in any State. Texas has over 59,000 miles of rural telephone line operating, the greatest total mileage of any State. Texas has received the largest cumulation total of telephone loans of any State, $136,408,542.

Mr. President, I must strenuously object to any provision in the proposed bill which would single out these fine rural citizens of Texas as more likely to violate a particular law than another group. This would be insulting and humiliating.

Even more serious than this gratuitous offensiveness is the possibility that the provision would serve to intimidate these citizens from assuming their duty to participate in the processes of government on an individual basis, in a lawful manner. We must guard against any infringement of these basic rights of citizens and in order to do so, I urge my colleagues to join me in support of this amendment.

I commend the Senator from Oklahoma for his leadership on this matter, and the inequity and injustice he has pointed out by his amendment.

It seems to me, Mr. President, that this provision is so manifestly unjust that the whole Senate should quickly agree to the amendment. Now that Mr. Hamil himself has realized what the REA means to rural America, I am hopeful that the sponsors of the bill will accept the amendment of the Senator from Oklahoma.

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

Mr. HARRIS. May I respond first to the Senator from Texas, who is himself a sponsor of this amendment, and a champion of the people involved in rural electrification activities and the rural telephone program? I think he has put his finger on the impact of the objectionable feature of this provision, which is, that it singles out this type of borrower and would require a demeaning statement in writing from them which is not required of any other borrower from any other Government agency.

I thank the Senator for his statement on behalf of the amendment.

I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, the present provision was pretty much patterned after S. 1684, of which the Senator from Oklahoma and the Senator from Texas were cosponsors.

Mr. HARRIS. Mr. President, does the Senator wish to propound an inquiry, or get the floor on his own time to make a speech?

Mr. DOLE. Mr. President, I was addressing an inquiry to the Senator from Texas. There have been several confessions made on the floor during this debate, and perhaps he wishes to make one.

Mr. HARRIS. Senators can be cute and diversionary, or they can be serious and substantive. It seems to me that this amendment ought to be agreed to, and I hope it will be without a vote.

I yield to the distinguished Senator from North Dakota.

Mr. BURDICK. Mr. President, I ask the Senator from Oklahoma if laws already enacted will not take care of this situation.

Mr. HARRIS. The Senator is quite correct. The laws are already on the books and recognized by everyone to be applicable now, without further action by Congress, to REA borrowers.

Mr. BURDICK. What does this language add, then?

Mr. HARRIS. It adds nothing at all, except an intimidating effect upon this kind of borrower only, and tends to try to keep them, it seems to me, either intentionally or accidentally, from exercising their individual constitutional rights not prohibited by law.

Mr. BURDICK. I shall be very happy to support the amendment of the distinguished Senator from Oklahoma.

Mr. HARRIS. I thank the Senator from North Dakota, who has been a great supporter of this program for many years. I welcome his support.

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

Mr. HARRIS. I am pleased to yield to the Senator from Arkansas.

Mr. FULBRIGHT. I commend the Senator from Oklahoma for suggesting this amendment. I, of course, as most of us are, am well acquainted with the activities of the REA. I think this language is inappropriate and uncalled for, and I certainly shall support the Senator's amendment.

The people who compose the REA cooperatives in my State are among the finest citizens there, and have always conducted themselves with the greatest propriety. I think this language is unnecessary, and I hope the Senate will agree to the amendment.

Mr. HARRIS. I join in the Senator's statement. I am pleased now to yield to the distinguished Senator from Vermont.

Mr. AIKEN. Mr. President, I realize that the REA has had low-interest loans from the Federal Government, but in this subsection number (7) on page 18, the bill states:

> No portion of any loan made under this Act shall be used to finance any political activities.

Is there a section like that that applies to other organizations or industries that

get Federal money, either at a low rate of interest on loans, or as a grant?

Mr. HARRIS. No. I would say to the distinguished Senator from Vermont, who has been such a great supporter of rural programs, that the Government Operations Subcommittee on Conservation and Resources made a poll of various Government agencies which make loans, and they found that no other borrower of any kind of Government agency loan is required to make this kind of special pleading in order to get a loan.

Mr. AIKEN. Would this proviso apply to loans to the airlines, to the merchant marine, to the oil industry, to the cotton industry, or even to hospitals or educational institutions? Would this same restriction apply to all of them, or is this intended to apply only to borrowers from the Rural Electrification Administration?

Mr. HARRIS. The provision would not apply to other Government borrowers, I am informed, and therein is exactly the objection to it.

Mr. AIKEN. Does the Senator from Oklahoma have any idea that the railroads or the airlines or the oil industry engage in politics, even though they may get some Federal money directly or indirectly? Has the Senator heard of any such thing as those industries becoming concerned in political campaigns?

Mr. HARRIS. It would be my hope, I would say to the distinguished Senator from Vermont, who has had far greater experience in these matters than have I, that all American citizens, corporations, and cooperatives, would abide by the law. If they do not, I would hope that the Attorney General and others charged with the responsibility for enforcing the law would do so, vigorously.

Mr. AIKEN. Does not this provision imply that REA borrowers are the only organizations getting Federal benefits that engage in political campaigns? Did the Senator ever hear of the oil companies or the railroads getting into politics in any way?

Mr. HARRIS. Mr. President, the point of the inquiry——

Mr. AIKEN. If they do, should they not be put on the same restrictive list as the REA?

Mr. HARRIS. The Senator is quite correct. The law should apply to all citizens, corporations, and cooperatives equally; and while I have no knowledge that laws have been violated, I would think that whatever the law is, it ought to apply to everyone.

Mr. AIKEN. I am much reassured that the Senator from Oklahoma cannot think of any instance where the railroads or the oil companies or the power companies have ever violated the law.

Mr. HARRIS. I would hope that the Senator might want to put that kind of evidence in the RECORD, or give it to the Attorney General. But I think the thrust of what he says is quite good, that the law is no respecter of persons nor corporations nor industries, nor types of cooperatives or corporations; and that is the reason why I offer this amendment, to strike out this discriminatory provision.

Mr. AIKEN. The law should not differentiate between persons, industries, organizations, and corporations; is that the Senator's position?

Mr. HARRIS. I should hope it would not. I believe it would discriminate, were this subparagraph (7) permitted to remain in the bill. The REA would be the only organization or the only industry directly referred to.

Mr. AIKEN. Yes, the Senator is quite correct. That is my understanding.

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

Mr. HARRIS. I yield.

Mr. BELLMON. Mr. President, I add my congratulations to those of other Senators to the committee and its chairman, the Senator from Louisiana (Mr. ELLENDER). In my opinion, S. 3387 meets a great need. I know how vital rural development is, not only to rural America but to urban centers as well. One of the greatest needs we have in our country at this time is to stop the city congestion that is creating almost impossible problems in our urban centers; and one way to do this is to provide opportunities and attractions in the rural areas, so that people will be able to earn livings there and to live reasonable lives under rural conditions.

To me, it is totally unreasonable to expect rural residents to accept substandard conditions out on our farms and ranches, and one such condition has been totally inadequate rural telephone service.

It is impossible to overemphasize the contributions which have been made to our national development by the REA, and more recently by the rural telephone associations. But certainly they have a great deal more to do, as has been pointed out in the debate here today.

At the present time, rural America feeds our Nation and the customers of other nations with a very minimum of manpower, and this performance would not be possible if it were not for the fact that electrical energy provided by the rural electrical system has released millions of Americans from mundane manual farm labor and made it possible for those who remain to increase their productivity year after year. It is impossible to imagine the conditions that would exist in either rural or urban America at this time if it were not for the dependable low cost electricity furnished by the REA's.

Unfortunately, the same fine service is not available for telephone users at the present time, and the proposed legislation is intended and I believe will go a long way toward filling this void. The big problem is not that we have lacked the authority or the organization, because both exist. Up to now the funds have not been available. This measure, S. 3387, is intended to fill that void.

There is a long history behind this bill that goes back to 1967. I was present when Senate hearings were held on the pending bill. No objections were raised to that measure. It presents a hope and possibly the reality that it might become something like our farm credit bank, which is presently owned by its users.

To me, this measure is a major move in the direction of rural development. It is an important measure to improve the productivity of our rural citizens. It is vital to a balanced rural-urban development of the entire Nation, and I feel that it is one of the most important bills that has come before Congress in this session.

I congratulate the present Administrator of REA for the great understanding he has of this program and for the way he has used the relatively limited resources at his command to meet the needs of rural America, and I believe this will be a major assist to him as he tries to discharge his great responsibilities.

Mr. TALMADGE. Mr. President, I am sure the amendment will be agreed to without a RECORD vote and that the Senate will pass this bill without a RECORD vote.

When the Senate committee held hearings on the bills before it, both S. 1684 and S. 2202 had not only the provision on page 18, section 7, about political activity, but also provided the further prohibition requiring that the loan would become immediately due and payable if the Telephone Bank Board found that these provisions had been violated. We struck the provision in committee calling for acceleration and prompt payment of the loan. Some of us in committee raised the point that pargaraph 7, on page 18, was surplusage, in view of the fact that the corrupt practices law already applied all over the country, without the enactment of any further law or any further signature or pledges on the part of potential borrowers from the Government.

I have conferred with the members of the committee that considered this bill, and I have found that the overwhelming sentiment is that this amendment would not detract from the bill and that the language of paragraph 7 is probably surplusage. So far as the Senator from Georgia is concerned, I am glad to accept the amendment.

Mr. MCGOVERN. Mr. President, we are faced with a very real dilemma in considering the telephone bank bill which is presently before the Senate.

The concept behind it is most admirable.

Our rural telephone system has grown and modernized considerably since the late 1940's when the REA telephone loan program began. Yet the fantastic advances of the telephone industry in this country have made even this growth inadequate in many parts of rural America. Thus, the demand by telephone borrowers for REA loans to improve and upgrade service is increasing at a rate far in excess of the amount Congress has been willing to appropriate for the 2-percent loan program—the rural telephone industry's touchstone for growth.

The rural telephone industry has recognized this fact of life by urging Congress to create a supplemental source of financing which would provide a source of additional capital at rates in excess of 2 percent.

My bill, S. 1684 would have accomplished this purpose by establishing a mixed-ownership telephone bank with both an intermediate loan program and

a loan program at bank rates. It would have been separate and distinct from the REA 2-percent loan program.

Through this vehicle, REA telephone borrowers who had the financial ability to pay a higher interest rate would be able to utilize the bank for their capital needs, while, at the same time, those co-ops whose operations necessitated 2-percent loans would have no fear of this program going by the boards.

Unfortunately, what we now have before us is the basic concept we need but with a great many apparently innocuous changes that are, in reality, important changes. They affect not only the operations and objectives of the bank but, in my opinion, jeopardize the 2-percent loan program as well.

The administration has tried, without success, the sledgehammer approach toward abolition of the 2-percent loan program. In the report of the Secretary of Agriculture on my bill and on S. 2202, introduced by the distinguished Senator from Kansas (Mr. DOLE), Secretary Hardin recommended, among other changes that—

> The interest rate for the direct telephone loan program, now set by statute at 2 percent, should be made flexible so that it will cover the Government's interest and administrative costs and probable losses . . .

This proposal was rejected outright. But other administration changes—which were accepted and written into the bill—also strike at the 2-percent program—only in a more subtle way.

One of these adjustments makes the bank a wholly owned Government corporation, as opposed to a mixed-ownership corporation as was provided in S. 1684. It seems innocuous enough, even though without logic since the bank is, from the start, capitalized with both private and Government funds.

But its likely effect will be a continuing erosion of the 2-percent loan program. The tendency will be to begin evaluating the amount of capital available to rural telephone systems by lumping together the funds the bank can loan and those appropriated under the original 2-percent plan, without accounting for differences in the ability of borrowers to pay the higher rates charged by the bank. As a consequence, overall budget limitations will undoubtedly bear most heavily upon less prosperous systems that must have 2-percent loans if they are to meet the original objectives of the program.

Mr. President, we should not forget that this legislation is essentially a supplement, and not a replacement, for the existing loan program. It is necessary because of the rapidly expanding capital needs of rural telephone systems. By the most conservative estimates, the program will need over $3.1 billion in growth capital over the next 15 years, and requirements may well run to twice that figure. This amounts to between $200 and $400 million each year if the industry is to keep pace and provide necessary service to its subscribers. It will require both a fully functioning telephone bank and a wholly funded 2-percent program.

We must, therefore, firmly avoid the temptation—which is unfortunately encouraged by provisions in the bill establishing the bank as a wholly owned Government corporation—to consider the total lending authority, bank and 2 percent, as a lump sum. We are far from the day when the need for 2-percent funds will decline.

The 2-percent program is likewise threatened by the concept of "blending" written into the Senate report. The report states—

> In order to provide still greater latitude in tailoring interest rates to the borrowers ability to pay and available funds loans to result in an average rate of interest which reflects the borrowers ability to pay.

This concept is totally hostile to the 2-percent loan program, and I think it also misreads the language of the bill. Quite clearly 2-percent dollars which are used to "custom blend" middle-level interest rates are 2-percent dollars which cannot be lent out to borrowers who can only afford 2-percent loans.

Moreover, the authority to "blend" funds is unnecessary. The REA Administrator is given power, in the bill, to arbitrarily set individual loan interest rates if the need warrants.

I think we tend to forget, in this day and age of affluence, the kind of shoestrings on which some of our rural cooperative—and proprietary—telephone systems are forced to operate. For some of these systems the availability of 2 percent money is the difference between being able to provide service—any kind of service—and going out of business.

In providing the rural telephone systems of our country a supplemental financing bill we must take great care to remember what the key word in the bill now before us is. That word is "supplemental."

This bill is meant to supplement the 2-percent loan program—not be its death knell.

I believe the Senate should pass this bill. But I also feel it should be a matter of record that we are cognizant of the dangers certain sections of the bill pose to the 2-percent program.

Mr. COOPER. Mr. President, I have for a number of years supported legislation to provide a source of supplemental financing for the rural electric and telephone systems. In fact, in 1966, when Senator Bass and I were members of the Senate Committee on Agriculture, we introduced the first Senate bills to establish a Federal rural electric bank and a Federal rural telephone bank—S. 3337 in May and S. 3720 in August of that year. That legislation had been developed following lengthy studies by the administration, and by the National Rural Electric Cooperative Association, on the need for providing additional amounts of long-term capital to supplement the 2-percent loan funds made available by annual appropriations to the REA program.

In 1966, the Senate Agriculture and Forestry Committee held thorough hearings on these bills. The distinguished chairman of the subcommittee, Mr. TALMADGE, may recall my testimony at that time. However, the 89th Congress adjourned before action could be taken.

In 1967, with the convening of the 90th Congress, I reintroduced, with Senator MONDALE, the 1966 proposal as S. 696. Similar bills were introduced in the House. However, as modified and eventually recommended by the House Agriculture Committee, the bill included new and controversial provisions which would have substantially affected the existing REA rural electric program, and was not approved by the House Rules Committee.

The rural electric systems, after extensive research and study, then decided to create their own financing institution, which would not require enactment of legislation.

At their annual meeting in March 1969, the NRECA membership approved the report and recommendations of its Long-Range Study Committee and authorized the creation of the National Rural Utilities Cooperative Finance Corporation. This organization, generally referred to as the Cooperative Finance Corporation—CFC—was incorporated in April 1969. We are proud that the incorporator directors elected Mr. J. K. Smith of Kentucky, general manager of the Kentucky RECC, which has given such great leadership in this field, to serve as president of CFC.

Much has been accomplished by the officers and directors of CFC in bringing this vital supplemental financing institution into being. I understand that 766 rural electric systems, representing about 75 percent of the rural electric systems in the country, have applied for membership. As soon as legal, procedural, and regulatory matters affecting CFC are completely resolved, CFC will ask the rural electric systems to complete their membership obligations, provide equity capital, and begin to operate. It is anticipated that CFC will provide a portion of the long term capital which is needed to assure the continuing availability of dependable electric power in the rural areas of the country.

I am very glad to have been able to support this eminently worthwhile program for many years. The rural electric leaders and members are to be complimented for their foresight and courage in undertaking this responsible method of supplying a part of their capital needs.

The Rural Telephone Bank to be established by S. 3387 will create a Federal rural electric bank which will help to make available a portion of the additional amount of long term capital needed by our rural telephone systems.

Future capital demands of all rural utility systems will be extremely large. The Federal Government has a continuing obligation to assist in providing a significant portion of the necessary funds. The passage of S. 3387 will provide the rural telephone systems of the country with a valuable tool to help meet a portion of these capital needs.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TALMADGE. I ask for a third reading, Mr. President.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed,

the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3387

An act to amend the Rural Electrification Act of 1936, as amended, to provide an additional source of financing for the rural telephone program, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy of the Congress that the growing capital needs of the rural telephone systems require the establishment of a rural telephone bank which will furnish assured and viable sources of supplementary financing with the objective that said bank will become an entirely privately owned, operated, and financed corporation. The Congress further finds that many rural telephone systems require financing under the terms and conditions provided in title II of the Rural Electrification Act of 1936, as amended. In order to effectuate this policy, the Rural Electrification Act of 1936, as amended (7 U.S.C. 921–924), is amended as hereinafter provided.

SEC. 2. The Rural Electrification Act of 1936, as amended, is amended by adding the following two new titles:

"TITLE III

"SEC. 301. RURAL TELEPHONE ACCOUNT.—There is hereby established in the Treasury of the United States an account, to be known as the rural telephone account, consisting of so much of the net collection proceeds (as defined in section 406(a) of this Act) as the Administrator may determine necessary to provide for investment in the capital stock of the Rural Telephone Bank in accordance with such section 406(a): *Provided,* That such investment shall be deemed paid in capital of the said bank notwithstanding that funds representing the proceeds from the sale of such stock shall remain in the rural telephone account until required for actual disbursement in cash by the said bank.

"SEC. 302. DEPOSIT OF ACCOUNT MONEYS.—Moneys in the rural telephone account shall remain on deposit in the Treasury of the United States until disbursed.

"TITLE IV

"SEC. 401. ESTABLISHMENT, GENERAL PURPOSES, AND STATUS OF THE TELEPHONE BANK.—(a) There is hereby established a body corporate to be known as the Rural Telephone Bank (hereinafter called the telephone bank).

"(b) The general purposes of the telephone bank shall be to obtain an adequate supply of supplemental funds to the extent feasible from non-Federal sources, to utilize said funds in the making of loans under section 408 of this title, and to conduct its operations to the extent practicable on a self-sustaining basis.

"(c) The telephone bank shall be deemed to be an instrumentality of the United States, and shall, for the purposes of jurisdiction and venue, be deemed a citizen and resident of the District of Columbia. The telephone bank is authorized to make payments to State, territorial, and local governments in lieu of property taxes upon real property and tangible personal property which was subject to State, territorial, and local taxation before acquisition by the telephone bank. Such payment may be in the amounts, at the times, and upon such terms as the telephone bank deems appropriate but the telephone bank shall be guided by the policy of making payments not in excess of the taxes which would have been payable upon such property in the condition in which it was acquired.

"SEC. 402. GENERAL POWERS.—To carry out the specific powers herein authorized, the telephone bank shall have power to (a) adopt, alter, and use a corporate seal; (b) sue and be sued in its corporate name; (c) make contracts, leases, and cooperative agreements, or enter into other transactions as may be necessary in the conduct of its business, and on such terms as it may deem appropriate; (d) acquire, in any lawful manner, hold, maintain, use, and dispose of property: *Provided,* That the telephone bank may only acquire property needed in the conduct of its banking operations or pledged or mortgaged to secure loans made hereunder or in temporary operation or maintenance thereof: *Provided further,* That any such pledged or mortgaged property so acquired shall be disposed of as promptly as is consistent with prudent liquidation practices, but in no event later than five years after such acquisition; (e) accept gifts or donations of services, or of property in aid of any of the purposes herein authorized; (f) appoint such officers, attorneys, agents, and employees, vest them with such powers and duties, fix and pay such compensation to them for their services as the telephone bank may determine; (g) determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid; (h) execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; (i) collect or compromise all obligations assigned to or held by it and all legal or equitable rights accruing to it in connection with the payment of such obligations until such time as such obligation may be referred to the Attorney General for suit or collection; and (j) exercise all such other powers as shall be necessary or incidental to carrying out its functions under this title.

"SEC. 403. SPECIAL PROVISIONS GOVERNING TELEPHONE BANK AS AN AGENCY OF THE UNITED STATES UNTIL CONVERSION OF OWNERSHIP, CONTROL, AND OPERATION.—Until the ownership, control, and operation of the telephone bank is converted as provided in section 410(a) of this title and not thereafter—

"(a) the telephone bank shall be an agency of the United States and shall be subject to the supervision and direction of the Secretary of Agriculture (hereinafter called the Secretary): *Provided, however,* That the telephone bank shall at no time be entitled to transmission of its mail free of postage, nor shall it have the priority of the United States in the payment of debts out of bankrupt, insolvent, and decedents' estates;

"(b) in order to perform its responsibilities under this title, the telephone bank may partially or jointly utilize the facilities and the services of employees of the Rural Electrification Administration or of any other agency of the Department of Agriculture, without cost to the telephone bank;

"(c) the telephone bank shall be subject to the provisions of the Government Corporation Control Act, as amended (31 U.S.C. 841, et seq.), in the same manner and to the same extent as if it were included in the definition of 'wholly owned Government corporation' as set forth in section 101 of said Act (31 U.S.C. 846);

"(d) the telephone bank may without regard to the civil service classification laws appoint and fix the compensation of such officers and employees of the telephone bank as it may deem necessary;

"(e) the telephone bank shall be subject to the provisions of sections 517, 519, and 2679 of title 28, United States Code.

"SEC. 404. GOVERNOR.—Subject to the provisions of section 410, the Administrator of the Rural Electrification Administration shall serve as the chief executive officer of the telephone bank (herein called the Governor of the telephone bank). Except as to matters specifically reserved to the Telephone Bank Board in this title, the Governor of the telephone bank shall exercise and perform all functions, powers, and duties of the telephone bank.

"SEC. 405. BOARD OF DIRECTORS.—(a) The management of the telephone bank, within the limitations prescribed by law, shall be vested in a board of directors (herein called the Telephone Bank Board) consisting of thirteen members.

"(b) The Administrator of the Rural Electrification Administration and the Governor of the Farm Credit Administration shall be members of the Telephone Bank Board. Five other members of the Telephone Bank Board shall be designated by the President to serve at his pleasure, three of whom shall be officers or employees of the Department of Agriculture but not officers or employees of the Rural Electrification Administration, and two of whom shall be from the general public and not officers or employees of the Federal Government. The Administrator and other officers and employees of the Department of Agriculture and the Governor of the Farm Credit Administration shall serve as members without additional compensation.

"(c) As soon as practicable after enactment of this title, the President of the United States shall appoint six additional members of the initial Telephone Bank Board to be selected from the directors, managers, and employees of any entities eligible to borrow from the telephone bank and of organizations controlled by such entities, with due regard to fair representation of the rural telephone systems of the Nation. The six members thus appointed shall serve until their successors shall have been duly elected in accordance with subsection (d).

"(d) Within twelve months following the appointment of the six members of the initial Board as provided in subsection (c), the Governor of the telephone bank shall call a meeting of all entities then eligible to borrow from the telephone bank and organizations controlled by such entities for the purpose of electing members of the Telephone Bank Board. Each such entity and organization shall be entitled to notice of and shall have one noncumulative vote at said meeting. Six members of the Telephone Bank Board shall be elected for a two-year term, three from among the directors, managers, and employees of cooperative-type entities eligible to vote and organizations controlled by such entities, and three from among the managers, directors, and employees of commercial-type entities eligible to vote and organizations controlled by such entities. These six members shall be elected by majority vote of the entities and organizations eligible to vote and such entities and organizations may vote by proxy.

"(e) Thereafter, in accordance with the bylaws of the telephone bank, the six members of the Telephone Bank Board shall be elected by holders of class B and class C stock, three from among the directors, managers, and employees of cooperative-type entities and organizations controlled by such entities holding class B or class C stock, and three from among the directors, managers, and employees of commercial-type entities and organizations controlled by such entities holding class B or class C stock. These six members shall be elected by majority vote of the entities and organizations eligible to vote and such entities and organizations may vote by proxy.

"(f) Any Telephone Bank Board member may continue to serve after the expiration of the term for which he is elected until his successor has been elected and has qualified. Telephone Bank Board members designated from the general public, pursuant to subsection (b), or appointed or elected pursuant to subsections (c), (d), and (e), shall receive

$100 for each day or part thereof, not to exceed one hundred days per year for the first three years after enactment of this title and not to exceed fifty days per year thereafter, spent in the performance of official duties, and shall be reimbursed for travel and other expenses in such manner and subject to such limitations as the Telephone Bank Board may prescribe.

"(g) The Telephone Bank Board shall prescribe bylaws, not inconsistent with law, regulating the manner in which the telephone bank's business shall be conducted, its directors and officers elected, its stock issued, held, and disposed of, its property transferred, its bylaws amended, and the powers and privileges granted to it by law exercised and enjoyed.

"(h) The Telephone Bank Board shall meet at such times and places as it may fix and determine, but shall hold at least four regularly scheduled meetings a year, and special meetings may be held on call in the manner specified in the bylaws of the telephone bank.

"(i) The Telephone Bank Board shall make an annual report to the Secretary for transmittal to the Congress on the administration of this title IV and any other matters relating to the effectuation of the policies of title IV, including recommendations for legislation.

"SEC. 406. CAPITALIZATION.—(a) The telephone bank's capital shall consist of capital subscribed by the United States, by borrowers from the telephone bank, by corporations and public bodies eligible to become borrowers from the telephone bank, and by organizations controlled by such borrowers, corporations, and public bodies. Beginning with the fiscal year 1970 and for each fiscal year thereafter, the United States shall furnish capital for the purchase of class A stock and there are hereby authorized to be appropriated from net collection proceeds in the rural telephone account created under title III of this Act such amounts, not to exceed $30,000,000 annually, for such purchases until such class A stock shall equal $300,000,000: *Provided*, That on or before July 1, 1974, the Secretary shall make a report to the President for transmittal to the Congress on the status of capitalization of the telephone bank by the United States with appropriate recommendations. As used in this section and section 301, the term 'net collection proceeds' shall be deemed to mean payments from and after July 1, 1968, of principal and interest on loans heretofore or hereafter made under section 201 of this Act, less an amount representing interest payable to the Secretary of the Treasury on loans to the Administrator for telephone purposes pursuant to section 3(a) of this Act.

"(b) The capital stock of the telephone bank shall consist of three classes, class A, class B, and class C, the rights, powers, privileges, and preferences of the separate classes to be as specified, not inconsistent with law in the bylaws of the telephone bank. Class B and class C stock shall be voting stock, but no holder of said stock shall be entitled to more than one vote, nor shall class B and class C stockholders, regardless of their number, which are owned or controlled by the same person, group of persons, firm, association, or corporation, be entitled in any event to more than one vote.

"(c) Class A stock shall be issued only to the Administrator of the Rural Electrification Administration on behalf of the United States in exchange for capital furnished to the telephone bank pursuant to subsection (a), and such class A stock shall be redeemed and retired by the telephone bank as soon as practicable after June 30, 1984, but not to the extent that the Telephone Bank Board determines that such retirement will impair the operations of the telephone bank: *Provided*, That the minimum amount of class A stock that shall be retired each year after said date and after the amount of class A and class B stock issued totals $400,000,000, shall equal the amount of class B stock sold by the telephone bank during such year. Class A stock shall be entitled to a return, payable from income, at the rate of 2 per centum per annum on the amounts of said class A stock actually paid into the telephone bank. Such return shall be cumulative and shall be payable annually into miscellaneous receipts of the Treasury.

"(d) Class B stock shall be held only by recipients of loans under section 408 of this Act. Borrowers receiving loan funds pursuant to section 408(a) (1) or (2) shall be required to invest in class B stock 5 per centum of the amount of loans funds so provided. No dividends shall be payable on class B stock. All holders of class B stock shall be entitled to patronage refunds in class B stock under terms and conditions to be specified in the bylaws of the telephone bank.

"(e) Class C stock shall be available for purchase and shall be held only by borrowers, or by corporations eligible to borrow under section 408 of this Act, or by organizations controlled by such borrowers and corporations, and shall be entitled to dividends in the manner specified in the bylaws of the telephone bank. Such dividends shall be payable only from income and, until all class A stock is retired, shall not exceed the current average rate payable on its telephone debentures.

"(f) If a firm, association, corporation, or public body is not authorized under the laws of the jurisdiction in which it is organized to acquire stock of the telephone bank, the telephone bank shall, in lieu thereof, permit such organization to pay into a special fund of the telephone bank a sum equivalent to the amount of stock to be purchased. Each reference in this title to capital stock, or to class B, or class C stock, shall include also the special fund equivalents of such stock, and to the extent permitted under the laws of the jurisdiction in which such organization is organized, a holder of special fund equivalents of class B, or class C stock, shall have the same rights and status as a holder of class B or class C stock, respectively. The rights and obligations of the telephone bank in respect of such special fund equivalent shall be identical to its rights and obligations in respect of class B or class C stock, respectively.

"(g) After payment of all operating expenses of the telephone bank, including interest on its telephone debentures, setting aside appropriate funds for reserves for losses, and making payments in lieu of taxes, and returns on class A stock as provided in section 406(c), and on class C stock, the Telephone Bank Board shall annually set aside the remaining earnings of the telephone bank for patronage refunds in accordance with the bylaws of the telephone bank.

"SEC. 407. BORROWING POWER.—The telephone bank is authorized to obtain funds through the public or private sale of its bonds, debentures, notes, and other evidences of indebtedness (herein collectively called telephone debentures). Telephone debentures shall be issued at such times, bear interest at such rates, and contain such other terms and conditions as the Telephone Bank Board shall determine after consultation with the Secretary of the Treasury: *Provided, however*, That the amount of the telephone debentures which may be outstanding at any one time pursuant to this section shall not exceed eight times the paid-in capital and retained earnings of the telephone bank. The telephone bank shall insert in all its telephone debentures appropriate language indicating that such telephone debentures, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the telephone bank. Telephone debentures shall not be exempt, either as to principal or interest, from any taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State or local taxing authority. Telephone debentures shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof.

"SEC. 408. LENDING POWER.—(a) The Governor of the telephone bank is authorized on behalf of the telephone bank to make loans, in conformance with policies approved by the Telephone Bank Board, to corporations and public bodies which have received a loan or loan commitment pursuant to section 201 of this Act, (1) for the same purposes and under the same limitations for which loans may be made under section 201 of this Act, (2) for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, in order to improve the efficiency, effectiveness, or financial stability of borrowers financed under sections 201 and 408 of this Act, and (3) for the purchase of class B stock required to be purchased under section 406(d) of this Act but not for the purchase of class C stock, subject, as to the purposes set forth in (2) hereof, to the following provisos: That in the case of any such loan for the acquisition of telephone lines, facilities, or systems, the acquisition shall be approved by the Secretary, the location and character thereof shall be such as to improve the efficiency, effectiveness, or financial stability of the telephone system of the borrower, and in respect to exchange facilities for local services, the size of each acquisition shall be not greater than the borrower's existing system at the time it receives its first loan from the telephone bank, taking into account the number of subscribers served, miles of line, and plant investment.

"(b) Loans under this section shall be on such terms and conditions as the Governor of the telephone bank shall determine, subject, however, to the following restrictions:

"(1) All loans made under this section shall be fully amortized over a period not to exceed fifty years.

"(2) Funds to be loaned under this Act to any borrower shall be loaned under this section in preference to section 201 if the borrower is eligible for such a loan and funds are available therefor. Notwithstanding the foregoing or any other provision of law, all loans made pursuant to this Act for facilities for telephone systems with an average subscriber density of three or fewer per mile shall be made under section 201 of this Act; but this provision shall not preclude the making of such loans from the telephone bank at the election of the borrower.

"(3) Loans under this section shall, to the extent practicable, bear interest at the highest rate which meets the requirements set forth in paragraph (4), consistent with the borrower's ability to pay such interest rate and with achievement of the objectives of this Act; but not less than 4 per centum per annum.

"(4) Loans shall not be made under this section unless the Governor of the telephone bank finds and certifies that in his judgment (i) the security therefor is reasonably adequate and such loan will be repaid within the time agreed, and (ii) the borrower has the capability of producing net income or margins before interest at least equal to 150 per centum of the interest requirements on all of its outstanding and proposed loans, or such higher per centum as may be fixed from time to time by the Telephone Bank Board in order to allocate available funds

equitably among borrowers or to improve the marketability of the telephone debentures: *Provided, however,* That the Governor of the telephone bank may waive the requirement of (ii) above in any case if he shall determine (and set forth his reasons therefor in writing) that this requirement would prevent emergency restoration of the borrower's system or otherwise result in severe hardship to the borrower.

"(5) No loan shall be made in any State which now has or may hereafter have a State regulatory body having authority to regulate telephone service and to require certificates of convenience and necessity to the applicant unless such certificate from such agency is first obtained. In a State in which there is no such agency or regulatory body legally authorized to issue such certificates to the applicant, no loan shall be made under this section unless the Governor of the telephone bank shall determine (and set forth his reasons therefor in writing) that no duplication of lines, facilities, or systems, providing reasonably adequate services will result therefrom.

"(6) As used in this section, the term telephone service shall have the meaning prescribed for this term in section 203(a) of this Act, and the term telephone lines, facilities, or systems shall mean lines, facilities, or systems used in the rendition of such telephone service.

"(7) Notwithstanding any other provision of law, (i) no borrower of funds under section 201 of this Act shall, without approval of the Administrator, sell or dispose of its property, rights, controlling interest, or franchise, or merge or consolidate with any other corporation, until all indebtedness, including all interest and charges, to the Rural Electrification Administration shall have been repaid, and (ii) no borrower of funds under section 408 of this Act shall, without approval of the Governor of the telephone bank under rules established by the Telephone Bank Board, sell or dispose of its property, rights, controlling interest, or franchise, or merge or consolidate with any other corporation, until all indebtedness, including all interest and charges, to the telephone bank shall have been repaid. Any such approval of the disposition of all, or substantially all, of such property, rights, interest, or franchise, or of such merger or consolidation, shall be conditioned upon (1) agreement by the new owner, or the entity resulting from such merger or consolidation, to pay not less than such rate or rates of interest as would be required by this Act if a new loan, or loans, were made to it and (2) refinancing of the loan, or loans, to the extent necessary to effect this result.

"(c) The Governor of the telephone bank is authorized under rules established by the Telephone Bank Board to adjust, on an amortized basis, the schedule of payments of interest or principal of loans made under this section upon his determination that with such readjustment there is reasonable assurance of repayment: *Provided, however,* That no adjustment shall extend the period of such loans beyond fifty years.

"SEC. 409. TELEPHONE BANK RECEIPTS.—Any receipts from the activities of the telephone bank shall be available for all obligations and expenditures of the telephone bank.

"SEC. 410. CONVERSION OF OWNERSHIP, CONTROL AND OPERATION OF TELEPHONE BANK.—(a) Whenever class A stock issued to the United States has been fully redeemed and retired pursuant to section 406(c) of this title—

"(1) the powers and authority of the Governor of the telephone bank granted to the Administrator of the Rural Electrification Administration by this title IV shall vest in the Telephone Bank Board, and may be exercised and performed through the Governor of the telephone bank, to be selected by the Telephone Bank Board, and through such other employees as the Telephone Bank Board shall designate;

"(2) the five members of the Telephone Bank Board designated by the President pursuant to section 405(b) shall cease to be members, and the number of Board members shall be accordingly reduced to eight unless other provision is thereafter made in the by-laws of the telephone bank;

"(3) the telephone bank shall cease to be an agency of the United States, but shall continue in existence in perpetuity as an instrumentality of the United States and as a banking corporation with all of the powers and limitations conferred or imposed by this title IV except such as shall have lapsed pursuant to the provisions of this title.

"(b) When all class A stock has been fully redeemed and retired, loans made by the telephone bank shall not continue to be subject to the restrictions prescribed in the provisos to section 408(a)(2).

"(c) Congress reserves the right to review the continued operations of the telephone bank after all class A stock has been fully redeemed and retired.

"SEC. 411. LIQUIDATION OR DISSOLUTION OF THE TELEPHONE BANK.—In the case of liquidation or dissolution of the telephone bank, after the payment or retirement, as the case may be, first, of all liabilities; second, of all class A stock at par; third, of all class B stock at par; fourth, of all class C stock at par; then any surpluses and contingency reserves existing on the effective date of liquidation or dissolution of the telephone bank shall be paid to the holders of class A and class B stock issued and outstanding before the effective date of such liquidation or dissolution, pro rata.

"SEC. 412. BORROWER NET WORTH.—Except as provided in subsection (b)(2) of section 408, notwithstanding any other provision of law, a loan shall not be made under section 201 of this Act to any borrower which during the immediately preceding year had a net worth in excess of 20 per centum of its assets unless the Administrator finds that the borrower cannot obtain such a loan from the telephone bank or from other reliable sources at reasonable rates of interest and terms and conditions.

SEC. 3. (a) Subsection (f) of section 3 of the Rural Electrification Act of 1936, as amended, is amended by inserting in lieu of the first word of said subsection "Except as otherwise provided in sections 301 and 406(a) of this Act, all".

(b) Section 201 of the Rural Electrification Act of 1936, as amended, is amended by inserting ", to public bodies now providing telephone service in rural areas", immediately after the word "areas" in the first sentence and also immediately after the word "areas" in the first proviso of the second sentence.

SEC. 4. The right to repeal, alter, or amend this Act is expressly reserved.

SEC. 5. This Act shall take effect upon enactment.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRIBUTE TO SENATORS ON TELEPHONE BANK AND STOCKPILE BILLS

Mr. MANSFIELD. Mr. President, the distinguished Senator from Georgia (Mr. TALMADGE), chairman of the Subcommittee on Agricultural Credit and Rural Electrification, has done a splendid job of guiding the Rural Telephone Bank bill through the Senate. As always, his thoughtful presentation and thorough knowledge of the measure contributed to its overwhelming adoption. The Senate is deeply grateful.

The ranking minority member of that committee, the senior Senator from Vermont (Mr. AIKEN) is also to be commended for his excellent work and support on this measure. The Senate always appreciates having his views, his ideas, his outstanding cooperation. The able and distinguished junior Senator from Kansas (Mr. DOLE) also contributed to the efficient completion of work on this very important bill today.

Especially to be commended are the distinguished Senators from Oklahoma (Mr. HARRIS and Mr. BELLMON) and the Senator from Kentucky (Mr. COOK). They joined to develop the high quality of the debate and helped considerably to expedite the consideration of the measure. Their efforts are greatly appreciated.

I wish at this time to praise as well the distinguished Senator from Nevada (Mr. CANNON). His work earlier today in handling the many stockpile bills was truly exemplary. As always, he applied the great skill and ability that have marked his outstanding service. On these same measures, the distinguished senior Senator from Delaware (Mr. WILLIAMS) is to be commended. His splendid cooperation assured the efficient and swift disposition of each of those measures.

SUSPENSION OF FURTHER DEPLOYMENT OF OFFENSIVE AND DEFENSIVE NUCLEAR STRATEGIC WEAPONS SYSTEMS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 745, Senate Resolution 211, a resolution seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles. I do this so that the resolution will become the pending business. Nothing will be done on the resolution tonight.

The PRESIDING OFFICER. The resolution will be read by title.

The ASSISTANT LEGISLATIVE CLERK. A resolution (S. Res. 211) seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution, which had been reported from the Committee on Foreign Relations with an amendment to strike out all after the resolving clauses and insert:

That it is the sense of the Senate that prompt negotiations between the Governments of the United States of America and of the Union of Soviet Socialist Republics to seek agreed limitations of both offensive and defensive strategic weapons should be urgently pursued; and

Resolved further, That the President should propose to the Government of the

Union of Soviet Socialist Republics an immediate suspension by the United States and by the Union of Soviet Socialist Republics of the further deployment of all offensive and defensive nuclear strategic weapons systems, subject to national verification or such other measures of observation and inspection as may be appropriate.

OLD MYTHS AND NEW REALITIES—I

Mr. FULBRIGHT. Mr. President, several years ago I made a speech on the subject, "Old Myths and New Realities." I recently reread it and was surprised at how tame it seemed in retrospect. Some of the "new realities" of 1964 still seem pertinent, but others have ripened into clichés, while a few, which once had validity, have passed into the realm of old mythology.

Meanwhile, a whole new crop of myths have come abloom. I do not presume to have discerned all of them by any means, but a few have seemed conspicuous and noteworthy. I propose, therefore, in a few short statements, to survey some of these new "old myths" and to suggest, if I can, some newer "new realities." Today, for a start, I should like to discuss some of the misconceptions which seem to obtain in our policy in Southeast Asia. Next, I would like to talk about dissent in America and the way in which ill-conceived methods can bring undesired results. On another day I will offer some thoughts on the Middle East, where the myths are as prolific as in a Bible story. Finally, I shall express some impressions about our domestic affairs, where certain social prescriptions have been elevated to the status of revealed truth, and hope has given way to disillusion, in such fields as poverty, race, and education.

I. THE MYTH OF VIETNAMIZATION

From the Greek city-states to the 20th century, foreign policy of great powers has been, in its essence, a game of "one-upsmanship" in an unending struggle for power. Prior to the 20th century, however, it was done, for the most part, with restraint and decorum: Battles were fought for the pleasure of winning, usually in open fields where they would not bother anybody except the local inhabitants; provinces changed hands without much ado or inconvenience for the inhabitants; kings enjoyed humbling each other but more or less remained friends for social purposes; they seldom sought to dethrone each other and, in their moral lexicon, the only truly heinous crime was the mercifully uncommon one of regicide.

There were many wars, of course, but winning them was fun and losing was not all that terrible if you did not happen to be one of the small number of people that got killed. It was a sportsmen's game with the saving grace that, except for a few upstarts like Napoleon and Bismarck, the players were content to play it with sportsmen's weapons. This is not to suggest that all international conflicts before the 20th century were trivial; some were serious, indeed, and a few were enormously consequential but, for every war that mattered, a great many more were vanity, trivial quarrels for trivial stakes.

In the 20th century all conflicts are serious because of the unlimited destructiveness of new methods of warfare, although, as far as their merits are concerned, the ratio of serious to superficial has not visibly altered. For every issue of substantive importance there are many more which are vanity: We are still playing the same old game of "one-upsmanship" in a mindless struggle for power and influence. Unfortunately, however, the distinction between the conflicts that matter and the ones that do not is no longer easily made, because both have been adorned with the same bloated vocabulary. Both are drenched in portentous allusions to "freedom," "survival," "vital interest," and all the other familiar grandiosities of power politics and ideology.

The old myth of international politics—that it was the private preserve of sovereigns and their ministers and none of the people's business—has given way to a new myth: That politics is life and everything political is highly consequential—not just for those who make their living by politics but for everybody, everywhere. Every issue is now a "critical" issue; every threat a "grave" one; and I doubt if there is a square inch left on the face of the earth that someone does not regard as "strategic."

Not everybody, of course, appreciates the supremacy of politics; there remains a benighted mass of bumpkins who live in the illusion that there is more to life than the next election and the balance of power. The number of these illiterates, however, is shrinking because of the astonishing success of the "professionals" in persuading us that politics—especially international politics—is indeed what life is all about. The experts have mastered the media, and the result of their overkill is not only a greatly inflated notion of how much foreign policy matters to the daily lives of people, but the effective drowning of any distinction between issues that matter and issues that do not. Thus, at one time we were all very nearly persuaded that Tonkin Gulf was as fateful as Pearl Harbor, and that Vietnam was of a piece with the German conquest of Europe.

The master myth of Vietnam—that is, the country as distinguished from the war—is the greatly inflated importance which has been attached to it. From the standpoint of American security and interests, the central fact about Indochina, including Vietnam, is that it does not matter very much who rules in those small and backward lands. We have preferences, to be sure—all of us do—but they are a product of sentiment and habit. One might add humanitarian feeling, except that it is hard to see what human purpose is advanced by inflicting Thieu and Ky on anybody. What it all comes down to is that, if all other things were equal—as indeed they are not—it might be a convenience to the United States to have the countries of Indochina ruled by non-Communist leaders. For this hypothetical advantage, we have already spent over 40,000 lives and $100 billion—and nearly 300,000 other casualties.

How have we come to inflate so colossally the importance of Indochina to our own security? The answer lies in that hoariest, hardiest, most indestructible myth of them all: the myth of the international Communist conspiracy. Our leaders deny their continuing belief in it; they are quite familiar, they assure us, with the split in the Communist world; they will even grant that Ho Chi Minh was a nationalist. They say this, to be sure, but with all the tremulous conviction of a child walking past a graveyard on a dark night protesting that he is not afraid of the dark. For all the sophistication and fine distinctions that are supposed to have refined our policy since the bad old days of the cold war, there is little discernible difference in spirit between Mr. Nixon's ominous reference to "those great powers who have not yet abandoned their goals of world conquest," [1] and the portentous language of President Truman's proclamation of national emergency 20 years ago—which, by the way, is still in force:

> Whereas world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world. . . .

With due account taken of the new, milder, less portentous style in warnings and "whereases," the myth of the international Communist conspiracy still survives. Sometimes, when the facts are overwhelming, it is possible to show that some particular event—such as the Dominican revolution of 1965—was local in origin and not the result of a Moscow-directed plot. But the myth withstands every assault of hard evidence. Just like the walking catfish, which gets out of a pond when the water becomes uninhabitable and heads overland for more hospitable waters, the conspiracy myth is both mobile and indestructible. Discredited in one locale, it soon turns up in another, sustained here and there by a kernel of truth, not enough to validate the myth but more than enough to secure its group on the minds of leaders whose education in communism began—and ended—with Stalin. That, indeed, is the myth's true home—the fortress minds of the old cold warriors, where nothing flourishes for very long that was not there to begin with.

The myth distorts our perceptions. It has made it difficult for us to see the Soviet Union for what it has become—a traditional, cautious, and rather unimaginative great power, jealously clinging to its sphere of domination in Eastern Europe but limited to methods of pressure and persuasion in its dealings with other Communist movements, especially in Asia. China has engendered a myth all its own: "If there is not a world Communist conspiracy—so we are told—then there is surely an Asian one, and the unshakeable faith in it of some of our recent leaders has permitted them to brush aside the fact that China, after all, has kept its combat soldiers within its own borders.

Mr. GORE. Mr. President, will the Senator from Arkansas yield at that point?

Mr. FULBRIGHT. I yield.

[1] Speech of November 3, 1969.

Mr. GORE. How does that fact square with the canard that the Chinese have no regard for human life? If they have no regard for human life, why would they not have their soldiers committed where, allegedly, they have their interests?

Mr. FULBRIGHT. I do not think it does square with it. The obsession with the ideological aspects of the struggle which began about 21 years ago have overwhelmed our commonsense in this respect. The Chinese have been extremely cautious in engaging people abroad. The only case of any significance was when we went up to the border in Korea, and they had warned us that they would intervene. I expect that we would react the same way if the Chinese were to approach our borders from Mexico. It is a normal reaction.

I think it is another of these myths, that the Chinese have no regard for human life. All people on this earth appear to have the same human interests one with the other. It is remarkable, actually, that the Chinese had about 1 million—or at least perhaps 500,000—troops in North Korea in the mid-1950's. Then they took them all out, and we still have 50,000 there.

Mr. President, at last we come to the fighting front, where our tenacious, real life antagonists, the Vietnamese Communists, are perceived as no more than spearbearers for the world—or the Asian—Communist conspiracy. All but lost to view is the tangible, ascertainable fact that North Vietnam, though materially dependent and politically influenced by both Moscow and Peking, is an authentically independent country, the dominant power of Indochina, but nonetheless a small and undeveloped country without the resources to become a significant imperialist power, much less a threat to the United States.

We are fighting a double shadow in Indochina—the shadow of the international Communist conspiracy and the shadow of the old, obsolete, mindless game of power politics. Armed with weapons that have given war a new dimension of horror, and adorned with the sham morality of ideological conflict, the struggle for power and influence has taken on a deadly, new intensity at exactly the time when it has lost much of the meaning it once had. All the old power politics bromides—about "stability," "order," and "spheres of influence"—are largely without meaning to a global superpower armed with nuclear weapons. The world balance of power on which our security depends is a nuclear balance involving Russia, China, Western Europe, and the United States. The preservation of a non-Communist—as against a Communist—dictatorship in South Vietnam is not going to protect us, or anybody else, from Soviet or Chinese missiles. It simply does not matter very much for the United States, in cold, unadorned strategic terms, who rules the states of Indochina.

Nor does it matter all that terribly to the inhabitants. At the risk of being accused of every sin from racism to communism, I stress the irrelevance of ideology to poor and backward populations. Someday, perhaps, it will matter, in what one hopes will be a constructive and utilitarian way. But in the meantime, what earthly difference does it make to nomadic tribes or uneducated subsistence farmers, in Vietnam or Laos or the north of Thailand, whether they have a military dictator, a royal prince, or a Socialist commissar in some distant capital that they have never seen and may never even have heard of?

At their current stage of undevelopment these populations have more basic requirements. They need governments which will provide medical services and education, fertilizer, high-yield seeds and instruction in how to use them. They need governments which are honest enough to refrain from robbing and exploiting them, purposeful enough to want to modernize their societies, and efficient enough to have some ideas about how to do it. Whether such governments are capitalist or Socialist can be of little interest to the people involved, or to anyone except their present rulers, whose perquisites are at stake, and their great power mentors, fretting in their distant capitals about ideology and "spheres of interest."

So much for myth No. 1—that it matters to our security who rules Indochina. The second myth, well-established after 5 years of futile warfare, is that we could do anything about it if it did matter—anything worth doing, that is. We could certainly "win" the wars in Vietnam and Laos today if we wanted to bomb those little countries back into the stone age, as one of our generals once suggested. But we have been reluctant to do that; and, because of the domestic uproar that would follow, it has become politically impractical to escalate beyond the present war of piecemeal extermination—which simply is not doing the trick, and is not likely to.

The plain fact that comes out of our war in Vietnam—reinforced by recent events in Laos and perhaps Cambodia as well—is that, puny as it is by great power standards, North Vietnam is the paramount power in Indochina. In unadorned strategic terms it is "their" part of the world in exactly the same way—except on a much more modest scale—that Eastern Europe is Russia's part of the world and Latin America is ours.

We may think this an immoral and obsolete way of running the world's affairs—I certainly do—but no one is showing much inclination to change it by trying, say, to breathe some life into the United Nations. As long as we are going to continue to play the old, discredited game, we might as well play it intelligently, and it is just not intelligent to expect to be able to poach on somebody else's territory without encountering serious resistance, while at the same time you fiercely defend the inviolability of your own. The Russians ran into a buzz saw when they tried poaching on our preserve in the Western Hemisphere, whereupon they prudently retired from the field. What reason have we ever had to suppose that the North Vietnamese, within the limits of their resources, would react any differently from the way we react? Perhaps if our minds were less cluttered with ideology, the sham morality it fosters, and great power pride, we could see that the only real differences are of scale—ours is a big sphere of influence; theirs is a small one—and in the weapons employed—we scared off the Russians with the threat of our H-bombs; the North Vietnamese and Vietcong challenge us with guerrilla warfare. It is not, as a former Member of this body once suggested, that, when we intervene, it is "for their own good."

We ought in a way to welcome North Vietnam's preeminence in Indochina, because, while North Vietnam has shown itself strong enough to dominate Indochina if left alone by outside powers, it has also shown itself willing and able to resist Chinese domination. At the same time North Vietnam is far too small a power to have any serious hope of conquering all of Southeast Asia, much less posing any kind of a threat to the United States.

Suppose, by way of analogy, that Yugoslavia, instead of emerging from World War II as a strong, independent, unified Communist country, had reverted instead to political units coinciding with its component ethnic groups—Serbian, Slovenian, Croatian, Montenegrin, and Macedonian. Suppose too that all of these states had adopted some kind of Western parliamentary institutions, making themselves members—as the term is commonly used—of the "free world." Recalling also their Balkan tradition of mutual hostility and political instability, is it possible to believe that such a congeries of mini-states could have resisted Stalin's regional imperialism with anything approaching the success of Tito's Communist Yugoslavia? To me, it seems unlikely.

Perhaps if France and then the United States had refrained from intervening on each of the occasions when Ho Chi Minh was on the verge of unifying Vietnam under his rule—in 1946, in the mid-fifties and again in 1965—we might now be dealing with a stable, independent, unified Communist country—no more hostile to the United States than Yugoslavia itself is today. Perhaps, someday, that is exactly what we will be confronted with, when—and if—American military power is removed from Indochina.

It should not be necessary to add—although I suppose it is—that I do not advocate a Communist-dominated Indochina. I merely propose to accept it, if it arises from the local power situation, as something unwelcome but tolerable, and most emphatically not worth the extravagant costs of a war like the one we are now fighting. By their own choice our leaders are playing the spheres-of-influence game in a world of power politics. It was their choice to do it this way rather than to pursue a policy of authentic internationalism through the United Nations. Having made their choice of the game they wish to play, they ought at least to play the game by its rules. Mr. Henry Kissinger, the President's close adviser on foreign relations, once wrote an admiring book about Metternich, the great Austrian diplomat whose name is a symbol for the old politics of the balance of power. Of all recent administrations, the present one ought to know that, if you are going to be

a successful Metternichian, you have to be a consistent one.

That, however, is something which the Nixon administration seems disinclined to do. Like the Johnson administration before it, the present administration seems persuaded that it can preserve the American sphere of influence inviolate while contesting somebody else's in the name of saving the world from communism. In this respect, Vietnamization represents a change in tactics from the Johnson policy but not a change in the objective, which is to preserve some kind of American military foothold, either directly or by proxy, in an alien sphere of influence.

I welcome the change: Vietnamization is better than escalation, but I welcome it only in the sense that I would rather be riding in a car heading for a precipice at the 30 miles an hour than at 80 miles an hour. If I really had my choice, I would not be in that car at all. Granting the new policy all that is its due, I am still unwilling to adorn the lesser folly with the name of wisdom. Like the escalation which preceded it, Vietnamization is still an unsound policy, aimed at an unnecessary and probably unattainable objective.

Mr. GORE. Mr. President, what is that objective?

Mr. FULBRIGHT. The objective, as I stated in the previous paragraph, is to maintain a military foothold, either directly or by proxy, in an alien sphere of influence. In other words, the maintenance of the Thieu-Ky government, by giving them almost unlimited arms, is intended to preserve them there as our loyal ally and friend.

Mr. GORE. Would that be a military victory for the United States?

Mr. FULBRIGHT. They would consider it that, I suppose, in the absence of a defeat. But I think it is unattainable in terms of any reasonable action we could take. I am talking about the intelligence, not the physical impossibility, of seeking a military victory. We would all like to have friendly governments everywhere, but the cost of this unattainable objective is all out of proportion. This seems to be their intention of our policymakers. If it were not their intention to maintain this foothold, it seems to me they would recognize that the only solution is a political settlement.

Mr. GORE. Mr. President, will the Senator yield further?

Mr. FULBRIGHT. I yield.

Mr. GORE. President Nixon, in his speech to the American people on the Vietnam policy of May 14, 1969, said that he had ruled out a military decision on the battlefield.

Now, if the able Senator is correct in his statement that the aim of Vietnamization is the establishment of a dependency, or a satellite, or a foothold—however one describes it—in South Vietnam, and although we do not and would not call that victory, I wonder if the Senator thinks the National Liberation Front and the northern part of Vietnam would consider it a defeat, a total defeat for them?

Mr. FULBRIGHT. I think they would. This is why I say it is unattainable. If they would accept it, then I think it could be attained; but they consider it their country, and they are going to continue to fight, North Vietnam, South Vietnam, and the Vietcong—the same way we were unwilling to accept Russian missiles in Cuba. They consider this their sphere of influence. Without any international organization, such as the U.N., we are still playing this game of balance of power and spheres of influence.

They are there and will not accept our victory—I believe. Therefore, the attempt to win it is extremely costly. The great tragedy of this is that, if we had no concern whatever for the loss in lives and money and what it is doing to our country, we could maintain ourselves either directly or by proxy for a long time; but it is so costly and out of proportion to its significance that it is an extremely unintelligent way to play the game of power politics. It does not make any sense.

Mr. GORE. Mr. President, will the Senator yield further?

Mr. FULBRIGHT. I yield.

Mr. GORE. Is not the central issue about which the war has been raging for years now the character of government in Saigon over the people of South Vietnam?

Mr. FULBRIGHT. That is the essential question. Our presence there, of course, as a dominant power, is now the primary issue, just as the French presence there was the reason for the war between 1946 and 1954. The Vietminh rebellion was intended to rid their country of the foreign dominant country. Now we have stepped into the shoes of the French, not with the same motives, but—in the view of the people we are fighting—to control the destiny of South Vietnam.

The Senator is quite correct. I am trying to balance off: How important is this to us? To them it is very important in the same way it was important to us that the Russians were in Cuba with their missiles. That is easy to understand. I think we could maintain ourselves in Vietnam, but it is not worth the price.

Mr. GORE. Mr. President, will the Senator yield further?

Mr. FULBRIGHT. I yield.

Mr. GORE. If the character of the Government in South Vietnam is the central issue, would a compromise peace settlement not appear to be dependent upon a compromise with respect to the Government of South Vietnam?

Mr. FULBRIGHT. I think the Senator is quite right. I believe that is the crucial question—the character of the government in Saigon. If it could be agreed that the present regime is a transitional government, and arrangements made for a successor without being dominated by us, I believe you could find political accommodation.

Mr. GORE. Mr. President, will the Senator yield further? I will ask but one other question.

Mr. FULBRIGHT. I welcome the Senator's question.

Mr. GORE. In view of the Senator's observations I wonder if he would comment upon an article which I recently read by the very learned author Theodore White that neither side had offered the other anything in the Paris conference except humiliating defeat and surrender.

Mr. FULBRIGHT. This is an extremely interesting and critical question as to just what has been done there. One gets different stories from them. There have been several articles in addition to Mr. White's article. Mr. Arthur Cox had an extremely perceptive article in the Sunday paper a week ago last Sunday. Mr. Gelb had an interesting letter in the New York Times. Mr. Hilsman had an article in the Philadelphia Bulletin, I believe. All of them were consistent on these points—that what was necessary was to make credible offer that we were ready to accept a transitional government, or a coalition government. "Coalition" has a connotation to which everyone objects; what is required is a government that would carry out some new arrangement for South Vietnam without the arrangement being under the direct control of the Thieu-Ky government.

These are all knowledgeable men. They say they read the signs as indicating the North Vietnamese have indicated this is their position. There are two things. If we would agree at some time—a later time, a reasonable time—to withdraw our forces, and in the meantime have a transitional government to look after elections, or some form of arrangement for a new government, they would agree; and they say we have never made such an arrangement.

On the other hand, I have been told by a journalist that he was told in conversation with Mr. Habib that we have made such an offer. One is left without any certain knowledge. This is one reason why I regret that the Secretary of State could not come before the Foreign Relations Committee in open session and make this clear, so that all would know, and in no uncertain terms, whether we had or had not offered to permit a sharing of power by the Vietnamese belligerents.

The President, on some occasions, has made statements that could be interpreted to mean we have made these offers, but those statements are usually a little vague and ambivalent, and it is uncertain how positive they are. Everybody knows it is the way one says things that matters, and whether or not they are said in a way that is credible; and one's actions convey much more than the words used in many instances. So it is not easy to pin these matters down. We all know this is true in any area of human relations. One's actions have to be consistent with his words and one has to inspire a degree of confidence to be persuasive. The Vietnamese feel that they were doublecrossed in 1954. That has been widely discussed. They are obviously cautious about making agreements on words alone.

I do not wish to leave the impression that we are all at fault. I think the Vietnamese should long ago, especially at the time of the San Antonio formula, have accepted an offer. I think it was in their interest, and everybody's interest, to have accepted the offer that was made, even though it was not all that they would have liked.

I think it would have resulted in a settlement to our advantage and their advantage. But they did not choose to do it. They are a people who have a different background.

I do not mean to say that we have always been at fault in these matters. I think they have exercised bad judgment, too, but I always come back to this proposition: We have so much to lose. When I look at this country, the strikes of the mailmen, the threatened strike on the railroads, the slowdown of air transportation, the slowdown in housing, the high interest rates, the effects of inflation, and so forth, it simply means that we have far more to gain, it seems to me, by making the necessary arrangements to bring this matter to a close than anybody else, even the Vietnamese.

Even if the issue were confined to Vietnam—as recent events in Laos and Cambodia show it is not—Vietnamization would still be an unpromising course. Having failed to beat the Communists with a well-led, well-trained, and superbly equipped American Army of half a million men, we can hardly expect the ARVN on its own to do the job—even with American air and logistic support, without which, indeed, it would almost certainly collapse. At most we can hope to keep our punchy proteges staggering around the ring for a few years longer. That might serve Mr. Thieu's purposes well enough—it would keep him and his friends in power, however precariously—and it might serve the Nixon administration's apparent determination to avoid the political settlement which it insists upon calling our "defeat and humiliation." For these worthy ends the Vietnamese people will pay the price of an indefinite continuation of terror and death, and the American people will pay the price of reduced but continuing casualties, burgeoning expense, and the social and economic fallout which is causing the fabric of our own society to begin coming unstuck.

This is assuming that Vietnamization goes well, as in all probability it will not. Current favorable estimates—indeed a kind of euphoria—in the administration appear to be based on some improvement in the fighting qualities of the ARVN, a degree of success in the "pacification" program, and a consequent reduction in the military effectiveness of the Vietcong. One even hears it said that Vietnam is no longer an "issue," despite the fact that American war deaths in 1969—the first year of Vietnamization—were greater than in the "escalation" year of 1967. The "issue" may be over, but the war most certainly is not.

Granting that there has been progress in pacification, what is going to come of these successes when another 200,000 or 300,000 Americans are withdrawn under the Vietnamization program? Will the Communists just sit by while the strengthened but still very shaky Saigon forces press on to victory? Or, as seems more likely, will they take the offensive again and, without a half million Americans to hold them off, drive the Saigon army and the remaining Americans into a handful of besieged urban enclaves?

In that event we will be confronted with exactly the specter that the President rightly fears: the defeat and humiliation of the American Armed Forces. With that prospect ahead, it is difficult to share the high spirits of the pacification officers from the field who recently gave the Foreign Relations Committee an optimistic account of their progress. I do not doubt that they are having some success, but I doubt its viability in the broader context of events. They are, I believe, building castles in the sand, without an eye for the incoming tide.

The President still has time to prevent an American defeat, but not a lot of time. For all the fancy sophistries that have been concocted about it, Vietnamization is not strengthening our hand; like any reduction in military forces, it is weakening our hand, and our enemies are not such mental defectives that they can be kidded into believing otherwise. As Arthur Cox, a recognized specialist on communism, has pointed out recently, we still may have time to negotiate a political settlement this year if we can bring ourselves to give up the untenable dream of an anti-Communist government in Saigon—whether under Thieu and Ky or somebody like them—in return for the Communists giving up their hopes of a complete takeover and settling for a neutralist coalition in Saigon. By mid-1971, when American forces are scheduled to be down to about 225,000 men, it may well be too late.

The myth of Vietnamization is thrown into sharp relief by the deterioration of the anti-Communist military position in Laos and the coup in Cambodia. These events point up the futility of our Vietnamese strategy in a conflict which is not confined to Vietnam but in fact encompasses all of Indochina. For reasons ranging from the logistic importance of the Ho Chi Minh Trail to their probable conception of their own sphere of influence, the Vietnamese Communists have been unwilling to confine the war within the borders of Vietnam. Whether they actually aspire to the physical domination of Laos and Cambodia, or would settle for "friendly" neighbors, I do not know. It is clear, however, that they are going to continue making whatever political and military uses they can of the unstable situations in Laos and Cambodia.

As matters are now developing, those uses appear considerable. Stymied though not defeated in Vietnam, the North Vietnamese have found in the power vacuum of Laos an opportunity to turn our flank. In the strategic vocabulary of a decade ago, they may have come up with a variation on the so-called domino theory: something that might be called the skip-a-domino theory. With the Vietnamese domino momentarily glued down, the Communists may simply have decided to go on to the next one, where Souvanna Phouma's army of Meo tribesmen is hardly a match for the North Vietnamese, even with the support of an indeterminate number of CIA soldiers, an unrevealed number of imported Thais, and an apparently great number of B-52's to pound the Communist supply lines.

I doubt that it is the intention of the North Vietnamese to sweep through Laos and then have a go at the next domino, which would be Thailand. I think it more likely that they are pressing their advantage in Laos to compensate for the stalemate in Vietnam and to demonstrate the futility of Vietnamization. Even if we do succed in retaining a tenuous foothold in South Vietnam, what will be its use if the North Vietnamese are left free to do pretty much as they please in the rest of Indochina? Events in Laos are showing up Vietnamization for a kind of political maginot line—difficult to assault head on, but why bother when you can walk around it?

Here again we see the strategic absurdity of our effort to win an Indochinese struggle through a primarily Vietnamese campaign. Even more, we see the extraordinary difficulty and extravagant cost of the ill-advised attempt to implant American influence in this area which any good Metternichian must recognize as somebody else's part of the world.

The startling aspect of the situation in Laos is our virtual helplessness. Caught in a dilemma between its instinct for fighting communism wherever it appears and the restraints imposed by public and congressional opinion, the administration is reduced to hoping for the best in Laos. I have heard nothing which points up the ironic futility of 5 years of war in Vietnam more than Secretary Rogers' plaintive confession of American helplessness in Laos. Speaking on television on March 17, the Secretary acknowledged that the ultimate objective of the North Vietnamese in Laos was unknown. He said:

> We hope, that what they are up to is to make their negotiating position a little stronger. We hope that they do not intend to overrun Laos.

In Cambodia as in Laos the initiative lies with the Communists. The new regime of General Lon Nol has ordered the North Vietnamese and Vietcong forces to get out of Cambodia, but all the general has for doing the job is a poorly equipped little army of 40,000 men. What if the new rulers of Cambodia now appeal to President Nixon for help? Will he provide that help and expand the war or refuse it and leave the new Cambodian rulers to their fate? Confronted with an embarrassing new friend, the President can only hope against hope that he will not be put to the test.

Mr. GOODELL. Mr. President, will the Senator yield at that point?

Mr. FULBRIGHT. I yield.

Mr. GOODELL. Mr. President, the distinguished chairman of the Committee on Foreign Relations knows that last year I introduced a bill (S. 3000) to require the withdrawal of all American military personnel from Vietnam by December 31 of this year. The Senator, in his very fine address, has now referred to the Cambodian situation, the possibility that it is worsening, and the possibility of the Cambodians requesting military assistance and perhaps American military personnel.

It is my intention to introduce a bill along the lines of S. 3000, limited to

Cambodia. The bill will bar the entry of American forces in Cambodia.

I fear the dangers to which the Senator from Arkansas has referred. I think the Congress of the United States should go on record to prevent the expansion of this war into Cambodia.

We stand at the crossroads in Cambodia, as we did in Vietnam a decade ago. We made the wrong choice then. I think it is critically important that we not make the wrong choice now, or else we will be debating in future years a Cambodian Disengagement Act to extricate ourselves from yet another disastrous war.

I agree with the Senator's comment that what is going on in Laos, Thailand, and Cambodia is a part of a larger war in Indochina. I also agree that the war cannot be limited easily, and that the options lie with the enemy.

So, in making this proposal with reference to American troops being introduced into Cambodia, I do not back away from the essential point—that as long as we have a major war in Vietnam, we are going to find it extremely difficult, if not impossible, to contain the expansion of that war. The options are all with the enemy in that respect.

I would hope that the Committee on Foreign Relations and Congress would give specific consideration to a legislative proposal now that would do more than just express the sense of Congress—that would exercise our coordinate, shared responsibility with the President when it comes to war, and when it comes to the engagement of American men in combat.

We, the Congress, are the only agency that has the power under the Constitution to declare war. Here we are, facing a situation where a new war possibly will develop through an extension of the present Vietnamese conflict and through the civil conflict that appears to be burgeoning in Cambodia. Once again, we could find ourselves alined with American troops on one side of an internal civil war in Cambodia, as we did in Vietnam.

Mr. FULBRIGHT. Mr. President, I commend the Senator once again for his resolution, which was, I believe, the first one last year bearing directly on this question of the war in Vietnam. I think it precipitated a consideration which was badly needed, and which has great merit.

Personally, I think the Senator's resolution was well conceived. I notice, too, that these articles, including one I mentioned written by Mr. Cox, would certainly be consistent with the Senator's resolution. Mr. Cox's estimate is that we have just this year to reach a negotiated conclusion to the war, which would mean, I think, the withdrawal of the troops, as the Senator put it.

I think the Senator is to be commended on keeping this subject alive, and with regard to Cambodia, I certainly would not want our ground troops to go there. This is a matter that the Senator has talked about, and the Senator from Kentucky (Mr. COOPER) added an amendment to the appropriation bill last summer on this same subject. The restriction has been discussed, and I am all for it.

We do have this problem about restricting military action by way of appropriations, because we have to deal with the other House. The Senate can express its views, which hopefully will be taken seriously by the administration, but to actually affect the law and to alter the appropriations, we have to deal with the law itself, in this case an appropriation bill. That, of course, was the purpose of the Senator from New York. I thought it was a very proper way to approach the problem, especially when any administration does not take seriously the constitutional provision about war powers.

I am bound to say here that this war was not started under this administration. It is very difficult to deal with these subjects without appearing to be critical solely of the present administration. I always feel that I ought to preface my remarks by stating that it started before this administration came in.

Mr. GOODELL. I think the Senator from Arkansas made that clear in his previous remarks.

Mr. FULBRIGHT. I have tried to. I do not want to be unfair to this administration. Actually, the announced purposes, and what has happened, have been better than what we had under the previous administration. I suppose I could summarize my difference in this way: I do not think the means adopted to achieve the announced purpose of liquidating the war in Vietnam are well designed to achieve that purpose. It is a matter of the means to achieve it. The policy of Vietnamization was announced, I believe, last June. It has not been quite a year, but it is a substantial time, and a great many people have died. I believe someone in the committee this morning said 40,000 casualties have taken place since then. We all know of the enormous cost in money. We know we are plagued at home with these ever-increasing strikes, slowdowns, and all kinds of disruptions of our economy, which I think flow from the inflation and other things connected with the war.

Therefore, it is imperative that we do something about it. I think the Senator from New York has rendered a great service in calling attention to this problem. I know it is not popular for him, as a member of the Republican Party, but I think he is doing a great service to the Republican Party and to the country in raising these questions and lending his voice to urge the administration to reconsider this policy—it is the means which I am talking about, not the objective—and to take another look at it.

I simply feel that the President was oversold on a device, a kind of an approach, which looked like an easy way out. I do not think it is working. I think it is clearer every day that it is not, and the Laotian development, and now the Cambodian situation, only prove beyond doubt, I think, that Vietnamization cannot work. I do not see, under the circumstances, how they can retain any confidence in the working of Vietnamization. It exposes us, as the Senator points out, to demands for assistance in Cambodia and Laos, and that would be widening the war; it would be a resumption of escalation. That would be very dangerous; I do not believe a majority of this body would approve it. I believe a great majority of the people of the United States do not approve of widening the war.

Mr. GOODELL. Will the Senator yield further?

Mr. FULBRIGHT. I yield.

Mr. GOODELL. I agree with the Senator. I agree also that the President has reversed the policy of escalation, and should be commended for it. I agree that the methods chosen by the President will not accomplish his objective, although we all wish him well.

I believe that now there will be overwhelming sentiment in this Congress and in the United States that we should not get involved in the same kind of thing in Cambodia, at least not without Congress being consulted, at least not without the President sending up here a message for approval that we are going to introduce American combat troops into Cambodia. It is my belief that Congress would not approve such a resolution today.

Mr. FULBRIGHT. I agree.

Mr. GOODELL. That is why I believe that, because we are not yet involved in Cambodia in any major way.

I propose that we go on record as a preventive now, letting the President know that, so far as Congress is concerned, no funds will be approved to support American military personnel in Cambodia. Then we perhaps will not have to face in a year, or 2 years, or 5 years, the problem of extricating ourselves from Cambodia. I think it would be a step toward a removal of our forces from Vietnam, also.

I would say to the Senator from Arkansas, because he made reference to air, that I intend to draw my bill so that it will cover all American military personnel and would prevent American military personnel from bombing or flying over Cambodia, also.

I think this is critically important. We got ourselves involved very deeply in Laos first through air activity and subsequently through introduction of ground personnel. I think if we act now, we can perhaps prevent an extension of this conflict into a new civil war.

If we fail to act, we might possibly become involved in a new kind of civil war involving Sihanouk and the new military leadership, each vying for the support of the population, and we intruding ourselves into that and compounding the tragedy.

I thank the Senator for yielding.

Mr. FULBRIGHT. I thank the Senator for his comments.

I want to add this. The Senator has reminded me of it. We had the Secretary of State before our committee this morning. He was very fair in his attitude toward Congress. He has been all along. He assured us that they would not do what the Senator referred to—and I agree it should not be done—without consulting Congress. That was some satisfaction. He could not—and I would not expect him to—make any ironclad agreements not to do it.

In any case, it is some comfort that the Government would not move in any substantial way—in any way—into

Cambodia, either by air, by ground, by aid, or anything else, without consulting Congress in advance.

He also was reassuring when he said that we had absolutely nothing to do with the coup that took place. He reiterated many times that their policy was to respect and to preserve in any way we could the neutrality of Cambodia. To that extent, it was reassuring. But he could not, obviously, give any assurance as to the future and as to a Presidential decision to do otherwise. If the pressure arises, if there is a real request from that Government, of course, the Secretary does not know what the pressures would be from various sources, nor do we.

I think it is a good idea for Congress to express itself. I think it is not only a good idea, but also it is our duty to do it when it involves the lives and fortunes of our people, as they are now involved. It certainly is the duty of this body to express itself to the President and, if it is feasible at all—and we do have the votes to do it—to prevent an expansion of the war, if we can, through the appropriation process.

So I think we ought to regard it as our duty to do it. This is what I call being a strict constructionist, which is a very popular term these days. I consider that I am a strict constructionist of the Constitution when I insist on the Senate playing a role.

Mr. GOODELL. I believe in Congress playing a role in a war.

Mr. FULBRIGHT. I think we should. It is one of our great responsibilities.

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

Mr. FULBRIGHT. I yield.

Mr. COOPER. I join with the Senator in his expression of concern about the events in Laos and Cambodia and the possible danger that the Vietnam war might be expanded and that the United States might become more largely involved in Southeast Asia.

In the past years I have had the opportunity of working with the Senator from Arkansas on several matters. One was on the amended language of the commitments resolution, and later, when we gained some knowledge of events in Laos upon the amendment I offered in August 1969 to the defense authorization bill.

Mr. FULBRIGHT. I referred to that a moment ago.

Mr. COOPER. The amendment denied funds for the use of our forces in civil war in Laos and Thailand. It was adopted by the Senate but did not survive the House-Senate conference. When it was offered later on the Defense appropriation bill, it was watered down. It was helpful to deny the use of ground forces in Laos, but as the United States had other forces in Laos at the time, its effect was to preserve the status quo. The Senate adopted the amendment, and perhaps if it had been stricter, the House would not have accepted it.

We are concerned about the situation that has developed in Cambodia. I think it is fair to say—as the Senator has said, and I am grateful that he did—that there is no fact thus far, and I do not believe there will be, which suggests that the administration of President Nixon intends to involve the United States in war in Cambodia. The Senator reported faithfully, as had been reported in the press, the statement of the Secretary of State that the administration's policy is one of respect for the neutrality of Cambodia, that it respects the integrity of their boundaries, and that it intends to advise the South Vietnamese Government that it would not support policies which would lead to the introduction of South Vietnamese troops. I think that is a fair statement. The neutrality of Cambodia has been breached, not by the United States, but by the movement of thousands of North Vietnamese troops into Cambodia.

I would repeat that nothing indicates that the administration is planning to introduce troops into Cambodia or engage in fighting. I think it good that Members express their concern against intervention; but to make the record absolutely correct at this point, nothing has been said or done by the administration which suggests such a policy.

The Senator has doubts about the policy of Vietnamization. As I understand, the chief burden of the Senator's speech has been a questioning of the policy of Vietnamization.

Mr. FULBRIGHT. And urging that there be a negotiation.

Mr. COOPER. We have always urged—and I join with the Senator in urging—initiatives toward a political settlement. But, again, I think we have to make the record clear that, if the United States has not been able thus far to move toward a political settlement, the burden lies with the North Vietnamese and not the administration. The North Vietnamese have not been willing to negotiate, even to suggest terms of negotiation, and have continued to lay down conditions that would seem to make it impossible to begin negotiations. I agree with the Senator that we do not have to accept the status quo. We can continue to search for ways that might open up negotiations.

I have expressed criticism in the past of the policies of the former administration, and have expressed criticism of some elements of the policy of this administration. But I must say that there has been a change for the better, that the administration is making an effort to get out of the situation it found, and that the efforts of the President must be recognized.

The Senator referred to the Secretary of State. They are good friends. Each has confidence in the other. The Senator referred to the statement made by the Secretary of State—I think it is a very truthful statement—by an intelligent man—that there is very little we can do about Laos or Cambodia.

Mr. FULBRIGHT. I think it is true, too.

Mr. COOPER. An honest and truthful statement, for which he should be commended.

Mr. FULBRIGHT. It is true; yes.

Mr. COOPER. I am assured that the administration, not from my analysis alone, which may not be perfect, but from statements of the Secretary of State, and most important, from the President—that he intends, if it is at all possible, to find the means to relieve this country of the awful burden of this war which has pressed so heavily on our resources and most tragically on the young men of this country.

Mr. FULBRIGHT. Let me recall to the Senator from Kentucky that we participated in that period of 1964–65, when we heard the previous administration making commitments against any wider war. Yet, what happened?

It is true, we can say, that this administration should not be blamed for what they did. But, of course, when an administration changes not everyone changes with it. Many of the same people in extremely important positions in the previous administration remain. And some of these very same people are committed, either by their actions, or their beliefs, to a certain policy. These are people who are high officials in the bureaucracy of the State Department.

We have the same Ambassador in South Vietnam who supported the previous administration's policy. He is still there. He no doubt believes with all his heart that the policy is right and that we are serving a great cause. The fact that I disagree with him is not to attack his motive. But, having gone through that period of the midsixties and having accepted at face value their protestations, I believe that we learned something, that even though something is said in all sincerity, it is not necessarily true. That is no reflection upon people now in power. It is just that we have had that experience before. We know that some of the advisers to President Nixon are the same people who were advisers to the previous President and they are in important positions still. President Nixon is a man just like everyone else. He is subject to persuasion by different people.

While I certainly accept the good faith of the Secretary of State and the President, I know that in the "crunch," if we are asked to do something and there is great emotion built up about it, like everyone else, it is possible they might do it, just as the previous administration did. President Johnson assured us, as the Senator knows, not only in the election, but in the campaign, that there would be no wider war. He did that privately, too. He assured me privately that he did not want any war. He assured us privately, in meetings, that the only objective of the Gulf of Tonkin resolution was to prevent a war, that that was the way to discourage the North Vietnamese from continuing the war, and he needed that resolution.

I have been attacked for my naivete for not recognizing the situation at that time. I have a strong feeling that there are people in this Government, especially the bureaucrats who do not change—they are not really appointees—I am not trying to attribute this to this President—who do not agree with the "low posture" policy. They think that we have a role to play, who want us to stay there, who want us to manage all of Indochina, who think that we should step into the shoes of the British Empire. There is

plenty of evidence that there are such people. They are around. It is possible to have such a theory. I do not share it. But it is no disgrace to have it. It is a traditional way for big powers to act. If they could, they would take over other powers. They have always done that. It is not unusual. I am not charging them with bad faith. I want to recognize the facts of life. That is all I am trying to do.

Mr. COOPER. I did not want to raise the questions about the former administration. Of course, it made such statements.

Mr. FULBRIGHT. Surely, they did.

Mr. COOPER. The point I am making, is that while making such statements, it escalated the war, in the point of increasing forces and strategy. This administration has done more than make statements. It has reversed the policy of escalation. It is reducing our forces and involvement, and I believe it intends to continue in this policy.

Mr. FULBRIGHT. I agree; they have done that. However, on other occasions they have publicly said that. I think it is an improvement, but now that we have had nearly a year go by, as the Senator said. I think that the difficulty in Laos and Cambodia is the unanswerable proof that Vietnamization is not going to work. It is so easy, relatively speaking, for the North Vietnamese to turn our flank and create a situation that is extremely dangerous and threatening. In addition to other things, it shows that the South Vietnamese people, motivated—or unmotivated—as they are, probably cannot create a viable and independent government, even with our logistic support. It has to be based on a much broader base, a genuine election, or some genuine kind of agreement as to what kind of government they will have. I do not believe the present Saigon government has that kind of support.

These are judgments as to means. I accept the administration's statement as to its purpose and intention. I think they do it with good faith. It is legitimate for people to have different views as to the best means to get from here to there. All we are saying is that, in light of our experience, in light of our own judgment about human nature, and other factors, the means now being used are not going to work. Therefore, because we do not want the war to go on and on, we need to revise that means.

Mr. COOPER. I have no disagreement about that at all.

Mr. FULBRIGHT. Mr. President, to continue with any remarks, the ousted Prince Sihanouk skillfully kept his powerless little country out of the Indochina war for many years by refusing to notice what he could not control. With notable success, he had tried, as he said from his new asylum in Peking, to protect his country from

> The great danger of provoking, with exaggerated hostility, a socialist Vietnam that even the United States, the world's richest and biggest military power, has not managed to overcome. ("Underground Fight Urged by Sihanouk Against New Rulers," *New York Times*, March 25, 1970.)

Now, with apparent Chinese, North Vietnamese and Vietcong sponsorship, Prince Sihanouk has called for a war of "national liberation" in Cambodia and, as in Laos, all that the world's biggest and richest military power can do is to hope for the best.

It is not my purpose to taunt the administration for its comparative restraint in Laos and Cambodia. On the contrary, I commend it, but I am apprehensive of our ability to stay out of war in Laos and Cambodia as long as we remain at war in Vietnam. The issues in the three countries are inseparable. I do not see how we can get out of any of them except by means of political settlement applying to all of them. As they have shown by their advance in Laos, and as further developments in Cambodia may also demonstrate, the Communists are not going to confine the fight to a battlefield of our choosing and, as Secretary Rogers readily admitted, the initiative is theirs.

I do not know what more is needed to demonstrate the incongruity of the policy of Vietnamization. The administration is trying to strike a "low posture" in the rest of Southeast Asia while preserving an American base in Vietnam, and the Communists are not allowing them to do it. They cannot drive us out of Indochina, but they can force upon us the choice of either plunging in altogether or getting out altogether.

It is this choice that the Nixon administration has thus far refused to make. With one foot in the swamp and the other foot out, they are trapped in a position of embarrassing incongruity. In Vietnam they are plodding along with pacification and Vietnamization; in Laos they are reduced to hoping that the Communists will not choose to conquer the country; in Cambodia they are no doubt torn; glad in a way for the anti-Communist takeover but fearful that their new-found friends will ask for help that they hardly dare grant and hardly dare refuse.

"Myth" is a mild word for madness on so grand a scale. Not only has the rationale for Vietnam proved unfounded; it has shown itself to be disastrously mistaken. Instead of deterring Communist intervention in Southeast Asia, American military involvement has turned out to be a powerful magnet for it. Whatever other reasons the North Vietnamese have for putting their soldiers in Laos and Cambodia, the most important by far is the presence of American soldiers in Vietnam. Some years ago in an interview with an American reporter, Souvanna Phouma recalled a warning he had been given back in 1956 by Chinese Premier Chou En-lai:

> We don't care how much United States aid you take, but we cannot tolerate American military bases so close to our borders. (Stanley Karnow, "A Marxist Lunch With the Laotians," *Washington Post*, March 24, 1970).

It stands to reason—or it should have. How much chance would the Mexicans have of keeping the Americans out of their country if they were so insane as to invite the Chinese to establish a base on Mexican territory? Metternich at least was prepared to abide uniformly by the rules of his amoral game. His modern American admirers appear to believe that they can enforce Metternich's rules in our sphere of influence but something closer to Napoleon's in somebody else's. Or to put it in terms that have been credited to the Communists:

> What's ours is ours; what's yours can be dealt with by counterinsurgency.

It is not working, and it is not likely to. The North Vietnamese have repeatedly asserted—and abundantly proven—that they are prepared to contest the swamp with us for as long as we choose to remain in it. In an article published in Hanoi last December, the North Vietnamese Defense Minister, General Vo Nguyen Giap, conceded American numerical and technical superiority but then went on to assert the need for time "to gradually exterminate and weaken the enemy's forces, to restrict their strength and aggravate their weaknesses, to gradually strengthen and develop our forces and overcome our deficiencies." Nothing in General Giap's article supports the Nixon premise that Vietnamization somehow is going to reduce North Vietnamese bargaining power. He said:

> At times and in certain places the revolutionary war may be in a defensive position. But this defensive position is only partial and temporary, while conditions are created for resuming the offensive.

A similar prognosis was offered by the First Secretary of the North Vietnamese Communist Party, Le Duan, in a speech in Hanoi on February 1 calling on the North Vietnamese people to be prepared to continue fighting the United States for "many years more."

He said:

> Vietnamization is only aimed at prolonging the war.

And he added:

> We must be resolved to fight against the United States aggressors until total victory, no matter what difficulties and hardships may lie ahead.

It is Mr. Nixon's belief, stated in his speech of November 3, 1969, that, barring Communist acceptance of our terms in Paris—highly unlikely after 2 years of futile negotiations—we have only two choices: Vietnamization or "immediate precipitate withdrawal." As to negotiating a political settlement, President Nixon said in his report to the Congress of February 18 that the North Vietnamese Government "has adamantly refused even to discuss our proposals" and, further, said the President:

> It has insisted that we must unconditionally and totally accept its demands for unilateral U.S. withdrawals and for the removal of the leaders of the Government of South Vietnam. It has demanded these things as conditions for just *beginning* negotiations.

According to a number of highly qualified unofficial observers, the President's reading of the North Vietnamese position is inaccurate. They do not insist—so I am told—on either a Vietcong takeover in Saigon or on complete American withdrawal prior to a settlement. What they are said to insist upon is a transitional coalition government for what would become a neutralist, independent South

Vietnam and a commitment to a definite schedule for the ultimate total withdrawal of American forces.

There is, I believe, a good chance for a settlement along these lines, and also for a general neutralization agreement embracing Laos and Cambodia as well as Vietnam. But, as Arthur Cox pointed out in the article which I cited earlier, the chance for a political settlement will diminish as Vietnamization progresses; a year or so from now we may really face the threat of "defeat and humiliation."

Confronted with these dangerous prospects, the administration would do well to respond favorably to the extremely constructive suggestion made yesterday by the French Government calling for a general conference for the purpose of converting all of Indochina into a "zone of neutrality and peace." The realities of the situation were summarized with accuracy and precision in the French Cabinet's statement, which pointed out:

> The extension of a war that tends to become indivisible can be avoided only by negotiation between all interested parties with a view to seeking and guaranteeing the bases of a peace, itself indivisible.

The French Government did not specify the exact nature of the forum which might be used for a general conference on Indochina. Nor is that a matter of the first priority. The primary requirement for the American Government is to recognize the indivisibility of the conflicts in the three states of Indochina and, further, to recognize the necessity of a political settlement for all of Indochina based upon the two cardinal principles of neutralization and the withdrawal of foreign forces. That, as I read it, is the thrust of the French proposal. It should be welcomed and acted upon by all parties interested in a negotiated compromise peace.

We have one great liability and one great asset for negotiating a political settlement. The liability is our peculiar devotion to the Saigon dictators. Since they survive at our sufferance, the handicap could be removed by the simple expedient of putting Mr. Thieu and Mr. Ky on notice that they can either join us in negotiating a compromise peace or make some arrangement of their own. Of all the options open to the Thieu government, the only one we can and should remove is their present veto on American policy.

I have always been puzzled—I might mention parenthetically—by our gratuitous tenderheartedness toward rightwing dictators who need us far more than we need them. It is one thing to tolerate such regimes, because it is not our business to be overthrowing foreign governments anyway. But in the case of such unsavory military dictatorships as those in Greece and South Vietnam, we have been much more than tolerant; we have aided and supported these regimes against their own internal enemies. I do not think this is done out of softheartedness—although our Embassy in Saigon has seemed extravagantly solicitous of Mr. Thieu, even to the extent that Ambassador Bunker has stanchly refused to intercede on behalf of Tran Ngoc Chau, the South Vietnamese deputy who was sentenced by a kangaroo court to 10 years at hard labor for maintaining contacts with his brother, a North Vietnamese agent—despite the fact that Chau reported these contacts to the CIA and the U.S. Embassy.

It takes more than realpolitik to explain such gratuitous friendliness toward rightwing dictators. Here again I suspect that the explanation lies in that attitude of crusading anticommunism which has colored so much of American foreign policy over the years. The charm of the rightwing dictators has been their stanch anticommunism, and that appears to have been enough to compensate for such trivial defects as their despotism and corruption. I recall a member of the Senate, not so long ago, going so far as to defend the Greek colonels as democratic on the ground that they were resisting communism.

This is not the hardheaded de factoism favored by the old school diplomats. It is ideological obsession on the part of old school cold warriors. I am not against tolerating these rightwing dictators any more than I am against tolerating Communist regimes. But our attitude over the last 25 years has not been one of toleration; it has been one of intolerance of Communist regimes giving rise to excessive friendliness toward rightwing regimes. The inspiration for such an outlook comes not from the practical Metternich but from John Calvin, or from the religious crusades.

To return to my theme: if devotion to Thieu and Ky are the obstacle to a compromise political settlement, the asset we have is our remaining force of over 400,000 men in Vietnam—and our freedom to take them out. The Communists want them out, and it is supremely in our interests to get them out. That would seem a promising basis for doing business.

I do not share President Nixon's belief that our choice is between Vietnamization and "precipitate withdrawal." Vietnamization is only the latest in a series of military strategies, and as General Ridgway, former United Nations commander in Korea and Army Chief of Staff, recently asserted:

> A military solution is not now and never has been possible under conditions consistent with our interests. (Matthew B. Ridgway, "Settlement—Not Victory—in Vietnam," *New York Times*, March 14, 1970.)

The real choice, as Arthur Cox suggests, is between political settlement now and "defeat and humiliation" later.

Our country very much needs a political settlement in Indochina. For reasons mostly traceable to the war things are already coming unstuck in America: young people are losing confidence in the country's institutions and resorting to dangerous and disorderly forms of protest. Encouraged by high officials, a nasty vigilantism against dissent has arisen in reaction on the right. I would not even rule out a psychological connection between the weakening of institutional restraints induced by the war and the first postal workers' strike in our country's history. There is certainly a connection between the strike and the war-induced inflation.

All these tensions will be aggravated if Vietnamization is allowed to continue until a major military disaster occurs in Indochina. A disaster of great proportions to American foreign policy in Asia would induce a wave of recrimination at home, which in turn could set off a chain of events culminating in a disaster to American democracy. What a price to pay for the myth that Vietnam ever really mattered to the security of the United States.

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

Mr. FULBRIGHT. I yield to the Senator from Rhode Island.

Mr. PELL. Mr. President, the speech of the Senator from Arkansas is truly excellent, and I find myself in agreement with its total thrust and objectives.

I congratulate the Senator on his speech.

Mr. FULBRIGHT. I thank the Senator from Rhode Island for his comments.

I yield the floor.

CAMBODIA

Mr. GOODELL. Mr. President, I would like to bring to the attention of my colleagues a statement I made today announcing my intention to introduce a bill barring the entry of U.S. military personnel into Cambodia.

I ask unanimous consent that the text of my statement be included in the RECORD.

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

STATEMENT BY SENATOR CHARLES E. GOODELL PROPOSING A BILL BARRING U.S. FORCES IN CAMBODIA, APRIL 2, 1970

I shortly will introduce in the Senate a bill barring the entry of American forces into Cambodia. The operative provisions of the bill will prohibit the expenditure of funds for the introduction of U.S. military personnel into that nation.

The Vietnam war threatens to become a new Indochina war. It grinds on in Vietnam; it grows in Laos, it now looms over Cambodia.

Last September, I introduced the "Vietnam Disengagement Act" to extricate this nation from a hopeless and brutalizing war which by then had killed or wounded over a quarter of a million young Americans. I am now making this proposal, in order to make certain that no "Cambodia Disengagement Act" will ever be needed to extricate ourselves from yet another disastrous conflict.

Tragedy has not yet struck in Cambodia, but the portents of tragedy are visible everywhere.

The long standing neutrality of Cambodia erodes. Two governments, a new and an old, claim the loyalty of the people, and the conflict between them threatens to assume the dimensions of a civil war. A junta with slender military resources is drawn into conflict with much more powerful Vietnamese Communist forces that long have had sanctuary within the country. The border is increasingly violated by forays that could spill the Vietnamese conflict into Cambodia.

We stand at the crossroads in Cambodia, as we did in Vietnam a decade ago. We made the wrong choice then. Let us not make the wrong choice now.

The legislation I propose will prevent that wrong choice.

It safeguards this nation from being sucked into a conflict in Cambodia by small stages against its will—from being drawn once

again down the disastrous road of escalation that was traveled in Vietnam.

It recognizes that the interests of the United States in Cambodia cannot conceivably justify the commitment of American forces and the loss of American lives there.

It affirms that the war in Vietnam can be brought to an end only if it can be contained—and that a widening of the war inevitably means its escalation.

It signals to all interested parties the intention of the United States to continue to support the neutrality of Cambodia—a neutrality that cannot be preserved by outside force.

It places the new government of Cambodia upon notice to keep its military initiatives within the bounds of its own military capacities.

Above all, it is the ounce of prevention. It permits Congress and the President to make the rational choice before any commitments have been made that limit that choice. It would prevent another Vietnam disaster before that disaster is upon us.

The commitment of American troops in a foreign conflict is a responsibility that, under the Constitution, the President shares with the Congress. The enactment of this bill would assure that this responsibility is thus shared. Should the President, as a result of new developments, wish to present further proposals for utilization of any American military personnel in Cambodia, he would be required to obtain the specific authorization of Congress before taking such action.

The Nixon Administration has expressed its determination to prevent the Vietnam war from engulfing Cambodia. I respect that determination and I support it. I believe this legislation will be a commitment by Congress and the President for achieving this essential end.

THE NOMINATION OF G. HARROLD CARSWELL

Mr. BAYH. Mr. President, during the past several hours, I admit quite frankly to having given considerable and deep thought to the propriety of my speaking in the Senate this afternoon.

I have finally come to the conclusion that personal tragedies, unexplained as they may be, once they have happened are unrecallable.

If there ever was a truism, it is that the past is prolog. What is facing the U.S. Senate, and what will be before this Senate for a vote on Monday, is not prolog.

Indeed, it is my considered judgment that the decision to be made by the Senate on Monday could well determine a great deal of the future in this country. We are living in trying times. There is not one of us in the Senate who has not referred to that fact repeatedly. I think it should not pass unnoticed that large numbers of people, either rightly or wrongly, are beginning to lose faith with much that many of us consider fundamental as far as our governmental system is concerned.

I mention this merely because it seems to me from talking to large numbers of people on the campuses and at various other types of meetings over the past several months that those who have the deepest concern, and perhaps the greatest degree of lessening of faith in the ability of this democratic system of ours to meet the problems of this age, are those who have the highest respect for the Supreme Court of the United States as an institution. Because of this feeling and because of my deep concern that the Senate not follow a course of action on Monday which would lessen the faith that the citizens of this country have in the Supreme Court, I ask my colleagues to bear with me if my joining in debate at this moment might seem to some to be callous and hard and out of place.

Mr. President, I was deeply concerned over what appeared in this morning's newspaper relative to the Carswell nomination. It appeared to me that, unable to make a convincing case on the merits that the nominee might possess, the supporters of Judge Carswell are now making a concerted effort to shift the focus of the debate from the central issue—the qualifications of the nominee.

Mr. President, I would like to say before proceeding further that the letter which was sent from the President of the United States to our friend, the distinguished Senator from Ohio (Mr. SAXBE) appears to be couched in terms designed to let the fate of the Supreme Court nominee disintegrate into what we would call an old-fashioned political donnybrook. And if that is the intention, let me say as forthrightly as I know how that I do not intend to become embroiled in this type of chicanery. But I am concerned.

In recent days, various administration spokesmen have made statements impugning the motives of us in the Senate who oppose the nomination of Judge Carswell and even questioning the propriety of this body exercising its constitutional right to advise and consent. Yesterday, as I mentioned a moment ago, my esteemed colleague from Ohio, Senator SAXBE, made public a letter written by President Nixon in support of Judge Carswell. Because the President's letter arrives at some highly unusual conclusions, I ask unanimous consent to print the letter in the RECORD at this point so that those who read this letter can draw conclusions for themselves as to whether the analysis of the Senator from Indiana is accurate or inaccurate.

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

THE WHITE HOUSE,
Washington, D.C., March 31, 1970.

HON. WILLIAM B. SAXBE,
U.S. Senate,
Washington, D.C.

DEAR BILL: Your letter of March 30 provides me a welcome opportunity to reaffirm my confidence in Judge Carswell.

First, let me dispel any thought that I am less committed to Judge Carswell than to any prior nominee. He has my total support.

I have consistently stated my determination to appoint to the Supreme Court competent, experienced men who are sensitive to the role of the judiciary in interpreting the Constitution and the laws of the land. My first appointee, now the Chief Justice, had 13 years previous experience in the Federal judiciary. Judge Carswell has had longer and more complete judicial service than any Supreme Court appointee in decades other than Chief Justice Burger. Judge Carswell was for 5 years a U.S. Attorney and for 11 years a U.S. District Judge. Appointment to both positions required Senate confirmation. Just a year ago the Senate again confirmed him, without a single opposing vote, for membership on the U.S. Court of Appeals for the Fifth Circuit, which is subordinate only to the Supreme Court in the Federal Judicial System. The American Bar Association Committee on the Federal Judiciary found Judge Carswell qualified as to integrity, judicial temperament and professional competence. The Committee met a second time after attacks were mounted against the Judge and unanimously agreed to adhere to its earlier conclusion.

The charges against Judge Carswell are specious. He is accused, for example, of "lack of candor." The record shows that during his testimony before the Senate Judiciary Committee, Judge Carswell erred in commenting on an incident that had occurred 14 years earlier. During the same hearing, only minutes later, he corrected his own statement. The Committee, in reporting the nomination, did not suggest that Judge Carswell had intended to deceive or mislead the Committee in any way.

It is also charged that Judge Carswell is a "racist." In the Committee record a letter appears from a shipmate of Judge Carswell, who served with him aboard the USS Baltimore for two years during World War II, a period when the military services were racially segregated. The shipmate describes Judge Carswell's attitude as "truly humanistic and liberal" and reports that he reacted to people without bias, regardless of race or color. Two men, together under the tension of combat, come to know one another as few others do.

In other testimony before the Committee, the eminent Professor Moore of Yale Law School describes Judge Carswell's key role in establishing an integrated, highly successful law school at Florida State University.

Those who charge that Judge Carswell is a racist should examine the entire record, not just those parts which taken out of context support the conclusion that they wish to reach. His own repudiation of his 1948 campaign statement was eloquent and unequivocal, and no decision he has rendered can be fairly labeled "racist" in any respect.

What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment. The question arises whether I, as President of the United States, shall be accorded the same right of choice in naming Supreme Court Justices which has been freely accorded to my predecessors of both parties.

I respect the right of any Senator to differ with my selection. It would be extraordinary if the President and 100 Senators were to agree unanimously as to any nominee. The fact remains, under the Constitution it is the duty of the President to appoint and of the Senate to advise and consent. But if the Senate attempts to substitute its judgment as to who should be appointed, the traditional constitutional balance is in jeopardy and the duty of the President under the Constitution impaired.

For this reason, the current debate transcends the wisdom of this or any other appointment. If the charges against Judge Carswell were supportable, the issue would be wholly different. But if, as I believe, the charges are baseless, what is at stake is the preservation of the traditional constitutional relationships of the President and the Congress.

Sincerely,

DICK.

Mr. BAYH. This letter makes a number of points which I believe merit detailed discussion and close analysis. In fact, the very points raised by the Presi-

dent, serve to highlight the deep concern some of us feel over the Carswell nomination.

Let me hasten to interject at this time that any President of the United States should feel committed to a nominee that he sends to the Hill and should wage as effective an argument as he can muster to support his nominee.

But my concern goes to the fact that the President's letter seems to miss the point. It touches on the central issue, but never really gets down to the cardinal principles that are before us in this nomination.

I would like, as respectfully as I know how—because although our President is a member of the other political party, he is my President and I have respect for his office as well as for him as an individual—to look at the letter and to try to analyze it to see if this is the best argument that can be made by the chief proponents of the nominee. We as Democrats or Republicans, as well as Members of the U.S. Senate, want to advise and consent to the nomination of G. Harrold Carswell to be a justice of the Supreme Court of the United States.

So if the Presiding Officer and my colleagues will bear with me, I would like to look at the provisions of the letter.

The President writes of his determination to appoint to the Supreme Court competent, experienced men who are sensitive to the role of the judiciary in interpreting the Constitution. It is true that Judge Carswell is an experienced attorney and jurist. He served, as the President points out, for 5 years as a U.S. attorney and for 11 years as a U.S. district judge.

One might indeed expect a judge to grow in competence and sensitivity and experience through interpreting the Constitution. That would be one of the valid reasons for appointing a man who had served on the district court and on the Fifth Circuit Court of Appeals for a short period of time.

I think when we look at the way one determines the experience and competence of a judge, it is fair to say that a judge's expertise and competence in interpreting the law of the land are accurately reflected in the number of reversals a man receives from the Highest Court. Does Judge Carswell's record show an adequate awareness as he sat there on the bench and looked at the factual situations that came before him and applied first the law and then the constitutional principles to each case? Has he been able to determine what the law is as it is interpreted by the higher courts of the land and, thus, by the Nation? The record shows Judge Carswell suffered an increasing number of reversals the longer he sat on the bench. Twenty-five percent of his first 30 appeals were reversed, 33 percent of his next 30 appeals were reversed, 48 percent of his next 31 appeals were reversed, and 53 percent of his last 31 decisions appealed were reversed. Of the 67 district court judges in his own Fifth Circuit between 1958 and 1969, 60 judges, or 90 percent were reversed less frequently than Judge Carswell.

This record does not merely indicate declining competence and sensitivity to the role of the judiciary in interpreting the Constitution. The record actually shows that Judge Carswell was an activist seeking to make new law by failing to follow precedent, not a "strict constructionist" as his supporters have said. And a more detailed analysis reveals another activist trend, the eagerness of Judge Carswell to terminate judicial proceedings without even granting hearings on allegations at issue with his personal views.

The President, in his letter to our distinguished colleague, the Senator from Ohio (Mr. SAXBE) writes that the American Bar Association Committee on the Federal Judiciary found Judge Carswell qualified as to integrity, judicial temperament, and professional competence. It is significant, I believe, that although 11 members of the ABA Committee on the Federal Judiciary found Judge Carswell qualified, literally hundreds of eminent attorneys and legal scholars have opposed his nomination citing his lack of qualifications and undistinguished record.

I will not bother the Senate with a detailed listing of all these prominent men who have had the courage and the intestinal fortitude to speak out in a matter as distasteful to them as it is to those of us who find ourselves compelled to oppose the nominee. However, it is appropriate to point out that last month 456 prominent members of the bar publicly announced their opposition to Judge Carswell's nomination in newspaper ads because they were convinced of his lack of qualifications.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BAYH. I am glad to yield.

Mr. DOLE. I do not have the exact figures with me but I referred to them a couple of days ago. I would like to point out certain other figures. What was the number the Senator said? Was it 454?

Mr. BAYH. 456 in one newspaper ad.

Mr. DOLE. I think 126 of those were practicing attorneys. The others were law professors. There are 300,000 practicing attorneys in America and 4,500 or more law professors. So that figure represents about three-tenths of 1 percent of the total attorneys in America.

Mr. BAYH. That is very interesting. I do not profess to have been in this body as long as some members and I do not claim it as a badge of honor to have been personally involved in actively opposing two Supreme Court nominations.

I endorsed Chief Justice Burger's nomination without any reluctance.

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

Mr. BAYH. I will yield to the Senator, but first I would like to finish this point. Having gone through two nominations and having compared the concern expressed by the legal community—lawyers, scholars, and deans—over the nomination of Judge Haynsworth, who was turned down by this body by a vote of 55 to 45, with the overwhelming opposition to this nomination by members of the same community, it seems significant to me that the people charged with teaching or practicing law are trying to tell us something.

I am glad to yield to the Senator from California. I do not want to shut off my friend from Kansas. I will be glad to pursue this matter further.

Mr. CRANSTON. Mr. President, first I wish to express my thanks to the Senator from Indiana (Mr. BAYH) for his remarkably effective leadership on this issue. I am glad that he has brought his mind to bear on the implications of the President's letter of yesterday.

I would like to join in questioning certain aspects of that letter. The particular aspect I would like to touch on at this time is the President's challenge of the right of the Senate to differ with him on his right to make appointments to the Supreme Court. He said in that letter:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment. The question arises whether I, as President of the United States, shall be accorded the same right of choice in naming Supreme Court Justices which has been freely accorded to my predecessors of both parties.

He also said:

> The fact remains under the Constitution it is the duty of the President to appoint and of the Senate to advise and consent. But if the Senate attempts to substitute its judgment as to who should be appointed, the traditional constitutional balance is in jeopardy and the duty of the President under the Constitution impaired.

The distinguished assistant minority leader, the Senator from Michigan (Mr. GRIFFIN), who is now in the Chamber, last year spelled out in great and articulate detail on this floor the right, the obligation of the Senate to decide in its own wisdom whether it wishes to confirm or not to confirm a Supreme Court nominee.

President Nixon, who served in the Senate for 2 years, exercised this right himself. No Supreme Court appointments came before this body during that time, but there were confirmation votes in which then Senator Nixon participated.

On October 9, 1951, Chester Bowles was confirmed Ambassador to India by a 43 to 33 vote. Senator Nixon was paired against Ambassador Bowles.

On February 25, 1952, in a vote on the confirmation of Harry A. McConald, to be administrator to the Reconstruction Finance Corporation, then Senator Nixon voted against that nomination.

More importantly, on May 20, 1952, President Nixon, when a Member of this body, was one of 18 Senators who voted against James P. McGranery to serve as Attorney General of the United States. Mr. McGranery was confirmed by a vote of 52 to 18.

Mr. President, at this point, I ask unanimous consent to have printed in the RECORD the rollcall vote on that particular nomination.

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

Yeas—52: Aiken, Anderson, Benton, Bridges, Butler of Nebraska, Case, Chavez, Clements, Connally, Douglas, Duff, Eastland,

Ellender, Frear, Green, Hayden, Hennings, Hill, Hoey, Holland, Humphrey, Hunt, Johnson of Colorado Johnson of Texas, Johnston of South Carolina, Kilgore, Lehman, Long, Malone, Martin, McCarran, McClellan, McFarland, McKellar, McMahon, Monroney, Morse, Mundt, Murray, Neely, O'Mahoney, Pastore, Robertson, Russell, Saltonstall, Smathers, Smith of New Jersey, Sparkman, Stennis, Thye, Tobey, Welker.

Nays—18: Bennett, Cain, Capehart, Cordon, Dworshak, Ferguson, Hickenlooper, Ives, Kem, Knowland, Millikin, Nixon, Schoeppel, Seaton, Smith of Maine, Taft, Watkins, Williams.

Not voting—26: Brewster, Bricker, Butler of Maryland, Byrd, Carlson, Dirksen, Ecton, Flanders, Fulbright, George, Gillette, Hendrickson Jenner, Kefauver, Kerr, Langer, Lodge, Magnuson, Maybank, McCarthy, Moody, O'Conor, Smith of North Carolina, Underwood, Wiley, Young.

So the nomination of James P. McGranery to be Attorney General of the United States was confirmed.

The VICE PRESIDENT. Without objection, the President will be notified forthwith.

Mr. CRANSTON. Mr. President, I do not seek to judge the wisdom or the folly of that particular vote by then Senator Nixon. I do not seek to judge the merits or the demerits of Mr. McGranery. I merely note that then Senator Nixon exercised the very right he would now, as President, deny to those now serving in the Senate.

I would like to point out, just as an incidental matter, that I now serve in the Senate seat, in the same class of Senator from California, that President Nixon once held. In opposing the pending nomination, I am now exercising the very right Senator Nixon exercised when he opposed the nomination of an Attorney General.

Mr. President, I would like to add one further thought quite relevant to what we are discussing.

On September 4, 1968, commenting on Justice Fortas' nomination as Chief Justice, President Nixon, then a candidate, said:

> When the appointment was up for confirmation in the Senate, my position was that it is the Senate's responsibility and that I would not interfere.

I believe President Nixon should follow his own advice during the debate on Judge Carswell's nomination.

The Senators who oppose Judge Carswell's nomination are not trying to usurp the President's constitutional function; they are, rather, exercising their constitutional obligation. The President can nominate a man with racist philosophy to sit on the Court if he wishes to do so. But this Senator will exercise his constitutional and moral responsibility by opposing the nomination of a racist to the highest court of the land.

I would like to ask the Senator from Indiana if he does not join in my feeling that this is an obligation we must meet within our own consciences as Members of the Senate.

Mr. BAYH. I certainly concur in what my distinguished colleague from California has said. We cannot just be totally naive about this matter. Nobody in this body can do his duty and fulfill his responsibility if he does not realize facts as they are. We live in a political world. Fortunately, we have good Democrats and good Republicans. I hope this discussion of the nomination does not head in the direction in which the President appears to be heading, which is that if one is a good Republican he has to be for the nomination and if one is going to be a good Democrat he has to support the President's nominee.

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

Mr. BAYH. I am glad to yield.

Mr. BROOKE. The Senator raises a very important point, and one which has troubled me deeply in the last few days. I have been troubled about the direction in which this debate has been going and has been moving.

The President is not a candidate for the Supreme Court. G. Harrold Carswell is the candidate for the Supreme Court. I greatly respect the President, as does the distinguished Senator from Indiana. He is my party chief, and it has been a very painful experience to me to have to disagree with him on the nomination.

Mr. BAYH. Mr. President, if the Senator will permit an interruption for just a moment, let me say that having had the privilege of sitting on the other side of the aisle and having listened to the Senator from Massachusetts give his first speech with respect to the Carswell nomination, in the course of the colloquy between us I do not think we could have been closer in a community of feeling. Perhaps I should not speak for the Senator from Massachusetts, but after having gone through the ordeal of the Haynsworth nomination, I was hoping and praying I would not have to go through another. I confessed—and I discussed this publicly, so it is a matter of record—that I was reluctant, hoping all the things that had been said would be laid at rest.

But the longer it went, the more I became convinced.

I salute the Senator from Massachusetts for the determination and raw courage he has evidenced. I would suppose—not having been in his position, I would have to suppose—it would be much more difficult to oppose a nomination from a President of his own party.

Mr. BROOKE. I thank the Senator from Indiana for that kind expression. On occasion the question has appeared to be not whether one is opposed to the qualifications of G. Harrold Carswell, but rather whether one is opposed to the President of the United States.

Most certainly, I am not opposed to the President of the United States. The distinguished Senator from Indiana has said he is not opposed to the President of the United States. He has said that, as a Democrat, he respects the President, who is his President as much as he is my President or the President of any other American. But I think it is unfortunate that the issue now is, Are you going to back the President and vote for G. Harrold Carswell, or are you going to live up to your obligation and responsibility as a U.S. Senator and make a judgment and decision based upon the qualifications of G. Harrold Carswell?

The President's qualifications are not at issue. G. Harrold Carswell's qualifications are. Our duty and our obligation is to examine those qualifications and to make a decision.

We are not supposed to make a decision based upon whether one is a liberal or a moderate or a conservative, a Republican or a Democrat, but based upon our individual responsibility as U.S. Senators. Each of us, in his own mind and conscience and heart, must ask is this a man to sit on the Supreme Court? There is nothing else.

A vote against G. Harrold Carswell should not be interpreted in any form or fashion as a vote against the President of the United States. And a vote by a Republican U.S. Senator should not be interpreted in any form or fashion as an act of disloyalty to his party chief, the President of the United States.

I think it is shameful that the issue is taking this turn in the waning days of the debate. It is getting so now that the question is not, "Are you going to vote for or against Carswell?" The question is, "Are you going to vote for or against the President?" That is most unfortunate. It troubles me. It is a misleading, and indeed an untrue, distortion of the issue.

I certainly want to commend the distinguished Senator from Indiana for giving us the opportunity to discuss this specific issue. I want to commend him for his leadership and his courage. He has had a great personal family tragedy, and I think he comes back to the Senate at this time not because he wants to defeat G. Harrold Carswell, not because he wants to oppose President Richard Nixon, but because he has such dedication to his responsibility as a U.S. Senator and such great reverence for the high tribunal of the Supreme Court of the United States that he could do nothing less. I think nothing else would have brought him back here today to stand on the floor and to work for what he believes is in the best interest of this country.

I think that is also true of those of us on this side of the aisle who are in opposition to this nomination. Some Senators have said, "Well, the President's nominee was rejected once, and therefore it would be an act of supreme disloyalty for a member of the President's own party to vote against the second nominee."

Mr. President, when men and women are elected to this body, it is presumed we are all intelligent men and women. Certainly we know that our responsibility is a joint responsibility with the President for the creation of a third coequal branch of the Government; namely, the judicial branch of government. This matter goes far beyond any loyalty to party, far beyond any loyalty to any particular ideology or philosophy. It is a question that should be decided on the merits of the case, and the merits of the particular case alone.

So those of us on this side of the aisle who painfully find it necessary to vote in opposition to the nomination of G. Harrold Carswell do so purely on the merits of the case, based upon our view that this man lacks the legal compe-

tency, the judicial temperament, which many of us in this body and across this land believe is essential for a man to sit on the Supreme Court of the United States.

No man should sit on the Supreme Court of the United States if he harbors ideals and ideas which are repugnant to the Constitution of the United States, which prescribes equal justice for all our citizens.

We are here discussing a motion to recommit. The debate has been directed primarily to the confirmation of this nominee. Serious questions have been raised. The credibility of this candidate has been raised. The credibility of some of the affidavits and witnesses has been raised.

Certainly, these are all valid matters to consider before contemplating a favorable vote upon a motion to reconsider.

Mr. President, in the waning days of this debate, I am again most hopeful that we will discontinue discussions of anything not germane to the business which is before the Senate, that we will no longer talk about loyalties to President, to parties, or to philosophies, but will direct our attention, as good lawyers should, to the central and dominant issue which is before this body: that is whether this body should send the nomination of G. Harrold Carswell back to the Senate Judiciary Committee, so that that committee, in its wisdom and its judgment, can conduct further hearings and resolve the grave questions and doubts that have been raised concerning this particular candidate.

I think it is regrettable that the President, in his exchange of letters with our distinguished colleague from Ohio (Mr. SAXBE), raised the question as to separate responsibilities of the executive branch of the Government and the legislative branch of the Government. We must never view the nomination and confirmation process, as Constitution has prescribed, as anything less than a joint responsibility, and one which we must take most seriously. The late distinguished Senator from Ohio, Mr. Taft, made an eloquent speech on this subject when he served in this august body. Separation of powers does not mean the domination of one branch over another, but rather—in this case in particular—a shared, coequal responsibility.

Mr. President, before I conclude—and I certainly thank my distinguished colleague from Indiana for his indulgence—another matter has come to my attention which I think should be discussed. I trust that some Senators here, be they proponents or opponents, may have some light to shed upon it. That is the issue that has been raised relative to the extent of the investigation made by the Federal Bureau of Investigation into the background and qualifications of the candidate.

Government procedure calls for an investigation by the FBI of potential candidates for high Federal office; and perhaps the most important investigation that they conduct is the investigation of prospective nominees for high judicial posts. It is my understanding that it has been the practice and procedure of the FBI, in conducting such investigations, to make inquiries into the racial attitudes of prospective candidates. The reason for that, Mr. President, is simply that no one should be allowed to sit on the Supreme Court of the United States, or on any court—certainly any Federal court—if that person harbors a racial view which would be repugnant to the Constitution of the United States. I think this is a good practice and a good procedure, and it is my understanding that it had been followed in the past.

It is my further understanding, Mr. President, that when the question was raised as to why the FBI had not come across the now somewhat infamous statement of G. Harrold Carswell made in 1948, in which he declared his very strong and profound belief in racial superiority, the FBI said that it did not look into the newspaper morgues, and had not looked into the racial beliefs or attitudes of this particular candidate, Carswell.

I ask the question: Was this a change in practice and procedure in the FBI? Was there some reason why the FBI, in this particular case, did not adhere to what apparently is an established practice and procedure? And if they did not do so, then why not?

I think this is an important point, Mr. President, because certainly the members of the Committee on the Judiciary and of the Senate relied upon the FBI investigation, as they should be able to do. If in this case the FBI did not do its job thoroughly, exhaustively, and intensively, and some part of the routine investigation was omitted, either by oversight or by design—and I do not make such charge, for I do not know—then it would seem to me——

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. GRIFFIN. Mr. President, is the Senator making a charge or not?

Mr. BROOKE. No, I said I do not make a charge.

Mr. GURNEY. Mr. President, I raise this question: Is there some doubt in the Senator's mind?

Mr. BROOKE. I am asking what was done. I think the Senator understands me.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. EAGLETON). The Senator from Indiana has the floor. He has yielded to the Senator from Massachusetts.

Mr. GURNEY. Will the Senator from Indiana yield briefly to me?

Mr. BAYH. I am glad to yield, with the understanding that I do not lose my right to the floor.

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

Several Senators addressed the Chair.

Mr. MURPHY. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from California will state his point of order.

Mr. MURPHY. Is it not proper that after a Senator has obtained the floor, he yield for questions only?

The PRESIDING OFFICER. The Senator is correct.

Mr. MURPHY. It seems to me we have been hearing a speech. It seems to me that if the Senator from Massachusetts wishes to make a speech, then perhaps the floor should pass to the Senator from Massachusetts; otherwise, the distinguished Senator from Indiana should be permitted to continue unencumbered.

Mr. GURNEY. I think the Senator from Indiana has yielded to me for the purpose of asking a question.

Mr. BAYH. Mr. President, I certainly appreciate the fact that my friend from California has my best interests at heart.

Mr. MURPHY. I am very much interested, because I have been sitting here for 3½ hours, hoping to get the floor myself.

Mr. BAYH. I yield to the Senator from Florida, provided that I may do so without losing my right to the floor.

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

Mr. GURNEY. Mr. President, my question is directed to the distinguished Senator from Massachusetts. Since the question and the point that he raised is a very important one, and I might say in all candor a very insinuating one, it seems to me that the question ought to be directed to the FBI, and not to the Senate here on the floor. The question should first be asked of the FBI, and then, if there is some indication that they have not done their work, then the Senate should be informed.

My question is, Has the Senator asked the FBI, and if not, why not, before he brings it up here on the Senate floor?

Mr. BROOKE. Mr. President, I think the distinguished Senator from Florida understood what I was saying. I raised the question, and I again raise it, as to whether or not, first, there is such an established practice and procedure in the FBI. Second, if there is, was it followed in this case? Third, if it was not, why not?

I think it is certainly proper for me to raise that question on the floor of the Senate, and I so raise it.

Mr. GURNEY. Mr. President, will the Senator yield further?

Mr. BAYH. I yield, with the understanding that I will not lose my right to the floor.

Mr. GURNEY. I can reply to that question of my own personal knowledge in connection with the investigation of a U.S. marshal appointment in Florida last year. They did, indeed, look into the question of racial bias of the particular candidate, and they gave an answer. I know that for sure. I can tell the Senator that of my own personal experience. So I think it is a custom.

I still say that this question should be directed to the FBI and not raised on the floor of the Senate.

Mr. BROOKE. Mr. President, the Senator from Florida has performed a very useful service. I am very grateful. I asked the proponents or opponents of this nomination alike if they had any information that might be helpful. The information that the distinguished Senator from Florida has given is very helpful. He has stated that, of his own knowledge, in the investigation of a U.S. marshal in the State of Florida this year,

the FBI did make an inquiry into the racial attitude of the prospective candidate.

Mr. GURNEY. Last year, not this year.

Mr. BROOKE. I stand corrected.

He says further, that it is established practice and procedure, and he knows that to be true. That is one of the questions I asked, and I thank the distinguished Senator for his answer.

Now I ask, if that is true in the case of a U.S. marshal, did the FBI follow the same established practice and procedure when they investigated G. Harrold Carswell? If they did then why is it that the FBI did not come up with the statement which was made by G. Harrold Carswell in the State of Georgia in 1948, which clearly indicates a racial bias, the worst I have ever heard.

If they had that practice and procedure, then why did not the FBI come up with the statement and report it to the Senate Judiciary Committee?

Does the Senator from Florida have any information that would be helpful to us on that?

Mr. GURNEY. If the Senator will yield, I think the answer is obvious.

The PRESIDING OFFICER. Does the Senator from Indiana yield?

Mr. BAYH. I yield, with the understanding that I will not lose my right to the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. GURNEY. I think the answer is quite obvious. Any investigation, no matter how thorough it might be, would not necessarily reveal the statement that was made obscurely in a rural Georgia area 22 years ago. I would think that any investigation into these matters might omit some facts that if investigators knew where they ought to go to find them, they might have gone. I think that is the obvious answer.

Mr. BROOKE. Mr. President, I think that is a rather serious indictment of the FBI. They are able to find out things that certainly are more obscure—if that is the word we are going to use—than a statement made by a prospective Supreme Court Justice in a political campaign before an American Legion forum in the State of Georgia. It did not seem to be obscure to the newspaper reporter who found out about it. Does the Senator mean there are things that the FBI cannot find that a newspaper reporter can find about a candidate for the Supreme Court of the United States? I just cannot believe that our FBI is this inadequate. I shudder to think that that is true.

Mr. TYDINGS. Mr. President, will the Senator from Indiana yield to me to address a question?

Mr. BAYH. I yield, with the understanding that I will not lose my right to the floor.

Mr. TYDINGS. Is the question which the Senator from Massachusetts is raising one perhaps a little bit broader than that we are discussing; namely, first, whether or not when conducting screenings of judicial candidates for the Federal bench, including Justices of the Supreme Court, there was within the Department of Justice a regular custom and procedure, which included surveillance of newspaper morgues and the questioning of lawyers and others who might be apprised of the racial attitudes of the individual nominee, and second was this practice set aside and not used by the Department of Justice and the Federal Bureau of Investigation in this case? Is that the question?

Mr. BROOKE. That is certainly one of the questions I raised.

As I said in response to the Senator's question, it is my understanding that for some time there had been an established practice and procedure in the FBI which required them, in the normal conduct of their business of investigating judicial appointments and others, to make inquiries into the racial attitudes of prospective nominees. That I understand to be the practice. That practice has been supported, or at least established, by the distinguished Senator from Florida, who says he knows that is an established practice and, in fact, it had applied last year to a U.S. marshal in his own State of Florida.

If that is true, I ask: Was the same practice used in the investigation of G. Harrold Carswell? If it was used, does it mean that they did not do their work as extensively as they should have and could have? Or, if they did not, why not? Did they change the practice, or did they just disregard the practice?

Those are my questions, and I am earnestly looking for some answers to those questions.

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

Mr. BAYH. Perhaps it would be a little easier for our colleagues to follow the debate in the RECORD if the Senator from Indiana could proceed, and then I am sure that my colleagues and I would be more than happy to join in colloquy about some of the things that have been said. I think the Senator from Massachusetts raises a very good point.

Mr. DOLE. Will the Senator yield briefly, and I will not interrupt again.

Mr. BAYH. I yield.

Mr. DOLE. Let me observe that a number of questions have been raised about Judge Carswell, and that may be one way to call attention to some of those who oppose him.

First, he was a racist; then he was mediocre; then he lacks candor; and now the FBI has failed.

It is fine to raise those questions and leave them in the air and hope the press will take over from there.

Mr. BAYH. If the Senator from Kansas will bear with me, I intend, in about 30 minutes, to tell the Senator from Kansas why the Senator from Indiana thinks Judge Carswell is mediocre and is not qualified to sit on the Court. That is the very reason I am here, as much as I question whether I should be or not. I have been reading, from half a world away, stories emanating from the United States about what the issues are involving G. Harrold Carswell's competence. What are we deciding here? It is time we started putting our feet back on the ground and stopped the effort to direct our attention to eliminate things that do not amount to anything.

The degree to which the background has been indicated, the facts that have been thrown on the record, which were available when the Judiciary Committee considered this nomination—I think that is very pertinent to whether we feel the nomination should be sent back to that committee. I think that is why the Senator from Massachusetts raises the question.

I do not intend to get into this particular question in as broad a field as I think we should at a later date, after we have disposed of this nomination one way or another. But in following the question raised by the distinguished Senator from Maryland, I am deeply concerned that the past two nominations and the controversies that have arisen lead the Senator from Indiana to believe that whatever practice is followed is not thorough enough, does not establish a criterion that should be established and followed, if we are going to ferret out all the facts.

Mr. CRANSTON. I should like to raise another question about the nature of the investigation conducted of this nominee. At various times, when I have been seeking to fill a position which I thought was important, before employing someone I would learn whatever I could about his ability and all other information available to me, and then I would interview the individual. There was always one question I would ask: Is there anything about you of which we may not be aware that we should know, and that you should bring to my attention that we may not have discovered about you?

It would seem to me if that question were not asked by the FBI—we would not expect the FBI to ask it—but by someone with higher responsibilities such as the Attorney General, of Mr. Carswell, then there was dereliction in the process of investigating the nominee. I think it would be useful to know whether that question was asked of him. If it was not, then the investigation was faulty. If that question was asked, then there is the question, did Carswell answer that question and say "Yes, I made a speech that was a segregationist speech some time back when I was in a political campaign." If he did not make such a statement, then he was not truthful in answering the questions that were posed to him. If he did answer the questions truthfully with a, "Yes, I made such a speech long ago," then we have a further question, "Did whoever asked that question feel it was relevant to the nomination and should not be brought to the attention of the Judiciary Committee, or did whoever asked that question deliberately conceal the information?

It seems to me this is an additional reason for referring the matter back to the Judiciary Committee, so that we can learn whether that question was asked, and what the response was.

Several Senators addressed the Chair.

Mr. BAYH. I yield to the Senator from Massachusetts.

Mr. BROOKE. The Senator has been most indulgent. I do know that he has a speech to deliver, but I want to be sure I am clear in my own mind as to the

last remarks of the distinguished Senator from Indiana.

Certainly, we can all agree that after the Carswell nomination is history, we should look more closely at the practices and procedures of the FBI insofar as investigations are concerned.

But would not the Senator agree that prior to that time, and most relevant to the Carswell case, we should find out the extent of the investigation conducted by the FBI in the Carswell case, and the practices and procedures that existed in the FBI prior to the Carswell investigation, and whether there was any change in the practices and procedures in this particular case. If not, what did they do? If so, why did they not do it? Is that not a logical and relevant series of questions that should be answered?

Mr. BAYH. Mr. President (Mr. EAGLETON), I feel that this type of information would be helpful to the Senate.

Several Senators addressed the Chair.

Mr. GURNEY. Mr. President, on that very point, I would ask the Senator from Massachusetts to direct those questions tonight to the FBI, and have them delivered, and have the answer up here tomorrow, so that the Senate and the press can have the benefit of what they say, rather than a speculative question as to what they have done, or what they might not have done, which may throw a cloud upon their investigation.

That is the way we should treat this thing, open and above board, on the table, so that we will all know.

Several Senators addressed the Chair.

Mr. BAYH. Mr. President, I have the floor.

Mr. BROOKE. The Senator yielded to me, as I understood it.

The PRESIDING OFFICER Mr. EAGLETON). The Senator from Indiana has the floor. Does he yield to the Senator from Massachusetts?

Mr. BAYH. Mr. President, I had yielded to my friend from Massachusetts, with the understanding that I would not lose my right to the floor, so that he may answer as expeditiously as possible the question of the Senator from Florida.

The PRESIDING OFFICER. Without objection, the Senator from Massachusetts may proceed.

Mr. BROOKE. I thank the Senator from Indiana.

I think that the Senator from Florida, in his zeal—and I can understand that zeal, and respect it, has mislabeled my question as speculative. I think it is rather unfair to say that these are speculative questions. I want to impress upon the Senator from Florida the earnestness of those questions. I am concerned. I want to know the answers to those questions. The Senator was most kind and helpful in giving me one answer, when he knew and I did not know the answer to that question. I asked all my colleagues on the floor to give me these answers, if they had them. I certainly have no objection to asking the FBI what their investigation consisted of in the Carswell matter, and what the practices and procedures were, whether they have changed them in this case, and if they did, why they did it. I think when I asked the questions, I pointed out to the Senate that the FBI had already said in a public statement that it did not come up with this information concerning the statement made by Carswell in 1948 in Georgia. As I recall their statement, it was because they did not look into the racial attitudes which might be revealed among other sources, by the newspaper morgues.

If that is true, then it would appear to me that the questions, one of which has been answered already, if I am to believe the Senator from Florida, is that there is such an established practice and procedure. If I am to believe the FBI, that they did not look at the newspaper morgues for racial attitudes, then obviously there has been some change in procedure, or they failed to observe the practices and procedures that existed in the past.

But, my answer to the distinguished Senator from Florida is, Yes, I would be pleased to ask the FBI. I want to know the answer, but more important than my knowing the answer, is the Senate should know the answer, and the Nation should know the answer.

Mr. GURNEY. I thank the Senator. I agree with him on that score.

Mr. BAYH. Mr. President, I think, if I still have the floor, I shall yield——

Mr. MURPHY. Mr. President, will the Senator from Indiana yield for a question?

Several other Senators addressed the Chair.

Mr. BAYH. Mr. President, I think the Senator from California (Mr. MURPHY) has been very patient and I will be glad to yield to him for a question, and then the Senator from Maryland. Then I would appreciate a chance to proceed along the pathway which brought me here in the first place, to try, along with all of us, to look at some of the things which have been stated. We all agree they are relevant questions to ask of a man who is being proposed to sit on the Supreme Court.

Mr. MURPHY. I am so pleased that my colleague from Indiana said that. I wonder if the gentlemen concerned with the lengthy colloquy going on here which seems to question the FBI—which may be probably and properly taken up at another time—have read page 3 of the report in which it states:

> The "racist" charges stem from a speech which the judge gave in 1948 when a recent law school graduate seeking election to the Georgia State Legislature. Having been charged by his opponent with being too liberal, Judge Carswell gave a speech embodying then current southern notions of segregation and white supremacy. Reminded of the speech 22 years later, Judge Carswell unhesitatingly deplored and rejected "the words themselves and the ideas they represent. They're obnoxious and abhorrent to my personal philosophy."

Mr. President, those are the words of Judge Carswell. They are contained in the committee report. I think that maybe this should cut through some of what is becoming confusing to the Senator from California.

I thank my distinguished colleague from Indiana for his courtesy in allowing me to put this into the RECORD at this particular point.

Mr. BAYH. I am certainly glad that the Senator from California put that into the RECORD. I think we should perhaps make one slight addition, so that it is put in proper perspective, that that statement was made 22 years later, after Judge Carswell's name had been submitted to the Senate to sit upon the Supreme Court.

Now, if anyone can find for this Senator a statement half so bold a year before, or 2 years before, or years before, then I would say, we have something.

Now the Senator from Maryland has a question——

Mr. MURPHY. Will the Senator from Indiana permit me to answer. It was not my purpose——

Mr. BAYH. The Senator from California was not asking a question——

Mr. MURPHY. Yes, I did—I beg the Senator's pardon—I asked the question, as to whether my colleagues had read page 3 of the committee report. It was my purpose merely to read that segment of page 3 and have it in the RECORD, and not to enter the colloquy which, in my humble opinion, is being handled very well by the Senator from Indiana, the Senator from Massachusetts, and others.

Mr. TYDINGS. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I yield.

Mr. TYDINGS. Mr. President, does the Senator from Indiana think the issue might be clarified if a letter were directed to the Attorney General of the United States propounding a number of questions, including those raised by the distinguished Senator from California (Mr. CRANSTON) and those raised by the distinguished Senator from Massachusetts (Mr. BROOKE) and by the Senator from Maryland, with respect to the policy, custom, and practice of the Federal Bureau of Investigation of the Department of Justice with respect to judicial nominations prior to the nomination of Judge Carswell, and the policy, practice, and actual conduct of the investigation with respect to Judge Carswell? Does the Senator think such a letter might be helpful?

Mr. BAYH. I think that such a letter and the answers that would be forthcoming would be helpful. I think it may be pertinent, particularly if we are talking about referring the nomination back to the Judiciary Committee.

I feel, whether by information supplied by the Department of Justice, the newspaper reports, or by individual Senators, we already have a number of answers to the questions that would be reasonably propounded. And the answers to these questions, as I see them, are matters of deep concern.

Mr. TYDINGS. The purpose of my question was to announce that the Senator from California (Mr. CRANSTON) and I are sending such a letter to the Attorney General of the United States. I think the significance of such a letter would be that if it turned out that the Department of Justice terminated its normal policy and initiated a new policy with respect to Judge Carswell which would tend to submerge or withhold vital information which should be available

about the background of Judge Carswell, then that information should be brought to the attention of the Judiciary Committee of the U.S. Senate and, indeed, to the attention of every Member of the Senate and the attention of the President of the United States.

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

Mr. BAYH. Mr. President, I yield to the Senator from Massachusetts with the understanding that I not lose my right to the floor.

Mr. BROOKE. Mr. President, I am very much pleased that the distinguished Senator from Maryland and the distinguished Senator from California are going to raise with the Attorney General the questions I have already propounded, and which continue to trouble me deeply.

I would be pleased to associate myself with the letter propounding those questions. It was for this reason that I brought them to the attention of the Senate. I would be very pleased to join with the distinguished Senator from Maryland and the distinguished Senator from California in sending such a letter to the Attorney General of the United States.

I think such a communication would be most helpful. And I trust that the Attorney General will reply as early as tomorrow—I do not see any reason why he could not do so—so that in the day and a half left before we vote on this very important issue, we will have the benefit of that information.

Mr. TYDINGS. Mr. President, I would be delighted to have the distinguished Senator from Massachusetts join with us in sending the letter.

Mr. BAYH. Mr. President, if I might ask the indulgence of the Senate, I am trying to deal with the points that had been raised by the President of the United States in the letter addressed to our friend the distinguished Senator from Ohio (Mr. SAXBE).

I ask unanimous consent at this time to have printed in the RECORD the very succinct editorial relative to this same matter appearing in this morning's Washington Post entitled "Judge Carswell: the President's 'Right of Choice.'"

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

JUDGE CARSWELL: THE PRESIDENT'S "RIGHT OF CHOICE"

"As the President has a right to nominate without giving his reasons, so has the Senate a right to dissent without giving theirs."—George Washington, Aug. 8, 1789.

President Nixon's claim that the Senate must vote to confirm Judge Carswell or place in jeopardy the constitutional balance between the Executive and the Legislature is an arrogant assertion of power that attacks the constitutional responsibilities of the Senate and is based on a false reading of history. It is, indeed, a presidential endorsement of the argument made recently in the Senate that since Mr. Nixon won the election he is entitled to put anyone he wants on the Supreme Court.

The President, of course, qualifies this claim by saying that "if the charges against Judge Carswell were supportable, the issue would be wholly different." But what he really means is that since *he* finds those charges—of mediocrity, of racial bias, and of a lack of candor—unsupportable, the Senate must accept his judgment and confirm his choice. He leaves a senator, who is given the constitutional responsibility of consenting to nominations, no latitude in making his own independent judgment on the fitness of the man for the office.

The President makes no attempt to square this bold assertion of the right to fill offices with this nation's constitutional or political history except to claim that his predecessors have been freely given the "right of choice in naming Supreme Court justices." He seems to overlook the fact that one out of every five presidential nominations of men to sit on the Supreme Court has not been confirmed by the Senate. He does not mention that the Senate failed to consent to nominations to that court made by Washington, Madison, John Q. Adams, Tyler, Polk, Fillmore, Buchanan, Johnson, Grant, Hayes, Cleveland, Hoover and Johnson.

It might be well, since the President has brought it up, to recall why the Senate was given the power to approve or reject presidential nominations to high office. It came about as a compromise in the Constitutional Convention between those who wanted the President to have absolute power to fill those offices and those who wanted to give that power to Congress. Alexander Hamilton explained the compromise in The Federalist:

"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 connections, from personal attachment, or from a view of popularity."

That this was intended to be a substantial check on the President's power was made clear in the first Congress. Arguing in favor of a secret ballot in the Senate on questions of confirmation, William Maclay said, "I would not say, in European language, that there would be court favor and court resentment, but there would be about the President a kind of sunshine that people in general would be well pleased to enjoy the warmth of. Openly voting against the nominations of the President would be the sure mode of losing this sunshine." And arguing in favor of an open vote, Robert Morris said it would be beneath the dignity of the Senate to vote in secret since a Senator, in passing on a nomination, ought to be "open, bold and unawed by any consideration whatever."

It is against that background—an attempt by the men who wrote the Constitution to keep the President from filling offices with anyone he might choose and a history in which the Senate has approved 108 nominations to the Supreme Court while failing to approve 26—that Mr. Nixon pleads the case for Judge Carswell. A vote against confirmation, he says, is to vote to strip the President of the power to appoint. No opponent of confirmation that we know of has suggested that the Senate, not the President, nominate prospective justices. No opponent has suggested that Mr. Nixon not make a third choice to fill the existing vacancy if his second choice fails. No opponent has suggested—as did some Republicans at the time Chief Justice Warren offered his resignation—that the President not choose at all. Some, for that matter, have even jested that the Senate ought to confirm this nomination since the next one might be worse.

What Mr. Nixon is attempting to do is to turn an attack on his judgment into an attack on the prerogatives of the office he holds. Those who oppose confirmation are, indeed, questioning the judgment of the President. But the impact of a rejection by the Senate would not be on the powers of the presidency but on the personal power of this President.

The irony of all this is clear. The current vacancy on the court exists solely because the Senate did *not* act on the principle stated by Mr. Nixon yesterday when it received the nominations of Justice Fortas and Judge Thornberry. It refused to be a rubber stamp then and it refused again when it rejected Mr. Nixon's nomination of Judge Haynsworth. Surely this should have put the President on notice that the Senate was not to be trifled with. Yet he came back after that defeat with a nomination that is an insult to both the Senate and the Supreme Court, a nomination of a man who is substantially inferior to Judge Haynsworth. Although this put many senators who wish to support the leader of their party in extremely embarrassing positions, the argument has now been turned on its head. Some of them are now saying that *they* cannot reject Judge Carswell without insulting *the President*. It is important to be clear in our minds about who is insulting whom in this matter. The answer is in yesterday's presidential letter to Senator Saxbe, for what the President is saying is nothing less than that he alone is entrusted "with the power of appointment." He is not so entrusted; he has only the power to *nominate*. The power to *appoint* is one he shares with the Senate. The Senate's best response to this attack—this insult, if you will—on its constitutionally given prerogatives in the appointments process would be an outright rejection of the nomination of Judge Carswell.

Mr. GRIFFIN. Mr. President, would the Senator from Indiana yield briefly to me?

Mr. BAYH. Mr. President, I yield to the Senator from Michigan with the understanding that I do not lose my right to the floor.

Mr. GRIFFIN. Mr. President, in view of the questions which were raised by the distinguished Senator from Massachusetts and the indication by the Senator from Maryland that he may join with others in writing to the Attorney General, let me say I believe I am in a position now to answer those questions.

After conferring with the Justice Department, I can say that the FBI does make a check as to the racial attitudes of nominees for judicial positions, and that the FBI did follow its usual practice and procedures in connection with the investigation of Judge Carswell.

Indeed, the question raised has already been answered by a press release issued by the Department of Justice on March 31.

As I received it over the telephone, the text of the press release read in part as follows:

The instructions issued to the FBI by Ramsey Clark in August 1965 were made a part of the Bureau's routine investigation of nominees. They are still in effect and are still a part of the routine.

Now, the question arises as to why, if the FBI followed its usual practice in this case, they did not uncover the newspaper report of a speech made by the nominee some 22 years before. I am informed that there is an answer to that.

The Irwinton Press, if I correctly remember the name of the newspaper in the little town, has been defunct for a number of years, and its files were not available.

Perhaps one can say, on reflection, that it could have been possible, nevertheless,

for an FBI agent to have discovered the report. It was possible because legal notices published in the defunct newspaper were preserved in the county courthouse. If the FBI had gone to that source, it would have been possible to have uncovered it.

However, it is difficult to criticize the FBI under such circumstances.

Obviously, later after an announcement was made about the nomination, there were hundreds of reporters, to say nothing of representatives of various special interest groups, who were busy digging everywhere they could possibly dig. It is not surprising that this item was later uncovered.

Under the circumstances, I do not think it is surprising that the FBI, in its normal investigation, did not happen to uncover it.

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

The PRESIDING OFFICER. The Senator from Indiana has the floor. Does the Senator from Indiana yield to the Senator from Maryland?

Mr. BAYH. I yield to the Senator from Maryland with the same stipulation.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Maryland is recognized.

Mr. TYDINGS. Mr. President, I could understand how on a regular, normal clearance check, one speech made 22 years ago might be overlooked. But it is difficult for me to conceive how they could have overlooked the strong feelings of John Lowenthal, who is now professor of law at Rutgers University, and who was involved in many civil rights cases before Judge Carswell for many years, whose testimony is on page 139 of the hearings; or the strong feelings of Ernest H. Rosenberger, a member of the bar of the State of New York, who was involved in civil rights cases before Judge Carswell, and whose testimony is on page 149 of the hearings; or the feelings of Norman Knopf, an attorney for the Department of Justice, whose testimony is on page 174; or the feelings of Leroy Clark, chief attorney for the NAACP legal defense fund during that period of time. I do not understand how they overlooked two judges in the State of Florida, who are now sitting, one, a former Assistant Attorney General, Harold Graham from the city of Miami, who tried cases before Judge Carswell; or how they overlooked James W. Matthews, now a municipal judge from the city of Opa Locka and a former assistant U.S. attorney, or other members of the bar and lawyers throughout the area involved in civil rights litigation.

I am at a loss to understand how they failed to know it was common knowledge with lawyers who defended civil rights litigants that one could not get a fair trial before Judge Carswell.

I do not know how a normal check along the standards stated by the Senator from Michigan could have been made without some of that evidence turning up.

Mr. President, let me say further that I have the greatest confidence in the Federal Bureau of Investigation. I worked for them for 3 years when I was U.S. attorney. I know the type work they did. I cannot believe if they did a normal routine check they would not have come up with some of that information which the Senate hearings turned up, which individuals volunteered, and which was common knowledge among attorneys trying civil rights cases involving racial issues in that part of the country during his tenure as judge.

(At this point, Mr. TYDINGS assumed the chair.)

Mr. BROOKE and Mr. GURNEY addressed the Chair.

Mr. BAYH. I have the floor. I am willing to yield with the understanding I do not lose my right to the floor.

Mr. BROOKE. Mr. President, I regret that I was not in the Chamber and did not hear the entire statement of the distinguished assistant minority leader (Mr. GRIFFIN). But I did understand that he was answering some of the questions I raised. Is it his understanding that this practice and procedure which was instituted under the former U.S. Attorney General, Ramsey Clark, is the same practice and procedure which is used today? And further, that it is the same practice and procedure which was used in the Carswell case?

If I understand correctly, he said that in this particular case the town of Irwinton, Ga., is no longer in existence.

Mr. GRIFFIN. I do not know about the town but the particular newspaper in which this report appeared is no longer in existence.

Mr. BROOKE. Does the Senator know the extent to which this investigation was conducted by the FBI?

Mr. GRIFFIN. No, the Senator does not. The Senator merely sought the answers to the questions of the Senator from Massachusetts.

Mr. BROOKE. May I further ask if the Senator knows what was the report of the FBI relative to the racial attitudes on the part of Judge Carswell?

Mr. GRIFFIN. No, the Senator does not.

Mr. BROOKE. The Senator is also a member of the Committee on the Judiciary. I ask the Senator if there was anything in the report to the Committee on the Judiciary which would have indicated that the FBI did inquire into the racial attitudes of G. Harrold Carswell.

Mr. GRIFFIN. I cannot tell.

Mr. BROOKE. The Senator does not know, so the Senator would not know whether a report was given either favorably or unfavorably, or in any detail whatever as to the issue of racial attitudes in the FBI report which was transmitted to the Committee on the Judiciary.

Mr. GRIFFIN. No, but I assume whatever adverse information that could be found was stated to the committee or is in the report for the Senate to consider.

Mr. BAYH. Mr. President, if the Senator would permit me to reclaim the floor temporarily, I think what the Senator from Maryland had to say a moment ago was pertinent here: That the information relative to the negative attitudes of the nominee was not uncovered by any examination or investigation of the FBI. It was brought out voluntarily by members of the press, individuals, members of the bar, and people who studied the civil rights movement in the South.

I would like to join in this letter and I might suggest to the distinguished Senator from Maryland, the distinguished Senator from California, the distinguished Senator from Massachusetts, and whoever may care to join in this letter, that in addition to asking the Department of Justice what type investigation was made, let them come forth with some of the information they found pursuant to asking some of these questions.

Mr. BROOKE. I think we ought to know the full extent of the investigation. The distinguished assistant minority leader has said that there was an investigation; that the FBI did follow the practice and procedure instituted by Attorney General Ramsey Clark. If this is true, what did the FBI find? I think we ought to know exactly what they found.

Mr. BAYH. It should be a part of the letter.

Mr. BROOKE. It should be a part of the letter. I think that is important to us. I think we ought to ask not only what their investigation consisted of, but we ought to find out why it is that they did not come up with the information which was found by some of the other people who, presumably, have nowhere near the investigative resources and talents of the FBI.

Mr. GURNEY. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I am glad to yield to the distinguished Senator from Florida, with the understanding that I do not lose my right to the floor.

Mr. GURNEY. Merely to answer briefly the argument made by the distinguished Senator from Maryland (Mr. TYDINGS), which I think needs answering, because it bears directly on the question of how rigorous and thorough the investigation was, I presume that the FBI, when it investigated the attitudes of lawyers who practiced before the judge in the northern district of Florida, went to lawyers who practiced before his court and who resided in the northern part of Florida.

As a matter of fact, I personally have gone to many of those lawyers and asked them about this very question—the racial attitude of Judge Carswell in civil rights cases. There are some letters which I placed in the RECORD. It seems to me that that would be the logical place the FBI would go to seek its evidence. It is true that this other testimony has been adduced, some before the committee and some later. But I suggest that most or perhaps all of those people are scattered throughout the country—the professor in the Yale Law School, as I recall; the professor from Rutgers; a professor who is now defending the Black Panthers in New York, having taken the place of Kunstler.

If the Senator will permit me to continue further—he is very patient and indulgent—the point I make is that these lawyers referred to by the Senator from

Maryland who appeared before Judge Carswell in civil rights cases were not from Florida, but were scattered throughout the country. The one or two who are in Florida are also now scattered and not in the northern district where Carswell sat. It is obvious why those people were not seen by the FBI.

Mr. BAYH. With all due respect, several, at least, of the individuals suggested by the Senator from Maryland are living in Florida today. As I recall, one or two are serving at present as municipal judges. So I do not think it is a fact that they are scattered like chaff before the wind.

I think we have determined that this letter will be sent. I hope we may reach some agreement that questions will be asked not only with respect to the type of investigation that was conducted, but also as to what information was obtained.

Mr. GRIFFIN. Mr. President, who is being confirmed here? The FBI or Judge Carswell?

The PRESIDING OFFICER (Mr. TYDINGS). The Senator from Indiana has the floor.

Mr. BAYH. I have enough respect for the distinguished Senator from Michigan to suggest that perhaps he does not need that information.

Mr. GRIFFIN. I think it is a question. I am beginning to wonder who is on trial. Who is it that we are trying to confirm? The information is here. The Senator is not saying he did not get all the information, I understand.

Mr. BAYH. If the Senator from Michigan had been listening to the Senator from Indiana, he would know the answer to that question also.

I do not want to appear to be trite to the distinguished minority whip, but I think the Senator from Indiana made it very clear that having the investigation and the information deduced therefrom is pertinent to whether the nomination is going to be sent back to committee.

What is of principal concern to the Senator from Indiana is that we already have substantial pages of information which has been disclosed by various means, most of which was not presented as a result of any report, but which is of deep concern to the Senator from Indiana. We have it in the RECORD now. It is not all in the volume of hearings, but it has been made public by insertion in the RECORD.

I hope, before morning, to have the opportunity to go point by point down the various issues raised by our distinguished President, because I think he hit these points, but, with all due respect to him, I think he apparently had not available all the information pertinent to the point; and I would like to have the chance to spread the rest of the information on the record so that then each Senator can look at what the President's judgment is relative to these important facts; look at the judgment of the Senator from Indiana, the judgment of the Senator from Michigan, the judgment of the Senator from Massachusetts, and that of any other Senator.

Mr. GOLDWATER. Mr. President, will the Senator yield for one question?

Mr. BAYH. I yield.

Mr. GOLDWATER. I would hope the letter that is written to the Justice Department relative to the FBI investigation is very carefully phrased, because I think every one of us in this room has, many times in his life, been questioned by the FBI relative to people who might be appointed to this job, that job, or the other job. If I am not mistaken, we are told that that information will be held in confidence.

I think we can skate on some rather thin ice here and destroy the effectiveness of the FBI in their investigations for all Government jobs, whether they be for courts or for just ordinary employment. I would hope they would be most careful in this.

While I know all the Senator wants to get is information on the questions that have been raised here, I think we could be getting into a serious situation, where we might destroy the effectiveness of FBI reports if we asked for full divulgence of everything people told the FBI with assurance that it would not be disclosed.

Mr. BAYH. I think the Senator from Arizona raises a good question. However, I think Members of the Senate would be able to get the pertinent information, either in a confidential manner or publicly, without violating the confidential nature of the FBI investigation.

If I may proceed, I was dealing with the point raised by the President when he suggested that the American Bar Association Committee on the Federal Judiciary found Judge Carswell qualified as to integrity, judicial temperament, and professional competence.

I think the Senator from Kansas and the Senator from Indiana had a little different opinion relative to the weight to be given to the large number of law school deans and some 200 prominent members of the bar, all former clerks to various Supreme Court Justices, and five or more faculty members from more than 30 law schools who have opposed the nomination.

A number of State and local bar associations have examined the nominee's record and found him lacking and announced opposition to his elevation to our highest court. This is of concern because the 11 members of the American Bar Association Committee on the Federal Judiciary are distinguished men, but I think we have to take their opinion of the nomination and compare it to the opinions of a vastly larger number of equally well qualified lawyers and scholars relative to the nominee's qualifications.

Unquestionably, the vast majority of those members of the bar who have taken a public position on the qualifications of Judge Carswell to sit on our highest court have been in disagreement with the American Bar Association committee that found him qualified. I think it is a fair assessment, as I said a moment ago, or perhaps it has been longer than a moment ago—when the Senator from Kansas raised this point—to note that never before has such overwhelming opposition to a Supreme Court nominee been evidence at the grassroot level and at the academic level of the legal profession. Certainly it was not raised in the previous discussion relative to the qualifications of Judge Haynsworth.

The President has attempted to make it appear that Judge Carswell's qualifications are demonstrated by the fact that 11 of his colleagues on the Fifth Circuit Court of Appeals support his nomination. Here again I ask the Senate's indulgence, because I intend to go down the letter of the President directed to our distinguished colleague from Ohio. He mentioned that 11 of Judge Carswell's colleagues on the Fifth Circuit Court of Appeals support his nomination.

One would normally expect all of a judge's colleagues to support his nomination to the highest court. Certainly the fourth circuit judges were unanimous in their support of Judge Haynsworth. I really think the significant thing that must be spread on the record and must not be overlooked is the fact that seven of Judge Carswell's 18 colleagues have chosen not to support his nomination publicly, including such distinguished jurists as John Minor Wisdom, Elbert Tuttle, and Chief Judge John R. Brown.

The Senator from Maryland raised a question as to the Tuttle matter earlier. I think that is in the RECORD, but it should be taken into consideration when we are studying this matter.

The President attempts to dismiss evidence of Judge Carswell's misstatements to the Judiciary Committee as merely insignificant and unintentional errors resulting from the passage of 14 years since he signed as an incorporator of a segregated private golf club in Tallahassee.

Mr. President, I want to dwell at some length on this matter, because I happen to be a member of that Judiciary Committee. We sat there for a number of hours and listened to this testimony, and I think the rest of the Members of the Senate need to compare the record of what was said there with the President's effort to dismiss it.

Mr. TYDINGS. Mr. President, will the Senator yield at that point for a question with respect to his statement of fact that only 11 of the Judges of the Fifth Circuit signed a letter supporting his nomination?

Mr. BAYH. I yield.

Mr. TYDINGS. Does the Senator from Indiana know of any Justice nominated to the Supreme Court of the United States in this century, who was a sitting judge when he was nominated, who did not have the support of every judge on the bench on which he sat?

Mr. BAYH. That is a very good question. I must admit that the Senator from Indiana does not have all this information available.

I do recall that in connection with the nomination of Judge Haynsworth, the fourth circuit judiciary was unanimous. It is a pretty gutsy thing, let me suggest, for any circuit court judge to stand up in public and say that he does not support or refuses to sign a petition of support for

a fellow circuit court justice he is going to have to continue to sit with if the man is not elevated to the highest court, or even if he is elevated to the highest court.

Mr. TYDINGS. Does the Senator recall, when Judge Burger was elevated to the position of Chief Justice, that every single member of the bench on which Judge Burger sat signed a letter of endorsement in behalf of Judge Burger?

Mr. BAYH. I am glad that the Senator from Maryland stimulated my memory. I do recall that, now he mentions it.

Mr. TYDINGS. I think the fact that five of his fellow judges who sat on the same bench with Judge Carswell declined to sign a letter of endorsement is one of the most telling indictments a man could receive. I know of no other instance of a judge nominated to the Supreme Court from the Federal bench in this century who did not have the full support of every judge on his bench.

Mr. BAYH. I appreciate the Senator from Maryland bringing this to our attention. I do recall the Burger nomination and the Haynsworth nomination, and certainly what the Senator from Maryland says relative to those nominations is accurate.

I am now going to look at this matter of what was said before the Committee on the Judiciary relative to the incorporation of the segregated private golf club in Tallahassee. I have said repeatedly in colloquy on this floor with some who have taken issue with me relative to this matter that if this fact stood alone, by itself, it would not be a matter of such significance to me. However, I think the existence of this involvement of the judge in the incorporation of this segregated golf club lends credence to the feeling that many have that the judge has really not changed the attitude that he expressed, significantly and exactly, relative to white supremacy back in 1948.

But of greater concern to the Senator from Indiana as a member of the Committee on the Judiciary is the way that the testimony evolved, as we sat there and listened to what Judge Carswell said relative to this information which had just come to the attention of several members of the Judiciary Committee.

The fact is that Judge Carswell testified under oath before the Senate Judiciary Committee that he was not an incorporator of the club, although his memory had been refreshed the preceding evening when two distinguished members of the ABA Judiciary Committee showed him the papers of incorporation and pointed out his signature as an incorporator.

I ask my colleagues to look at page 22 of the transcript, where the Senator from Nebraska (Mr. HRUSKA) is quoted as asking Judge Carswell:

> Were you an incorporator of that club as was alleged in one of the accounts I read?

I think there was an account in the morning paper, before the hearing that very day.

Judge Carswell replied: "No, sir."

Yet, the preceding evening Judge Carswell had held those incorporation papers in his hands; had acknowledged his signature on them as an incorporator in the presence of Charles A. Horsky and Norman P. Ramsey, two members of the ABA Judiciary Committee.

Mr. TYDINGS. Mr. President, will the Senator yield further at that point?

Mr. BAYH. I am glad to yield to my distinguished colleague from Maryland.

Mr. TYDINGS. Would the Senator from Indiana agree that integrity is a prime requisite for any candidate for the Supreme Court of the United States?

Mr. BAYH. There is no question about that. The Senator from Maryland is absolutely correct.

Mr. TYDINGS. At this time, in order to make the record complete, I ask unanimous consent that a memorandum addressed to Senators TYDINGS and KENNEDY, and signed by Charles A. Horsky and Norman P. Ramsey, members of the American Bar Association Committee on Judicial Nominations, be incorporated in the RECORD in its entirety; and if the Senator from Indiana will bear with me, I would like to read it.

Mr. BAYH. I yield to the Senator from Maryland for that purpose, with the understanding that in doing so I do not lose my right to the floor.

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

Mr. GURNEY. Mr. President, are there extra copies, so that we may have the benefit of the memorandum on this side?

Mr. TYDINGS. I intend to read it all, so Senators can listen as I read. That way, there will be no question.

The first page of the memorandum deals with the interrogation of Judge Carswell, but I shall read the entire memorandum so that there is no question, although the first part is not relevant to the question of the veracity of the judge before the committee with respect to the incorporation.

It reads as follows:

MEMORANDUM TO SENATORS TYDINGS AND KENNEDY FROM CHARLES A. HORSKY AND NORMAN P. RAMSEY

This memorandum is in response to your request of yesterday that we set forth the circumstances of the meeting we had with Judge Harrold Carswell on January 26, 1970.

We met with Judge Carswell, by appointment, at his hotel room in Washington, D.C. at about 6 p.m. on that date. We were met at the door by his brother-in-law, Mr. Simmons, whom we had met earlier, and who in turn introduced each of us to Judge Carswell. Our visit occupied between 25 and 30 minutes. Mr. Simmons was not present.

Mr. Horsky explained that the reason for the visit was the desire on the part of the Committee on Federal Judiciary to have further information with respect to two matters. He further stated that the Chairman of the Committee had requested Mr. Ramsey and himself to have this meeting in order to obtain first-hand information on these two matters. Judge Carswell stated that he would be glad to discuss any matters in which the Committee was interested.

The first topic mentioned by Mr. Horsky, who conducted most of the conversation, related to the reports that lobbying for a race track bill pending in the Florida legislature had occurred at a dinner party held at Judge Carswell's home in early 1969 at which several Florida legislators were present. Judge Carswell stated, as we had already learned from Mr. Simmons, that the dinner party to which the report referred had originally been arranged by Mr. Simmons and his wife as a small gathering. By reason of a "bring some of your friends" type of invitation, it had grown to include 40 or 50 people. When it became apparent that it had reached that size, Mrs. Simmons decided, because of the very recent tragic death of two of the Simmons' children, that she could not go on with it. Judge Carswell's wife, her sister, upon learning of her decision, volunteered to have the party at her home, which she did. Judge Carswell was late in arriving, although he was there during most of the evening. Contrary to the press reports, he said, there was no receiving line. He stated that, so far as he was informed, the dinner was not intended as an occasion for lobbying and that he had certainly had no part in any lobbying activity. He emphasized that the whole affair was held in his home only as an accommodation to the Simmons.

Page 2 of the memorandum contains the matter relevant to the debate and the issue concerning whether or not Judge Carswell conducted himself in a manner consistent with the integrity required of a Supreme Court nominee, when he answered certain questions before the Senate Committee on the Judiciary the following morning.

The memorandum continues:

Mr. Horsky then asked Judge Carswell about his connection with the Capital City Country Club. Judge Carswell stated that he had been asked by someone to contribute $100 to help build a new clubhouse, and that he had done so. He had been a member of the club for two or three years thereafter, but had found, since he did not play golf, that the membership was not worth the cost, and had resigned. Some years later, when his son became a golfer, he rejoined the club, but again soon decided that he could better pay greens fees for his son at other golf courses, and resigned again. He stated, in answer to a question by either Mr. Ramsey or Mr. Horsky, that at no time had he spoken of, or heard discussed, the idea that the purpose of the information of the new club was to prevent the use of the golf course by Negroes. In answer to another question, he stated that he had personal knowledge that Negroes had attended meetings at the club, because he recalled a conversation with a Mr. Kershaw, a Negro legislator, at a meeting at the club. He stated also that his wife, who was a member of the local Red Cross board, which was integrated, had told him of Red Cross board meetings held at the club.

Mr. Horsky, who had brought to the meeting photostatic copies of a number of papers having to do with the corporate organization of the club, then showed Judge Carswell the papers from the Certificate of Incorporation on which the names and signatures of the incorporators of the club appeared, showing him as an incorporator. Judge Carswell responded that, as he recalled it, anyone who was willing to put up the $100 which was being solicited could have had any title he wanted—vice president, director, incorporator or whatever. He said he had never attended any meetings. He then examined the list of names, in order, as he said, to see if he could recall who had asked him for the $100. After going down the list and identifying several of the persons whose names were listed, he commented that many of the men were bankers, and concluded, although not with certainty, that it had been one of the bankers, Julian Smith, who had solicited his contribution. The pages were then returned to Mr. Horsky.

When we were about to depart, we informed Judge Carswell that our Committee would inform the Judiciary Committee that he was qualified for the Supreme Court, and Judge Carswell expressed his gratification.

We have conferred so that we might refresh each other's memory on the circumstances of the meeting. The above constitutes our best joint recollection.

Mr. BAYH. If the Senator will permit me, this visit, then, preceded the testimony that took place 12, 13, or 14 hours later, the following morning, when, on page 12—I think I mentioned page 22 earlier—Senator HRUSKA said:

Were you an incorporator of that club as was alleged in one of the accounts I read?
Judge CARSWELL. No, sir.

Mr. TYDINGS. Under oath.

Mr. BAYH. Under oath.

Mr. TYDINGS. Judge Carswell said to the Senate Judiciary Committee, the morning after he had been interrogated and shown the corporation papers, "No, sir."

I ask the Senator from Indiana to look at page 13:

Senator HRUSKA. Are you or were you at that time familiar with the bylaws or the articles of incorporation?
Judge CARSWELL. No, sir.

The morning after he had seen the articles of incorporation, the list of the incorporators.

Mr. BAYH. I am glad the Senator brought this up, because in the letter to Senator SAXBE, the President suggests that Judge Carswell corrected his lapse of memory only a minute later, by the testimony that the Senator from Maryland is now pursuing.

Mr. TYDINGS. Let me go on.

At the time, I recall that my personal recollection was that Judge Carswell was a very impressive witness, that obviously he had no recollection of anything about this incorporation, that he had read something in the newspapers, he said, the night before; he had no idea.

Senator HRUSKA continued:

My safe deposit box has some of those country club stocks certifications, too. One of them has a very fancy designation on it, "incorporator." I paid my fee. I am sorry to say it was much more than $100, and it was an honorary thing. I could have gone along just as well without the honor, because I don't play golf either. Could the stock you received on this occasion have borne the label, "incorporator," indicating that you were one of the contributors to the building fund for the clubhouse?

Judge Carswell replied, under oath, to our committee:

Perhaps, I have no personal recollection.

Mr. BAYH. The night before, he had seen the papers. It was not a matter of something that had happened several years ago. But these very papers that he denies knowledge of had been given him in his hotel room the evening before by Mr. Horsky and Mr. Ramsey.

Mr. TYDINGS. Not only that—Horsky and Ramsey had interrogated him specifically and showed him the papers, and he went over the list of incorporators.

In the latter part of the afternoon Senator KENNEDY interrogated him on the same topic, at page 30.

Senator KENNEDY actually had photostatic copies of the corporation papers. Finally, at page 30, it will be seen that Judge Carswell admitted that he was an incorporator.

Here is a man under oath, before the Senate Judiciary Committee, who the evening before had seen the papers, knew he was an incorporator, who deliberately—there is no other way to take it—on three different occasions, on pages 12 and 13, denied he was an incorporator, and he did it in such a way as to mislead the members of the committee. Indeed, if Senator KENNEDY had not pinned him down, we never would have known whether or not he was an incorporator, although he knew it the entire time; because when you are interrogated by members of the judicial nominating committee of the ABA, you do not forget what they came to interrogate you about.

Mr. GRIFFIN. Mr. President, will the Senator yield briefly for a correction?

Mr. BAYH. I am glad to yield.

Mr. GRIFFIN. I know the Senator from Maryland would not want to leave an error in the RECORD. He said that it was late in the afternoon when Senator KENNEDY asked the question. If the Senator will look at page 32 of the record, he will see that the question was asked by Senator KENNEDY in the morning session before the noon recess.

Mr. TYDINGS. I stand corrected.

Mr. GRIFFIN. And was before the noon recess. I think that is of some significance.

Obviously, a reading of the entire record indicates—and the memorandum substantiates it—that Judge Carswell did not consider himself to be a promoter or an organizer of that corporation. He contributed $100. Technically, he was an incorporator and his first answer was in error.

Mr. TYDINGS. And he knew he was an incorporator.

Mr. GRIFFIN. And he corrected it. The President of the United States recognized that he made an error when he answered the question in the first instance. But during the same morning session, when the question was raised by Senator KENNEDY, the matter was clarified.

Mr. BROOKE. Mr. President, will the Senator yield at that point?

Mr. GRIFFIN. I yield.

Mr. BROOKE. Would not the error have stayed in the record had not Senator KENNEDY asked the question?

Mr. GRIFFIN. I cannot answer the question.

Mr. BROOKE. Mr. Carswell at least did not volunteer a correction of that error, did he?

Mr. GRIFFIN. As the record stands, that is correct.

Mr. TYDINGS. I think it would be helpful if we put in the RECORD at this time—and I ask unanimous consent—the full dialog between Senator KENNEDY and Judge Carswell, appearing on pages 31 and 32 of the record of the hearings, to note that it was not voluntary. Senator KENNEDY had to draw it out of Judge Carswell.

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

Senator KENNEDY. Earlier today, you responded to the inquiries of the Senator from Nebraska on the golf course down at Capital City Country Club. This was, as I understand it, in regard to a newspaper report that was in this morning's paper, and you responded to him, to the question of the Senator from Nebraska, that you thought it was principally an effort to build a clubhouse.

Judge CARSWELL. My sole knowledge of that matter had to do with a conversation with a friend named Julian Smith in Tallahassee who approached me and virtually anyone else, as I recall. He was trying to get the $100 apiece from anyone to build a new country club. I gave him $100. I then received some kind of message that I had a share or stock in this thing. I did receive it, and some several months later, as I have already stated, I sold it and got out of the thing entirely and got $75 back. That is my sole connection with that. I have never had any discussion or never heard anyone discuss anything that this might be an effort to take public lands and turn them into private hands for a discriminatory purpose. I have not been privy to it in any manner whatsoever.

Senator KENNEDY. By receiving that share, you became either a director or subscriber of that club?

Judge CARSWELL. No, sir; I never became a director, Senator Kennedy, at all. I don't know how it appears in the label there, but I never attended a meeting with anybody. I don't think I ever talked to anybody about it but Julian Smith. I don't think there was ever even one other human being with whom I ever had a conversation about it.

Senator KENNEDY. Did you in fact sign the letter of incorporation?

Judge CARSWELL. Yes, sir. I recall that.

Senator KENNEDY. What do you recall about that?

Judge CARSWELL. That they told me when I gave them $100 that I had the privilege of being called an incorporator. They might have put down some other title, as if you were potentate or something. I don't know what it would have been. I got the one share and that was it.

I found later, since we were not golfers, neither my wife nor me, that at that point, our four children were preschool age or school age, the club meant very little to us. It meant virtually nothing to us. It was only a privilege of going there to get a meal. So we dropped out very shortly thereafter, although we rejoined after an interval of time when my boys got up to 14 or so and wanted to play golf. Then we dropped out of that after a while and I haven't been a member since 1966.

Senator KENNEDY. Did you generally read the nature of your business or incorporation before you signed the notes of incorporation?

Judge CARSWELL. Certainly I read it, Senator. I am sure I must have. I would read anything before I put my signature on it, I think.

Senator KENNEDY. Do you remember that it talked about the purchasing and leasing and acquiring and operating a golf course and tennis courts and swimming pool, clubhouse, club facilities, lake; maintain and operate the same; purchase lease, and represent all or any real or permanent property necessary for said purposes, to do all the things incident to and in furtherance of a private country club, for the recreation, health, amusement and pleasure of the members thereof, to operate any business or facility incident to or in pursuit of these objectives? Would this lead you to believe that their only interest was just in the building of a clubhouse?

Judge CARSWELL. Oh, no. I certainly was aware that there would be things going on around the clubhouse that normally do. I didn't mean to imply that. If I did, I correct it.

Senator KENNEDY. You weren't, at least in your—

The CHAIRMAN. Let's recess now until 2:30.

(Whereupon at 12:30 p.m., the hearing was recessed to reconvene at 2:30 p.m. of the same day.)

Mr. TYDINGS. I think the issue is really not how Judge Carswell pictured himself but the fact that Judge Carswell was willing to deceive the Judiciary Committee of the U.S. Senate. That is what troubles me.

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

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

Mr. BAYH. I want to make one observation, because I happened to be seated next to Senator KENNEDY at the time this interrogation was going on.

It seemed to me that when Senator KENNEDY asked the question on the bottom of page 31:

By receiving that share, you became either a director or a subscriber of that club?

Judge Carswell said:

No, sir; I never became a director . . .

Then Senator KENNEDY made it evident that he, indeed, had a Thermofax copy of the articles of incorporation. Then Judge Carswell said:

Yes, sir. I recall that.

He either recalled it or he did not recall. I can see how it is possible for a fellow to give $100 to a club for one purpose or another and forget about it. But it is difficult for me, as hard as I try, to envision, in light of the Horsky-Ramsey disclosure, that all this took place in the hotel room the night before and then get the type of answers we had the following morning.

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

Mr. BAYH. I yield.

Mr. CRANSTON. In the effort to straighten out this tangled record, I asked the Senator from Indiana when this exchange occurred in the sequence. This colloquy appears in the hearing record at some point:

Senator BAYH. Since you have looked at the documents, I suppose——

Judge CARSWELL. Senator, I have not looked at the documents.

The documents referred to were the documents of incorporation. When did that particular conversation occur?

Mr. BAYH. The Senator from California knows—I guess the Senator from California has a reason for asking the question—that I said that Senator KENNEDY was to my right. So the questioning between the nominee and the Senator from Indiana took place immediately following. The discussion which has previously been alluded to by the Senator from Maryland related to Judge Carswell and Senator KENNEDY.

Mr. CRANSTON. Judge Carswell denied at that point having seen the document he had seen the night before?

Mr. BAYH. That is accurate. The Senator from Indiana would like to put that in proper perspective. The judge came back a second day, and the interrogation proceeded. The Senator from Indiana had an opportunity to ask questions of Judge Carswell on the second day as well as on the first day. I think that to be totally accurate I should read the quotation directly from the hearing record, as alluded to by the Senator from California, who read:

Senator BAYH. Since you have looked at the documents, I suppose——

Judge CARSWELL. Senator, I have not looked at the documents.

That occurred the next day; it did not occur the first day.

Mr. GRIFFIN. Mr. President, will the Senator further yield for a question?

Mr. BAYH. I yield.

Mr. GRIFFIN. The Senator did not complete the answer of Judge Carswell, who went on to say:

I didn't mean to leave that impression with you. The documents speak for themselves. I couldn't begin to tell you what the documents say.

Obviously, when he saw the papers the night before, he recognized his signature. He recognized that he had subscribed to some stock.

The question the Judge was answering, as it appears on page 68 of the hearings, sought to get from him in detail what the documents contained, and he did not know, which is not surprising.

Mr. BAYH. If the Senator will permit me to repeat, the English language is specific:

Senator BAYH. Since you looked at the documents, I suppose—

Then there was an interruption by Judge Carswell:

Judge CARSWELL. Senator, I have not looked at the documents. I didn't mean to leave that impression with you. The documents speak for themselves.

We were trying to find out what relationship the Judge had to the corporation—whether he knew it or not. Now we have learned that he had, indeed, looked at the documents the night before. But then he said he had not.

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

Mr. BAYH. I yield.

Mr. DOLE. Let me correct the Senator from Maryland. He has made serious charges of a lack of candor. I think the Senator said the memorandum was signed by Ramsey and Horsky. I think it was signed by Horsky, the same Horsky who occupied a position of importance in the White House in the last administration. But I do not see the signature of Ramsey. Is that correct?

Mr. TYDINGS. The signature is not on it, but this is the Ramsey statement.

Mr. GURNEY. Will the Senator yield for an observation?

Mr. BAYH. I yield.

Mr. GURNEY. I think this is most important. I think this particular testimony is troubling some Senators, as well as the Senator from Indiana and the Senator from Maryland. If we will recall, the Senator from Florida was present also during the hearings that first day, both morning and afternoon. In fact, all the time that Judge Carswell was before the committee. The Senator from Florida never heard of this country club either. It was as fresh to him as it was to the Senator from Indiana and the Senator from Maryland.

Let me say what the impression was of the Senator from Florida. Listening carefully to all the testimony as it was adduced by the Senator from Nebraska (Mr. HRUSKA) and the Senator from Massachusetts (Mr. KENNEDY), it was quite obvious that there were two country clubs involved, a first one, the one that Judge Carswell signed as an incorporator, and a second one. This was rather confusing at first, because it was hard for me to understand what actually went on.

Then as the colloquies and the questions and answers developed among the Senators and Judge Carswell testifying, it was quite obvious that the first corporation which was incorporated was incorporated, as I recall, as a corporation for profit, never really functioned or did any business at all so far as taking over the country club was concerned; but that later a corporation not for profit was organized which actually did the taking over of the country club and ran it.

Now let us look at specific dates. The first corporation which Judge Carswell signed as an incorporator is dated, as I recall it, April 24, 1956. That was actually the date of the articles of incorporation. Let me see if that is correct.

Mr. TYDINGS. Is the Senator referring to the Capital City Club?

Mr. GURNEY. That is right. I think I am correct on that. April 24, 1956, is the date. Right. Yes, here it is. There was the signature of Judge Carswell on that.

Then the other organization, which was a corporation organized not for profit, a charitable corporation, as we call it in Florida, which is done by quite a different method, by a petition to a circuit court and then an order by a judge, rather than by articles of incorporation filed by the secretary of state. That was instituted and it appears on page 360 of the record, the petition for the club by order——

Mr. BAYH. Will the Senator yield there?

Mr. GURNEY. Let me finish first and then I will be through.

Mr. BAYH. I believe the Senator is getting confused on this. He has not studied it, perhaps, as carefully as some others; but go ahead.

Mr. GURNEY. Perhaps if I am confused, the Senator can correct me later on. However, I think I have it right.

Then, later on, on January 29, 1957, that was about 7 months later as I recall it here, the new corporation, not for profit, the charitable corporation, was organized by petition and order of a circuit court. In that petition, on page 363, there is a list of the officers and directors of the corporation—both corporations, as a matter of fact.

Here is what it says.

Mr. TYDINGS. Is the Senator referring to page 357?

Mr. GURNEY. No. Page 363 of the record:

The present officers and directors of Capital City Country Club, Inc., . . .

That was the first one, a corporation for profit that Judge Carswell was a signatory to on the charter—

and the directors and officers of this corporation—

That was the one organized not for profit—

hereby designated to serve until the first election shall be—

Then it has a list, if Senators will examine it carefully, and Judge Harrold Carswell's name is not there. He was not a member of that second corporation. Mind you, now, this petition was in January, the first part of the next year, and it says in the petition:

The present officers and directors—

That is very important—

of Capital City Country Club, Inc.,—

That was the one he signed—

and the officers and directors of this corporation hereby designated to serve until the first election shall be—

This backs up the judge's testimony and his understanding that, yes, he was a part of this initial one but he was never a part of the second corporation.

Mr. BAYH. The Senator from Florida is really stretching the imagination of the Senator from Indiana. He tells us that two different corporations were involved. The judge was an incorporator of one and he said he was not an incorporator——

Mr. GURNEY. No, he did not.

Mr. BAYH. Well, it is either right or wrong.

Several Senators addressed the Chair.

Mr. BAYH. Mr. President, I should like to pursue my point, if I may. I have the floor.

The establishment of the country club, by all the evidence we have been able to adduce, was directed to the effort to circumvent the Supreme Court decision which made it illegal to have a public, segregated golf facility. They started out with a profit-making corporation and then found out that they could not make any money. That was not a technicality to change the two corporations, but part of the same pattern designed to be able to remove the country club from a public to a private one so that they could violate the Supreme Court decision and limit it to white people.

Mr. GURNEY. I am not arguing that one way or the other. The Senator can have one opinion on that and I can have another opinion on it. The point I make is that there were two corporations and he was the signatory to one corporation but had no part of the other corporation. The Senator has not answered that question at all in the context of the testimony adduced in the hearing. It bears out what the judge testified——

Mr. TYDINGS. What was the name of the second golf club?

Mr. GURNEY. Capital City Country Club.

Mr. TYDINGS. Inc., Tallahassee, Fla.?

Mr. GURNEY. That is right.

Mr. TYDINGS. What was the name of the first one?

Mr. GURNEY. Same name.

Mr. BAYH. There is no mystery about the corporations, or whether they are two entirely different corporations, other than the fact that they are on different sets of legal paper.

Mr. GURNEY. I certainly will say that they are two entirely different corporations, one organized under the Secretary of State of Florida, and the other organized under a circuit court order. The evidence is right there in the hearing on page 363, that Judge Harrold Carswell was not a part of that second corporation.

Mr. BAYH. Well, the Senator from Florida just said——

Mr. GURNEY. That is the whole point of the controversy.

Mr. BAYH. Not at all. That may be the point of the Senator from Florida but it is not the point of the Senator from Indiana. Is not the Senator from Florida trying to find some common ground here?

Mr. GURNEY. I am trying to find some facts. [Laughter.]

Mr. BAYH. I am sure that my good friend from Florida is——

Mr. GURNEY. Believe me, facts are being ignored around here by the opposition.

Mr. BAYH. It must be nice for the Senator from Florida to have the sole ability to determine fact and fiction. The Senator from Indiana regrets——

Mr. GURNEY. The Senator from Florida is able to read.

Mr. BAYH. If the Senator from Florida will let the Senator from Indiana finish, I will be glad to yield further, and if not, I shall proceed with my speech.

Mr. GURNEY. The Senator has the floor. The Senator has the floor.

Mr. BAYH. The whole issue here is the fact that there was a golf course and that the judge's signature was affixed to the incorporation papers. He saw the papers one night and he told the U.S. Senate Committee on the Judiciary in hearings the very next morning that he was never a member, was never an incorporator of this particular corporation. I do not care if there were a dozen different corporations, which there were not. It so happens that the Senator from Indiana believes those two corporation are closely related and that they are the same entity, except for form.

They were designed to accomplish the same purpose.

Mr. TYDINGS. It was on the same property and for the same purposes.

Mr. BAYH. What concerns me is that after seeing these papers, we had testimony from Judge Carswell contrary to the actual circumstances.

In the hope that we might try to find some common ground, does the Senator from Florida agree that Judge Carswell did sign one of the corporation papers?

Mr. GURNEY. The Senator from Florida has already pointed that out.

Mr. BAYH. Does the Senator from Florida admit that the judge saw his signature affixed to these papers the night before he testified?

Mr. GURNEY. The Senator from Florida will say that he has heard an affidavit read that was signed by one man. He points out that the other man, Mr. Ramsey, appeared at the second meeting of the bar association, after he had read his testimony regarding the formation and being one of those present at the hotel meeting that night. Having reported to the bar association on how he viewed what transpired in the hotel room, he must have reported the same set of facts that I am reporting. And that is, if I may finish my thought, that Judge Carswell did not consider that he had a part of the second corporation which actually carried on the business of the country club. And that is the point I am making.

Mr. BAYH. Who was carrying on the business of the country club at the time it was operating under the first of the corporation papers which were signed by Judge G. Harrold Carswell?

Mr. GURNEY. I said to the Senator that the impression I got from hearing the testimony before the Judiciary Committee—the same testimony that the Senator from Indiana heard—was that the main thrust of carrying on the business of this country club was that of a corporation organized, not for profit, but a charitable corporation, and that Judge G. Harrold Carswell was not a part of it.

Mr. BAYH. I think the Senator is entitled to his opinion.

Mr. GURNEY. I think that is true. And that is the other side of the coin.

Mr. BAYH. The Senator from Florida is entitled to form a judgment in his own mind. Each of us can construe the facts as we see them.

The Senator from Indiana believes that Judge Carswell signed these corporation papers. They are not made out of the thin air. We saw them. And when he was queried by the members of the committee, he suddenly denied that he had signed them.

I do not think this is to be taken lightly.

Mr. President, I yield briefly to the Senator from Michigan who has been trying to get the floor.

Mr. GRIFFIN. Mr. President, I appreciate this opportunity to indicate that the situation is even further complicated by the fact that there were not two corporations. There were actually three corporations involved.

On page 108 of the testimony, it is clear that originally this country club was owned by the Tallahassee Country Club, and that in 1935 it was turned over to the city of Tallahassee. There was a reservation in the deed providing that if at any time the city of Tallahassee did not wish to continue to operate it, it was to be leased back to the original corporation.

Now, on page 255, Mr. Proctor, who was a witness concerning the details of this transaction, testified that beginning in 1952 the shareholders of this original corporation that owned the country club began discussions and negotiations with the city trying to get the city to turn it back.

The city had let it run down. The golf course was in bad shape, and there were not the appropriate facilities.

Mr. TYDINGS. Mr. President, is the Senator speaking from his own knowledge?

Mr. GRIFFIN. That is the testimony in the record. In 1956, according to the testimony on page 255, the city turned the country club back to the original corporation, the Tallahassee Country Club, which was not the corporation to which Judge Carswell subscribed.

So, there are really three corporations involved. And I think that fact ought to be kept in mind as we are trying to evaluate this testimony.

Mr. TYDINGS. Mr. President, can the Senator tell us where on page 255 he is reading from? I think he might read the whole page.

Mr. GRIFFIN. It reads:

Senator KENNEDY. Then you said in 1956, February 14 of 1956, it was actually transferred back to this group, is that correct?

Mr. PROCTOR. That is correct.

Senator KENNEDY. And was the group that it was transferred to in 1956 the same group of stockholders that met in 1952? Were there others who were added to that group?

Mr. PROCTOR. There were others who were added to that group, and they formed a new club. This same group combined with a group of other interested citizens, and formed the Capital City Country Club, Inc. They filed for a certificate of incorporation on April 24 of 1956.

Mr. TYDINGS. Is that not the country club which we are referring to?

Mr. GRIFFIN. At another point in the record, it is clear that it was turned back and then the lease was assigned by the original corporation.

Mr. TYDINGS. Mr. President, what part is the Senator referring to? Can we have the specific part?

Mr. GURNEY. Mr. President, while the Senator is looking for that, will the Senator yield?

Mr. BAYH. May the Senator from Indiana proceed with his speech until the Senator from Michigan finds the place?

Mr. GURNEY. This bears directly on the speech of the Senator. It might shed some light on the matter.

Mr. BAYH. We are talking about two different things. The second is equally important to the Senator from Indiana.

At one point, we seem to have some disagreement as to whether Judge Carswell signed anything, whether he was an incorporator of the corporation, or whether this information was made available to him the night before he told the Senate he had not signed such a document.

Mr. GURNEY. Mr. President, my question to the Senator from Maryland (Mr. TYDINGS) would be what papers were shown to Judge Carswell—the first or the second incorporation papers, or both?

Mr. BAYH. Mr. President, did he sign them?

Mr. GURNEY. That is not the question. I am directing a question to the Senator from Maryland. We have two corporations. His signature was not on one.

Mr. TYDINGS. Mr. President, I now refer to page 11 of the record of hearings before the Judiciary Committee, and I read from that page the questions asked by Senator HRUSKA of Judge Carswell and I think we can clear the matter up by the record.

The question by Senator HRUSKA and the answer by Judge Carswell are as follows:

Now, this morning's paper had some mention that you were a member of a country club down in Tallahassee. I am confident that you read the account. I would be safe in saying all of us did. You are entitled to tell your side of the story and tell us just what the facts are.

Judge CARSWELL. I read the story very hurriedly this morning, Senator, certainly. I am aware of the genuine importance of the facts of that.

Perhaps this is it now. I was just going to say I had someone make a phone call to get some dates about this thing.

This is not it. (Noting a paper on the desk.)

I can only speak upon my individual recollection of this matter.

I was never an officer or director of any country club anywhere. Somewhere about 1956, someone, a friend of mine—I think he was Julian Smith—said, we need to get up some money to do something about repairing the little wooden country club, and they were out trying to get subscriptions for this. If you gave them $100, you would get a share in the stock in the rebuilding of the clubhouse. I did that. Later—I have had this confirmed; I do not have the records with me, but it can be confirmed, without a doubt—I was refunded $75 of that $100 in February of the following year, 1957. We were not even members of the country club. I am not a golfer. It is a golf-playing organization.

So years later, when my elder son, George, became quite interested in golf, his mother suggested primarily, and I concurred with the thought, that it would be a fine thing for him, a young boy, to play golf. So we rejoined the club on a family basis and were active members of this club—I say active members; dues-paying members. I don't think I went there more than twice a year, but my son went there frequently and played golf until, I—I am advised and the records show, and I have no reason to question them, that we resigned in 1966 entirely from this club. That concludes the matter. I do not know any more that I could say about this.

Now, listen to this:

The import of this thing, as I understand it, was that I had something to do with taking the public lands to keep a segregated facility. I have never had any discussion with any human being about the subject of this at all. That is the totality of it, Senators. I know no more about it than that.

We now have this, on the heels of a letter or statement from Ramsey and Horsky, signed by Charles A. Horsky, but a joint statement of the two concerning a meeting they had with Judge Carswell the night before he testified on this point before the Judiciary Committee.

Let me read the first paragraph:

We met with Judge Carswell, by appointment, at his hotel room in Washington, D.C., at about 6 p.m. on that date.

That was January 26, 1970.

Mr. Horsky, who had brought to the meeting photostatic copies of a number of papers having to do with the corporate organization of the club, then showed Judge Carswell the papers from the certificate of incorporation on which the names and signatures of the incorporators of the club approved, showing him as an incorporator.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD pages 348, 349, 350, 351, 352, 353, and 354 of the hearings.

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

SECRETARY OF STATE, STATE OF FLORIDA

I, Tom Adams, Secretary of State of the State of Florida, Do Hereby Certify that the following is a true and correct copy of Certificate of Incorporation of Capital City Country Club, Inc., organized and existing under the Laws of the State of Florida, filed on the 24th day of April, A.D., 1956; Resident Agent Certfiicate filed on the 23rd day of May, A.D., 1956; Capital Stock Tax Report for part year 1956 and 1957 filed on the 9th day of August, A. D., 1957; Petition to Leon County Circuit Court changing corporation from a profit corporation to a non-profit corporation approved by the Honorable Hugh M. Taylor, Judge of the Circuit Court, in and for Leon county, pursuant to Chapter 57-90, Laws of 1957, filed on the 9th day of August, A. D., 1957; Exempt Tax Report filed on the 20th day of January, A. D., 1960; Exempt Tax Report filed on the 17th day of May, A. D., 1963; Exempt Tax Report filed on the 24th day of September, A. D., 1964; Exempt Tax Report filed on the 28th day of July, A. D., 1965; Exempt tax Report filed on the 12th day of July, A.D., 1966; Exempt Tax Report filed on the 21st day of June, A. D., 1967; Exempt Tax Report filed on the 18th day of September, A. D., 1968, as shown by the records of this office.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the 30th day of January, A.D. 1970.

TOM ADAMS,
Secretary of State.

CERTIFICATION OF INCORPORATION OF CAPITAL CITY COUNTRY CLUB, INC.

We, the undersigned, hereby associate ourselves together for the purpose of becoming a corporation under the laws of the State of Florida, by and under the provisions of the Statutes of the State of Florida, providing for the formation, liability, rights, privileges and immunities of a corporation for profit.

ARTICLE I. NAME OF COMPANY

The name of this corporation shall be:—Capital City Country Club, Inc.

ARTICLE II. GENERAL NATURE OF BUSINESS

The general nature of the business and the objects and purposes proposed to be transacted and carried on, are to do any and all of the things herein mentioned, as fully and to the same extent as natural persons might or could do, viz:—

To purchase, lease, acquire, layout, and operate a golf course, tennis courts, swimming pool, club house and club facilities, and the like, and to maintain and operate the same; to purchase, lease, or rent any and all real or personal property necessary for said purposes; to do all things incident to and in the furtherance of a private country club for the recreation, health, amusement and pleasure of the members thereof, and to operate any business or facility incident to and in the furtherance of said objectives.

To borrow money and to negotiate loans for the purpose of carrying into effect the objectives of this corporation; to execute promissory notes, bonds, debentures, and other negotiable instruments of whatsoever nature, and to secure the same by mortgage on its property or otherwise.

Generally to make and perform contracts of any kind and description for the purpose of attaining any of the objects of the corporation; to do and perform any other acts and things, and to exercise any and all powers which a co-partnership or natural person could do and exercise, and which now are or hereafter may be authorized by law, and generally to do and perform any and all things necessary or incident to the performing and carrying out of the powers hereinabove specifically delegated or implied.

ARTICLE III. CAPITAL STOCK

The authorized Capital Stock of the Corporation shall be: Fifteen Hundred (1500) shares of common stock which shall have a par value of $100.00 per share.

All of said stock shall be payable in cash, property, labor or services at a just valuation

to be fixed by the Board of Directors at a meeting called for that purpose; property, labor or services may be purchased, or paid for with the Capital Stock at a just valuation to be fixed by the Board of Directors at a meeting called for that purpose.

ARTICLE IV. AMOUNT OF CAPITAL TO BEGIN BUSINESS WITH

The amount of Capital with which this corporation shall commence business shall be Five Hundred Dollars.

ARTICLE V. CORPORATE EXISTENCE

This corporation shall have a perpetual existence unless sooner dissolved according to law.

ARTICLE VI. PRINCIPAL PLACE OF BUSINESS

The principal place of business of said corporation shall be at Tallahassee, Leon County, Florida, with the privilege of having branch offices at other places within or without the State of Florida and within or without the United States of America.

ARTICLE VII. NUMBER OF DIRECTORS

The number of directors of this corporation shall be not less than five (5) nor more than twenty-five (25).

ARTICLE VIII. DIRECTORS

The name and post office address of the first officers of this corporation who shall hold office for the first year or until their successors are chosen, shall be:

Blair C. Stone, President, Tallahassee, Florida.

Paul H. Brock, Jr., Secretary, Tallahassee, Florida.

B. Cheever Lewis, Treasurer, Tallahassee, Florida.

ARTICLE IX. SUBSCRIBERS

The name and post office address of each Director and subscriber and the number of shares of stock which each agrees to take are:

Sidney D. Andrews, Tallahassee, Florida, 1 share.

Charles S. Ausley, Tallahassee, Florida, 1 share.

C. H. Belvin, Tallahassee, Florida, 1 share.

Paul H. Brock, Jr., Tallahassee, Florida, 1 share.

Wilson Carraway, Tallahassee, Florida, 1 share.

Harrold Carswell, Tallahassee, Florida, 1 share.

M. R. Clements, Tallahassee, Florida, 1 share.

Howell Collins, Tallahassee, Florida, 1 share.

Hilton Cooper, Tallahassee, Florida, 1 share.

Ernest Daffin, Tallahassee, Florida, 1 share.

B. Cheever Lewis, Tallahassee, Florida, 1 share.

William L. Moor, Tallahassee, Florida, 1 share.

Robert C. Parker, Tallahassee, Florida, 1 share.

C. R. Phillips, Tallahassee, Florida, 1 share.

Julian Proctor, Tallahassee, Florida, 1 share.

Godfrey Smith, Tallahassee, Florida, 1 share.

Julian C. Smith, Tallahassee, Florida, 1 share.

Julian V. Smith, Tallahassee, Florida, 1 share.

Sidney V. Steyerman, Tallahassee, Florida, 1 share.

Blair C. Stone, Tallahassee, Florida, 1 share.

J. Edwin White, Tallahassee, Florida, 1 share.

ARTICLE X. SPECIAL CHARTER PROVISIONS

The original incorporators of this corporation shall have the right to, and will after the organization of the same, assign and deliver their subscriptions of stock herein to any other persons who may hereafter become subscribers to the Capital Stock of this Corporation, who upon acceptance of such assignment, shall stand in lieu of the original incorporators and assume and carry out, all of the rights, liabilities and duties entailed by said subscriptions, subject to the laws of the State of Florida, and the execution of this power.

In witness of the foregoing, we have hereunto set our hands and seals this 24th day of April, A.D. 1956.

Sidney D. Andrews, Charles S. Ausley, C. H. Belvin, Paul H. Brock, Jr., Wilson Carraway, Harrold Carswell, M. R. Clements, Howell Collins, Hilton Cooper, Ernest Daffin, B. Cheever Lewis, William L. Moor, Robert C. Parker, C. R. Phillips, Julian Proctor, Godfrey Smith, Julian C. Smith, Julian V. Smith, Sidney V. Steyerman, Blair C. Stone, J. Edwin White.

STATE OF FLORIDA,
County of Leon:

I hereby certify that on this the 24th day of April, A.D. 1956, personally came and appeared before me, the undersigned authority, Sidney D. Andrews, Charles S. Ausley, C. H. Belvin, Paul H. Brock, Jr., Wilson Carraway, Harrold Carswell, M. R. Clements, Howell Collins, Hilton Cooper, Ernest Daffin, B. Cheever Lewis, William L. Moor, Robert C. Parker, C. R. Phillips, Julian Proctor, Godfrey Smith, Julian C. Smith, Julian V. Smith, Sidney V. Steyerman, Blair C. Stone and J. Edwin White, all to me well known, and well known by me to be the persons of that name described in and who severally acknowledged to me that they executed the foregoing "Articles of Incorporation" as their free and voluntary act and deed and for the uses and purposes therein set forth and expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal on the day and year above written.

BARBARA R. WHITE,
Notary Public, State of Florida at Large.
My Commission Expires: June 23, 1959.

Mr. TYDINGS. Mr. President, I call attention to the name and signature of Mr. Harrold Carswell on the certificate of incorporation of the Capital City Country Club, Inc., dated April 24, 1956.

Now, I shall return to reading the statement of Mr. Horsky and Mr. Ramsey, which is signed by Mr. Horsky. The statement further states:

Judge Carswell responded that, as he recalled it, anyone who was willing to put up the $100 which was being solicited could have had any title he wanted—vice president, director, incorporator or whatever. He said he had never attended any meetings. He then examined the list of names, in order, as he said, to see if he could recall who had asked him for the $100. After going down the list and identifying several of the persons whose names were listed, he commented that many of the men were bankers, and concluded, although not with certainty, that it had been one of the bankers, Julian Smith, who had solicited his contribution. The pages were then returned to Mr. Horsky.

Now, I ask unanimous consent to have printed in the RECORD the full text of the hearings found on pages 12 and 13.

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

Senator HRUSKA. Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

Judge CARSWELL. No, sir; nor in any other official capacity.

Senator HRUSKA. Did you ever attend any of the directors' meetings?

Judge CARSWELL. Never.

Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the accounts I read?

Judge CARSWELL. No, sir.

Senator HRUSKA. The stock certificate which you got, how was that designated, do you remember?

Judge CARSWELL. I really do not remember, Senator. It was one share of stock. I just really don't have any independent recollection of this, in 1956. We paid $100 for it and when we saw we were not going to continue to be active because it was primarily a golf club—the only privilege you got otherwise was going there for a meal and frankly, it wasn't commensurate with what we thought was sound policy for us at the time. So we dropped out of the club. That is all there was to it.

Senator HRUSKA. Have you from time to time used the facilities of the club by way of public meetings or board meetings or anything of that type?

Judge CARSWELL. Have I?

Senator HRUSKA. Yes.

Judge CARSWELL. I have been there, Senator, as guest of other people on many occasions, yes, sir, but not for any functions of my own, no.

Senator HRUSKA. Not for any functions of your own?

Judge CARSWELL. No, sir.

Senator HRUSKA. On occasions when you were a guest, was there any indication of segregation within the meetings that you attended?

Judge CARSWELL. Well, I didn't attend any meetings, Senator, as such.

Senator HRUSKA. Well, the social functions?

Judge CARSWELL. There are a number of functions there. Tallahassee is the capital of Florida. It is practically the only facility where one may have a large entertainment function. I have been there on many occasions where the president of the State senate, for example, or the speaker of the house would have a party, or other friends. I have been there many times. There has certainly been no racial discrimination among the guests. I have personally attended there several times when there were integrated functions.

Senator HRUSKA. And were there members of the Negro race present on any of these occasions?

Judge CARSWELL. Yes, sir, I specifically recall one or two. I don't recall any details.

Senator HRUSKA. Has Mrs. Carswell attended any functions or social activities or other activities in the country club?

Judge CARSWELL. Of course, I can't speak exactly where she has attended on any specific date, but she has been a member of the Leon County, which is the Tallahassee City, Board of Red Cross, which is an integrated board and they have had functions or meetings of some activities of such nature that I really don't know, because I wasn't privy to them, but I know that has occurred at the club.

Senator HRUSKA. Did you participate in the management of the club or the writing of its bylaws or any of the background concerning the corporation?

Judge CARSWELL. None whatsoever.

Senator HRUSKA. Are you or were you at the time, familiar with the by laws or the articles of incorporation?

Judge CARSWELL. No, sir.

Senator HRUSKA. My safe deposit box has some of those country club stock certifications, too. One of them has a very fancy designation on it, "incorporator." I paid my fee. I am sorry to say it was much more than $100, and it was an honorary thing. I could have gone along just as well without the honor, because I don't play golf either. Could the stock you received on this occasion have borne the label, "incorporator," indicating

that you were one of the contributors to the building fund for the clubhouse?

Judge CARSWELL. Perhaps. I have no personal recollection.

Senator HRUSKA. Do you still have the stock certificate?

Judge CARSWELL. No, I don't have it at all. I don't remember or have any personal recollection of any such thing as a piece of paper saying it was such a stock.

Senator HRUSKA. Judge Carswell, you filed with the committee a financial statement and copies of your income tax returns. Were those individual returns, or were they joint with Mrs. Carswell?

Judge CARSWELL. They were joint returns.

Senator HRUSKA. That is the way you file your income tax returns. Is it also the way you reflected your property statement?

Judge CARSWELL. Yes, sir.

Senator HRUSKA. Would you mind telling the committee so we in turn, can inform the Senate, in general what your property holdings consist of, to the best of your recollection, of course?

Judge CARSWELL. I don't have that right before me here. I can get it if somebody would give me my briefcase, but I believe I can speak without it, because it is a rather simple story.

I own three-sixteenths interest in approximately 1,290 acres—this is not 12,000 acres as has been reported somewhere—of unimproved land which was owned by my grandfather and in turn by my father, who died in 1955. I have one sister who owns a fourth interest in this. Another sister has deeded her portion to her three children. That gives them a 12th each in interest in it. And I have deeded one-fourth of my one-fourth—that is, one thirty-second—each to my two sons, George Harrold, Jr., and Scott Carswell. This is located in Wilkinson County, Ga. The best offer we have ever received for it on a firm basis is about $100 an acre on a total, outright sale. It is difficult, however, to put a fair market value upon this property because of one factor: Within that area of the State, there is a vein of kaolin and other bauxitic ores which permeate the hillsides, and surrounding property owners have had a good deal of luck in mining clay. From time to time, my father, and since his death, through my lifetime, we have tried to get people to come in and prospect this thing, hoping it would be worth something. We went through quite a bit of this. Recently, we had one collapse on us, as a matter of fact, December 1, 1969.

Mr. TYDINGS. Mr. President, I wish to note that three additional statements which Judge Carswell made, misled the committee or at least misled me to the point where it was thought he had no prior knowledge of whatever he had been an incorporator, director, or what have you, of the Capital City Country Club.

I shall now read from the top of page 12 of the hearings.

Senator HRUSKA. Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

Judge CARSWELL. No, sir; nor in any other official capacity.

Senator HRUSKA. Did you ever attend any of the directors' meetings?

Judge CARSWELL. Never.

Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the accounts I read?

Judge CARSWELL. No, sir.

Then, on page 13 of the following appears:

Senator HRUSKA. Are you or were you at the time, familiar with the laws or the articles of incorporation?

Judge CARSWELL. No, sir.

He had seen them all the night before.

Then, down further on page 13 the following appears:

Could the stock you receievd on this occasion have borne the label "incorporator" indicating that you were one of the contributors to the building fund for that clubhouse?

Judge CARSWELL. Perhaps. I have no personal recollection.

Now, I would like to turn, with the indulgence of the Senate, to page 255—my recollection was refreshed in this matter by the Senator from Michigan—on the manner in which the incorporators were picked.

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

Mr. TYDINGS. I would like to put all this material in the RECORD and then yield to the Senator.

Mr. GRIFFIN. The Senator will recall that at an earlier point I did not have the quotation or citation from the record to substantiate a point I made. If the Senator from Maryland will give me enough time, I would like to point out for the RECORD where it occurred. Would the Senator yield to me for that purpose?

Mr. TYDINGS. Very well. But I ask unanimous consent at this point in my remarks that there be printed in the RECORD pages 256 and 257 of the hearings, with specific reference to my interrogation of Mr. Proctor, a witness for Judge Carswell who, as I recall, returned to testify in Judge Carswell's behalf. The thrust of his testimony was that Judge Carswell's name just happened to be one of the 21 names picked from a hat and had nothing to do with the fact that he was U.S. attorney. It is an interesting dialog of questions for anyone who is interested in this debate.

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

Senator KENNEDY. Now do you have a list of the directors of the old country club and the incorporators of the new Capital City Country Club? Do you have that information available?

Mr. PROCTOR. I have. It is available and I will make it available to the committee.

Senator KENNEDY. Could it be made a part of the record?

The CHAIRMAN. Oh, sure.

(The documents referred to appear in the appendix.)

Senator TYDINGS. Before you leave that point, as I understand it, you had several hundred subscribers when you decided to——

Mr. PROCTOR. Correct.

Senator TYDINGS. And you picked from those subscribers 21 persons to use as incorporators?

Mr. PROCTOR. As subscribing incorporators, correct.

Senator TYDINGS. One of those 21 names was the name of U.S. attorney for the district of northern Florida, was it not?

Mr. PROCTOR. Judge Harrold Carswell, or Harrold Carswell, right.

Senator TYDINGS. How did you happen to pick him as one of the 21 incorporators?

Mr. PROCTOR. Senator, I cannot answer that question. It is just we took 21 out of the group. I happened to be one of the 21. Why did they pick me?

Senator TYDINGS. Were you trying to pick prominent people in the community to show community support?

Mr. PROCTOR. Not necessarily. Many of them were prominent. I would not consider myself particularly prominent, and I happened to be one.

Senator TYDINGS. Did you just pick them out of a hat? How did you do it?

Mr. PROCTOR. No, we just picked out a group of 21.

Senator TYDINGS. You just did it at random? You did not particularly want to have a U.S. attorney's name in that group of subscribers and incorporators?

Mr. PROCTOR. No.

Senator TYDINGS. It was just happenstance?

Mr. PROCTOR. It just happened.

Senator TYDINGS. You just happened to pick him?

Mr. PROCTOR. Absolutely, right.

Senator KENNEDY. Were there any blacks who were incorporators or invited to participate?

Mr. PROCTOR. It was open to the public.

Senator KENNEDY. Were there any blacks who were asked to participate?

Mr. PROCTOR. I did not ask any.

Senator KENNEDY. Do you know from your own knowledge whether any were?

Mr. PROCTOR. I do not know.

Senator KENNEDY. Were there any in fact included in that list?

The CHAIRMAN. His answer was he did not know.

Mr. PROCTOR. I do not know.

Senator KENNEDY. You have the list of the 21?

Mr. PROCTOR. I have a list of the 21. I also have a list of about 400 people.

The CHAIRMAN. Ask him the questions but give him time to answer the questions.

Mr. PROCTOR. In addition to the 21 subscribers, there were about 400 other subscribers who had decided to join the country club, of which I can provide the list to the committee.

Senator KENNEDY. You are familiar with the 21 incorporators?

Mr. PROCTOR. I am.

Senator KENNEDY. Were any of those black?

Mr. PROCTOR. No.

Senator KENNEDY. To your knowledge do you know whether any of the 400 members of the club were black?

Mr. PROCTOR. I do not know.

Senator KENNEDY. Would you know if there were some black members?

Senator TYDINGS. Do you really want us to believe that you do not know whether any of the subscribers were black?

Mr. PROCTOR. There are one or two names that I would not know, and I would not answer that they were black or white.

Senator KENNEDY. Were there any blacks that played on the golf course prior to the time that it became the Capital City Country Club, that is while it was the municipal club?

Mr. PROCTOR. Wait a minute, repeat the question, please.

Senator KENNEDY. Were any black citizens permitted to play on the municipal golf course?

Mr. PROCTOR. When the city was operating it?

Senator KENNEDY. When the city was operating it.

Mr. PROCTOR. I do not know. It was a city golf course. It was open to the public. It was not a private country club. It was operated by the city, and for city revenue. The pros were hired by the city. I cannot answer that question because I am maybe a 1-day-a-week golfer.

Senator KENNEDY. What was the pattern or the practice at this time in municipal country clubs either in Tallahassee or in that area? Were the blacks permitted to play?

Mr. PROCTOR. Senator, I was not familiar with the other country clubs in that area.

Senator KENNEDY. Actually the Florida A&M golf team, which as I understand it was all black, was allowed to play there?

Mr. PROCTOR. Was allowed to play? They could have been.

Senator KENNEDY. Were you familiar with that?

Mr. PROCTOR. I am not familiar with it.

Senator KENNEDY. As I understand it they were allowed to use the course before 8 a.m. every morning.

Mr. PROCTOR. Also the Florida State University Golf Club were able to use. They could have played. I would not necessarily know.

Senator KENNEDY. At some time then in 1956 this course was turned over to a group of incorporators?

Mr. PROCTOR. That is right, May 4, 1956. Now may I bring out a point here?

Senator KENNEDY. Yes, I wish you would.

Mr. PROCTOR. You mentioned the fact about Judge Carswell's name being one of the original subscribers, and on the 21 subscribing original directors. It just happens that I was among the original 21. To my knowledge Harrold Carswell never participated during that time, never attended a meeting to my knowledge, and I attended about 93 percent or more of them.

Mr. GRIFFIN. Mr. President, will the Senator from Indiana yield to me?

Mr. BAYH. I yield to the Senator from Michigan with the same understanding.

Mr. GRIFFIN. Mr. President, I would like to read page 254 of the hearings. Mr. Proctor was testifying.

In September of 1952, the stockholders of club because of dissatisfaction with the op- the original old Tallahassee Country Club reorganized and requested the return of the eration of the club.

It will be recalled there was a provision in the deed it would be returned if it were not used by the city.

I shall continue to read from page 255:

Senator KENNEDY. When was that? That was in what year?

Mr. PROCTOR. September of 1952 when it originally began.

Senator KENNEDY. What happened in September?

The CHAIRMAN. Let him answer the question. Did you finish your answer?

Mr. PROCTOR. That continued until February 14 of 1956. At that time the city leased the golf course back to the original Tallahassee Country Club.

This is confirmed again later on page 255:

Senator KENNEDY. It was actually transferred back to this group; is that correct?

Mr. PROCTOR. That is correct.

On page 109 the story is completed in the middle of the page. Mr. Proctor testified as follows:

Then we began operating on May 4 of 1956. The old Tallahassee Country Club assigned its lease from the city to the Capital City Country Club, Inc.

I think that should pretty clearly establish there were really three corporations you were talking about and that the city, when it ceased operating the country club, turned it back to the original country club organization, of which Mr. Carswell was not a member and they assigned their lease.

Mr. TYDINGS. It is not a fact that it was the new Capital City Country Club of which Judge Carswell was an incorporator and that was in the newspapers and that is what was before our committee?

Mr. GRIFFIN. The Senator is drawing conclusions. Of course, the Senator is entitled to draw conclusions. I am trying to get the facts on the table.

Mr. BAYH. Mr. President, I would like to interpose myself here one more time. I would be glad to ask, on behalf of the Senator from Maryland, that page 255 of the hearings be printed in the RECORD.

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

Senator KENNEDY. What happened in September?

The CHAIRMAN. Let him answer the question. Did you finish your answer?

Mr. PROCTOR. That continued until February 14 of 1956. At that time the city leased the golf course back to the original Tallahassee Country Club.

Senator KENNEDY. What happened in September of 1952? Was there some kind of incorporation? Did the old stockholders get together? Was there some kind of meeting?

Mr. PROCTOR. There was a meeting of the old stockholde. .

Senator KENNEDY. How many were there of them at that time?

Mr. PROCTOR. I do not know the exact number.

Senator KENNEDY. They got together and did they petition the city at that time?

Mr. PROCTOR. They got together and they discussed it with the city commission at that time, and petitioned the city to turn the club back over to them for their private operation.

Senator KENNEDY. Then you said in 1956, February 14 of 1956, it was actually transferred back to this group, is that correct?

Mr. PROCTOR. That is correct.

Senator KENNEDY. And was the group that it was transferred to in 1956 the same group of stockholders that met in 1952? Were there others who were added to that group?

Mr. PROCTOR. There were others who were added to that group, and they formed a new club. This same group combined with a group of other interested citizens, and formed the Capital City Country Club, Inc. They filed for a certificate of incorporation on April 24 of 1956.

Senator KENNEDY. As I understand it, one of those incorporators was the nominee, Judge Carswell; is that correct?

Mr. PROCTOR. One of the original subscribers was Judge Carswell. We had some 300-odd subscribers at that time.

Senator KENNEDY. Now this was an added membership over the 1952 meeting, was it not?

Mr. PROCTOR. That is correct.

Senator KENNEDY. Could you give us any idea of how many were added to it and how many were original stockholders?

Mr. PROCTOR. Original stockholders back in 1924, Senator? I do not know. It was 35 maybe.

Senator KENNEDY. The group that met in 1952 was approximately how large? Are you talking about two or three or 15 or how many?

Mr. PROCTOR. I do not know. I am talking about probably 15 to 20. They were heirs, and those members who had received this original stock.

Senator KENNEDY. And the club itself, of which the 1952 group had been stockholders, was a private country club, was it not? They had been former members or stockholders in a private country club?

Mr. PROCTOR. Some of them were original stockholders. Others were families of original stockholders.

Senator KENNEDY. And it had been a private country club?

Mr. PROCTOR. It had been a private country club from 24 to 35, at which time the city took it over and operated it at their request, and with their cooperation.

Mr. BAYH. Mr. President, we are all going to do the best we can to look at the facts and place what we feel is a correct interpretation on them. What concerns me, and in fact galls the Senator from Indiana, is that in his letter to the Senator from Ohio (Mr. SAXBE) of this week the President called charges of lack of candor as being specious. I suppose that applies to all of us who are a bit concerned.

Having sat through hearings, I am well aware of the fact that there was not just one country club corporation. But whether there was one, two, three, or four, the facts of the matter which really go to the heart of this situation, as far as I am concerned, are that the judge was informed of his signature on these corporation papers the night before; and in the interrogation we all heard discussed back and forth, he denied it. Why he did that I do not know but I think it is a matter of some concern.

The other point, in addition to whether he signed the articles of incorporation or not. was the whole purpose of the existence of this new corporation or corporations. Every Senator can form his own judgment, but the record will show, for anyone who cares to read it, that the time of this new corporation was immediately following the Supreme Court decision which said public facilities could not be segregated.

That public facility, I think undeniably, was segregated except for a very early period when members from a black college golf team could use it. So one has to be concerned whether the whole pupose of this new corporation was just to build a new swimming pool or club house, or more basic, to subvert the prohibition against segregation of public facilities that had recently been promulgated by the Supreme Court.

Mr. GURNEY. Mr. President, will the Senator yield at that point?

(At this point Mr. HART assumed the chair.)

Mr. BAYH. I will be glad to yield but I wanted to finish this one thought because this is what really concerns me when we go to this business of candor.

So there is a whole series of events that did in fact happen. I do not think anyone who wants to read the record can deny that they happened in this sequence. One could say it was mere circumstance or happenstance, but they did happen.

Mr. GURNEY. I wish we could get this in the RECORD at this point——

Mr. BAYH. The Senator from Indiana is going to continue. Then he will be glad to yield to his friend from Florida.

On page 69 of the hearings, I asked Judge Carswell the following question:

You had no personal knowledge that some of the incorporators might have had an intention to use this for that purpose?

That was after having dealt with the matter of the Supreme Court decision and the thrust on the part of some that the purpose was to thwart the Supreme Court determination.

Judge Carswell said, as appears on page 69 of the hearings:

I certainly could not speak for what anybody might have thought, Senator. I know that I positively didn't have any discussion about it at all. It was never mentioned to me. I didn't have it in mind, that is for sure.

I think it is a bit too much to ask Senators or the citizens of this country to expect that Judge Carswell—who was a prominent member of the community, who had been a Federal district attorney; there had been cases in the State of Florida at that very time; there was a case in Pensacola that was in the works at that very moment—would not have at least known of this effort. It strains credulity almost to the breaking point to believe that he would not have at least known of it, and thus would have been able to take steps to disassociate himself and not become involved.

I think it is interesting to note that the well-known columnist, James Kilpatrick, wrote that "He must have been the only one in north Florida who did not know."

Another Florida attorney, Neal P. Rutledge of Miami, was in Tallahassee for several months in late 1955 and early 1956. Mr. Rutledge in a telegram to me on March 19 said:

It was common knowledge in the community there at that time, and especially among members of the Bar, that the dominant motive for transferring the operation of the Tallahassee Golf Club from public to private club auspices was to prevent racial integration of the facilities. It is impossible for me to believe that any prominent member of the Tallahassee community at that time, such as then United States Attorney Carswell, was not fully aware of both this general, almost universal sentiment prevailing among the white citizens of Tallahassee in 1956 and the specific dominant motive for leasing the Municipal Golf Club to a private group.

Now I am glad to yield to the Senator from Florida.

Mr. GURNEY. I thank the Senator. I think we ought to complete the record, because it is extremely important. We have part of it.

As I view this matter, one can judge the answer of Judge Carswell to the first question during that whole day in light of the whole testimony.

I turn to page 257 of the hearings, to the testimony of Mr. Proctor, who was the Mr. Proctor who solicited $100 from Judge Carswell and was one of the main organizers of this venture, the Capital City Country Club. Starting at the bottom of page 257, Mr. Proctor said:

You mentioned the fact about Judge Carswell's name being one of the original subscribers, and on the 21 subscribing original directors. It just happens that I was among the original 21. To my knowledge Harrold Carswell never participated during that time, never attended a meeting to my knowledge, and I attended about 93 percent or more of them. He took no active interest at that time in the development of the Tallahassee Country Club.

On May 4, 1956, the Tallahassee Country Club assigned its lease to the new Capital City Country Club, Inc.

Senator KENNEDY. And Judge Carswell was an incorporator, was he not?

Mr. PROCTOR. He was one of the original incorporators.

Senator KENNEDY. And he actually signed——

Mr. PROCTOR. He signed as one of 21 subscribing members.

Senator KENNEDY. And he received a stock certificate, did he not?

Mr. PROCTOR. He did not.

Senator KENNEDY. He did not?

Mr. PROCTOR. No, because we were in the formative stage of the club. The dues were set, $300. We paid, some of us paid $100 at the time.

That is what the judge testified to, if the Senator will recall—

In order to have sufficient money on hand for the incorporation. Judge Carswell was one of those who paid the $100.

On September 1, 1956—

This is interesting, because it proves what I said, that this corporation did not do anything in the beginning—

On September 1, 1956, the Capital City Country Club, Inc., took the lease over from the Tallahassee Country Club. They still had not issued the stock.

On September 4, 1956, the Capital City Country Club, Inc., had its first annual stockholders' meeting. Forty-two names were proposed as the original stockholders of the new club. Harrold Carswell's name was among those 42. He was not elected to the board of directors. They elected 21 directors out of 42. He was not among those elected.

Senator KENNEDY. Now at some time did he receive a share of stock?

Mr. PROCTOR. No. It was on February 3 of 1957, before the stock had been issued, that Carswell withdrew, requested that he be withdrawn as a member and wrote a letter to that effect.

Just a moment ago the Senator from Indiana said he never gave any indication that he wanted to disassociate himself from that venture.

Mr. BAYH. The Senator alleges that the Senator from Indiana said something. When did I say he never made any effort to disassociate himself?

Mr. GURNEY. During the colloquy.

Mr. BAYH. He signed the document; did he not?

Mr. GURNEY. I am talking about disassociating himself from the venture; and here it is.

Mr. BAYH. The Senator from Indiana helped make that record. He did not sign the second document. He did sign the first document. I think it rather obvious that the first one was signed and then the second one in order for it to go defunct so that it would be established as a segregated club.

Mr. GURNEY. The Senator can argue all he wants, but I think the RECORD ought to be complete.

Mr. BAYH. I will be glad to yield again.

Mr. GURNEY. Mr. Proctor went on to say:

No. I say a letter. I do not know exactly if it was by letter for actually at that time we do not have the records so I stand corrected. He requested that his name be withdrawn. On February 12 of 1957; Carswell was refunded $76 of the $100. I do have a copy here of the date in which he along with that many who were refunded their money, which I will be happy to pass over to the committee.

Mr. President, I ask unanimous consent to include in the RECORD at this point the petition of the second country club, which appears on pages 360, 361, 362, 363, and 364 of the hearings.

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

[In the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida]

PETITION IN RE: MATTER OF CAPITAL CITY COUNTRY CLUB, INC.

Comes now Capital City Country Club, Inc., by Blair C. Stone, its President, subscriber to the following proposed charter and to this Petition and, presents this, its proposed charter, for the approval of the Hon. Hugh M. Taylor, Judge of the Circuit Court, in and for Leon County, Florida, respectfully saying:

1. That, heretofore, on the 24th day of April, 1956, Capital City Country Club, Inc., was incorporated, as a corporation for profit, under the Laws of the State of Florida.

2. That such corporation, from its inception, became engaged solely in carrying out the purposes and objects for which corporations not for profit and authorized under the Laws of Florida to carry out.

3. That, heretofore, on January 29, 1957, Blair Stone, Paul H. Brock, Robert C. Parker, Charles S. Ausley and Godfrey Smith who are all officers and/or directors of this Petitioner, acting on behalf of this Petitioner, Capital City Country Club, Inc., petitioned the Hon. W. May Walker, Judge of the Circuit Court, in and for Leon County, Florida, for approval of a proposed charter for Capital City Country Club, a non-profit corporation, which said charter, having been approved by the Court, was recorded in Corporation Book 6, page 87–90 on January 29, 1957, in the Public Records of Leon County, Florida.

4. That the purpose and intent of your Petitioner in seeking and obtaining a non-profit corporate charter for Capital City Country Club, was that such non-profit corporation should succeed to all of the rights, assets, duties and liabilities of your Petitioner, Capital City Country Club, Inc., the profit corporation.

5. That by Chapter 57–90, General Laws of 1957, Regular Session, which act became effective on May 13, 1957, the Legislature provided that any profit corporation which has transferred, or is in the process of transferring, its functions and assets to a non-profit corporation, shall, upon the recital of the facts, circumstances and intentions surrounding such transfer proceedings, in a petition filed before the Circuit Court, and the subsequent approval thereof, be deemed to have acted in a manner so that the non-profit corporation should succeed to the rights, liabilities and assets of its corporate predecessor, the same as if the original petition had been filed in accordance with the provisions of Chapter 617, which provides, in substance, that a corporation for profit engaged solely in carrying out the purposes and objects for which corporations not for profit are authorized, may change its corporate nature by the filing of a Petition before this Court.

6. That it is, and has been, the purpose and intention of this Petitioner to bring about the transfer of its functions and assets to Capital City Country Club, the non-profit corporation, within the terms, provisions and purview of Chapter 57–90, Laws of 1957 and Section 617.16, 617.17, 617.18 and 617.19, Florida Statutes, 1955.

7. The name of this corporation shall be Capital City Country Club, and its principal office and location shall be in Tallahassee, Lion County, Florida.

8. The purposes for which this corporation is formed are as follows:

A. To maintain a club house, grounds and other physical plant for the benefit of its members, to promote social intercourse and to further athletic sports and recreational activities, particularly the game of golf.

B. To solicit, collect, receive, hold, invest, reinvest, distribute and disburse donations, subscriptions, gifts, bequests and other funds for the purposes of this corporation.

C. To engage in any charitable, eleemosynary, educational or other activity which may be necessary to effect and carry out the purposes of this corporation, and the doing of any and all things necessary or incident thereto.

9. Any person shall be admitted to membership in this corporation subject to the requirements and limitations upon member-

ship as may from time to time be fixed and established by the by-laws of the corporation or by its Board of Directors.

10. This corporation shall commence on the 29th day of January, 1957, and shall have perpetual existence.

11. Names and residence of the subscribers to this proposed charter are as follows:

Blair C. Stone, President, Tallahassee, Florida.

Paul H. Brock, Jr., Secretary, Tallahassee, Florida.

12. The affairs of this corporation shall be managed by a President, Vice President, Secretary and Treasurer, together with a Board of Directors composed of not less than five (5) members, nor more than thirty-one (31) members, of this corporation who shall be elected by the membership thereof at each annual meeting of the corporation, for terms as provided by the by-laws, provided that, the number of members of the Board of Directors may, from time to time, be diminished or enlarged, within the above set forth limits, by a vote of two-thirds (⅔) of a quorum of the members present at any meeting.

13. Until the first election of officers and directors shall be held, the present officers and directors of CAPITAL CITY COUNTRY CLUB, INC., a corporation for profit, shall serve as the officers and directors of this corporation in the same respective capacities in which they serve in CAPITAL CITY COUNTRY CLUB, INC. The present officers and directors of CAPITAL CITY COUNTRY CLUB, INC., and the officers and directors of this corporation hereby designated to serve until the first election shall be Sydney D. Andrews; Charles S. Ausley; Paul H. Brock, Jr., Secretary; Wilson Carraway; Robert C. Parker, Vice President; Julian M. Proctor; Blair C. Stone, President; Mark Ahrano; Ernest C. Daffin; Ryals Lee; B. Cheever Lewis, Treasurer; Payne Midyette, Sr.; Godfrey Smith; Julian V. Smith; C. H. Belvin; M. R. Clements; Leo Foster; James M. Lee, Jr.; Frank Pepper; S. V. Steyerman; J. Edwin White.

14. The by-laws of this corporation shall be made, altered, amended or rescinded by the directors subject to the approval of a majority of a quorum of the stockholders.

15. The highest amount of indebtedness or liability to which this corporation may subject itself shall be $500,000.00, or two-thirds (⅔) of the value of the property of this corporation, whichever figure shall be the lesser.

16. This corporation may own real estate in the value of not more than $1,000,000.00.

17. CAPITAL CITY COUNTRY CLUB agrees to accept all of the property of the petitioning CAPITAL CITY COUNTRY CLUB, INC., and further agrees to assume and pay all its indebtedness and liabilities.

18. Attached hereto is a certified copy of the resolution duly adopted by the stockholders authorizing the change in corporate nature and directing an authorized officer to file this Petition before the Court.

WHEREFORE, your Petitioner prays that the Court will

1. Approve the proposed charter contained herein, and

2. Find that the Petitioner, CAPITAL CITY COUNTRY CLUB, INC., acted under the terms, provisions and within the meaning and purview of Chapter 57-90, Laws of 1957.

CAPITAL CITY COUNTRY CLUB, INC.
BLAIR C. STONE, *President*.

Attest: PAUL H. BROCK, JR.,
Secretary.

Mr. GURNEY. I simply wish to say that that petition of the second club—that was on January 29, 1957—sets forth the officers and directors of the first club, and Harrold Carswell's name is not a part of it.

Here, I realize how we can differ in our interpretation, but having read the record and the testimony, as I did, just as the Senator from Indiana listened to the testimony, and examining the record of the first incorporation and the second incorporation, it seems evident that he really never took part in the first corporation as a director. He had no part in the meetings. The testimony in the record shows that. It seems to me that, in all honesty, he might well have made an answer that he was not an incorporator of the country club, the main topic before it, as well as on the floor here today, being that the club was organized because of the problem of segregation.

The whole testimony, viewed in this Senator's interpretation, is that he was thinking of the second club, which actually did the business of running the golf course.

Mr. BAYH. The Senator from Florida is entitled to his own opinion.

Mr. GURNEY. I realize interpretations can differ.

Mr. BAYH. I guess that is what makes the Senate a great body. As we look at this thing, it reminds me of a story that used to be told by a great friend of mine who was an officer of our Indiana State Legislature when I had the great privilege of being there. At almost every session, he had the occasion to tell the same story. When there were great differences of opinion on what seemed to be a relatively simple state of facts, he would talk about asking a blind man to describe an elephant. It all depends, of course, on what part of the elephant the blind man touches.

We are just looking at these facts, I suppose, from a different standpoint. I think it is important, if we are going to look at the record, to point out, at the risk of being a pedant, that while all this was going on, and while the judge did sign the first incorporation papers and was an incorporator, this was a rather critical period relative to what the Supreme Court said was the law of the land, and how public facilities could be used.

I tried to find out whether the judge was really aware of these things going on, to support the suggestion that he really was not aware. But if you look at the record on page 69, it reads:

Senator BAYH. Were there problems in Florida relative to the use of public facilities and having them moved into private areas——

Judge CARSWELL. As far as I know, there were none there and then in this particular property that you are talking about.

Senator BAYH. You weren't aware of other cases in Florida——

Judge CARSWELL. Oh, certainly, certainly. There were cases all over the country at that time, everywhere. Certainly I was aware of the problems, yes. But I am telling you that I had no discussion about it. It was never mentioned to me in this context, and the $100 I put in for that was not for any purpose of taking property for racial purposes or discriminatory purposes.

Senator BAYH. You were aware that the Supreme Court had previously, sometime before that, come down with an order prohibiting this type of thing?

Judge CARSWELL. Yes, sir; I am aware of the decision of the Supreme Court.

Senator BAYH. Well, I don't want to dwell on this at length, but I think we need to nail down that Judge Carswell has, after that one intemperate statement, been involved in a steady sequence of events which tend to repudiate it; and it concerns me, very frankly, for you incidentally to be involved at the time you were district attorney in the incorporation of a club at least some of the members of which have made public allegations that the purpose of this was to avoid the integration order which had been previously set down by the Supreme Court of the United States and which, 1 month after incorporation, was ordered relative to another court in Pensacola, in your own State. This concerns me. You had no knowledge of this *Pensacola* case, because it came down a month afterward. But one has to wonder if the district attorney wasn't aware that this activity was going on in the State of Florida.

Judge CARSWELL. Certainly, I was aware, Senator, that these things were going on.

That is what concerns me.

Mr. TYDINGS. Mr. President, will the Senator yield at that point?

Mr. BAYH. I am glad to yield.

Mr. TYDINGS. Is it not a fact that the distinguished editorial writer, James J. Kilpatrick, endorsed Mr. Carswell for the Supreme Court?

Mr. BAYH. Well, I——

Mr. TYDINGS. The Senator can take it from me that he did.

Mr. BAYH. I quoted earlier from Mr. Kilpatrick.

Mr. TYDINGS. I am going to quote again from an article which appeared in the Washington Star of March 24, 1970, in which Kilpatrick endorsed Mr. Carswell, but, on the issue which is raised by the Senator from Indiana, he stated—and this is a pro-Carswell writer:

My own enthusiasm for Carswell is diminshed by his evasive account of his participation in the golf club incident of 1956.—

This, mind you, is a pro-Carswell writer in an article in which he endorsed Carswell.

He took an active role, not a passive role, in transfer of the Tallahassee municipal golf course to a private country club.

Forgive my incredulity, but if Carswell didn't understand the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand it. But it was "never mentioned to me," and "I didn't have it in my mind, that's for sure."

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

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

CARSWELL PROVED TO BE AN ABLE DISTRICT JUDGE

(By James J. Kilpatrick)

Some of the attacks that are being made upon Judge G. Harrold Carswell, and some of the impressions being pumped up in the phony groundswell against him, prompt a few words of rejoinder by one of the judge's unenthusiastic supporters, namely me.

The charges have to do with his record as a U.S. district judge, and with the testimonials for and against his elevation to the Supreme Court.

Carswell served as a federal judge in the Northern District of Florida from 1958 to 1969. The complaint is made that he left an "undistinguished" record behind, that he was frequently reversed by his circuit court and that his written opinions in this period are the products of a mediocre mind at work.

Such an appraisal, it seems to me, is predi-

cated upon a fundamental misunderstanding of the function of a district judge. His duty is not to erect great landmarks of the law. He does not sit as a philosopher, innovator, or architect. His principal responsibility is to dispose efficiently of the great mass of routine litigation coming before him.

Viewed in this light, the Carswell record suggests a competent, no-nonsense practitioner on the bench. As a district judge, he tried some 2,000 civil cases and an estimated 2,500 criminal cases. He kept his backlog down. And if he fired off no Roman candles of obiter dicta, so much the better.

For an example of the absurdity of some of the criticism voiced against him, consider this heavy-breathing accusation from the Ripon Society: "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 was on the district bench was 4.2 pages."

These calculation were made, at heaven knows what tedious labor, "to the nearest tenth of a page." The analysis tells us more of the desperation of the Ripon critics than it does of the mediocrity of Judge Carswell.

The big push against the nominee last week had to do with testimonials pro and con. It is being made to appear that nobody—but nobody—has had a good word to say of him. Great weight is being attached to a full-page ad signed by 350 lawyers and law professors opposed to his confirmation. It is remarked, significantly, that Carswell's colleagues on the 5th Circuit, Judge John Minor Wisdom, has come out publicly against him.

By way of response, it may be suggested that most of the anti-Carswell crowd take one view of the law—a sort of flexible view—and they surmise, by the fact of President Nixon's sponsorship of the nominee, that Carswell on the high court would take a different view. They do not want such a judge confirmed; and that is their privilege. But their hostility to a Southern strict constructionist is not necessarily evidence of Carswell's unfitness.

As for Judge Wisdom, he is known to conservatives as a kneejerk liberal, and some say the appellation could be shortened. Carswell has the solid endorsement of the Florida State Bar Association, through its unanimous board of governors.

Professor James William Moore of the Yale Law School, who got to know Carswell closely in formation of the Tallahassee Law School, describes him as a man of "great sincerity and scholarly attainments, moderate but forward-looking, and one of great potential."

My own enthusiasm for Carswell is diminished by his evasive account of his participation in the golf club incident of 1956. He took an active role, not a passive role, in transfer of the Tallahassee municipal golf course to a private country club.

Forgive my incredulity, but if Carswell didn't understand the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand it. But it was "never mentioned to me," and "I didn't have it in my mind, that's for sure."

Okay. Let it pass. On the whole record, Carswell is better qualified by experience than scores of nominees who have successfully preceded him. The high court is hurting for want of a ninth member. The sooner he is confirmed, the sooner he can get on with the business of building a new record to prove his critics wrong.

Mr. BROOKE. Mr. President, will the Senator yield? I think we ought to include at that point——

Mr. BAYH. Let me make just one observation, and I shall be glad to yield.

This whole business of credibility, I think, is a fundamental attribute that any judge or Senator ought to have. I can see how any of us can stumble into an embarrassing situation. I do not suppose there is one of us in this body who has not.

But why, given all the thorough preparation and memory stimulation the night before, did not the judge come right out and say, "Sure, I signed it. Perhaps I should not have. Perhaps I should have. But I signed it, and, sure, I was aware that this was going on in the community. That was several years ago. I am not doing that type of thing any more. I don't think I should have done it then."

I yield to my colleague from Massachusetts.

Mr. BROOKE. I think it is very important to point out that at the time the judge joined this corporation and became an incorporator and a member of the corporation, he was the U.S. attorney for that district of Florida. He was sworn to uphold and defend the law and to enforce the law. Here, then, is a man who was under oath to enforce the law of the land joining in a device to circumvent the very law which he had sworn to uphold, defend, and enforce.

To me, this is even more damaging than a private citizen or a politician or someone of that nature doing the same thing, because as a district attorney he had an added responsibility.

Mr. BAYH. The only thing, if I might interpose one additional thought, that makes it a matter of deeper concern, was the effort that has subsequently been made to deny that this was the whole purpose of the incorporation.

Mr. BROOKE. I think the Senator from Indiana and the Senator from Maryland have been trying to point out that the credibility of Judge Carswell is at issue here. We have the fact that the night before he knew, and the next morning, under oath, he denied, that he was an incorporator of the club.

My distinguished assistant minority leader has said:

But minutes later he corrected the error that he made earlier.

As I read the record, the first Senator to interrogate Mr. Carswell in the Committee on the Judiciary hearings was the Senator from Nebraska (Mr. HRUSKA). That was right after the committee convened, because I believe the chairman turned the matter over immediately to Senator HRUSKA for interrogation, and it was not until he was questioned by Senator KENNEDY, later on—and I think Senator KENNEDY was the last Senator to interrogate Judge Carswell, just prior to the recess at 12:30 on that day—that the error was ever corrected, point is, Mr. President, that Judge Carswell never volunteered any correction of this error. It was only upon rather lengthy interrogation by Senator KENNEDY that he did correct it in fact.

I think the language that was used by Senator KENNEDY and the answers by Judge Carswell are very important. We as lawyers certainly know that you sometimes have to look at the small things in order to determine whether a man is telling the truth or not. You look at the way in which he responds, whether he is evasive or whether he is direct, for example.

As shown on page 31 of the record, Senator KENNEDY asked him:

Earlier today, you responded to the inquiries of the Senator from Nebraska on the golf course down at Capital City Country Club. This was, as I understand it, in regard to a newspaper report that was in this morning's paper, and you responded to him, to the question of the Senator from Nebraska, that you thought it was principally an effort to build a clubhouse.

Judge Carswell's response:

My sole knowledge of that matter had to do with a conversation with a friend named Julian Smith in Tallahassee, who approached me and virtually anyone else, as I recall. He was trying to get the $100 apiece from anyone to build a new country club. I gave him $100. I then received some kind of message that I had a share or stock in this thing. I did receive it, and some several months later, as I have already stated, I sold it and got out of the thing entirely and got $75 back. This is my sole connection with that. I have never had any discussion or never heard anyone discuss anything that this might be an effort to take public lands and turn them into private hands for a discriminatory purpose. I have not been privy to it in any manner whatsoever.

The distinguished Senator from Florida just read from some testimony of Mr. Proctor which would indicate that Judge Carswell never received a share of stock in the corporation. Judge Carswell says he did receive a share of stock in the corporation. Not only did he say he received it, he said:

He was trying to get the $100 apiece from anyone to build a new country club. I gave him $100. I then received some kind of message that I had a share or stock in this thing. I did receive it, and several months later, as I have already stated, I sold it and got out of the thing entirely and got $75 back.

Certainly that is clear English. There is no ambiguity at all. The fact is that he is testfying that he did put in $100, that he did receive a share of stock, that he did sell that share of stock subsequently, and that he did get back $75.

There obviously is an inconsistency in what he had testified before the committee and what Mr. Proctor has testified before the committee.

Again I raise the question of credibility. Is this a mistake on the part of Judge Carswell, or is this a mistake on the part of Mr. Proctor? This is a matter which certainly, through proper hearing before the Senate Judiciary Committee, after the motion to recommit, we could clarify. I think these questions certainly should be resolved.

I think the proponents of Mr. Carswell are not taking this matter seriously enough. Here is a man who would like to sit on the Supreme Court of the United States, and not in one instance but in many instances now his credibility has been challenged. Do we want a man on the Supreme Court whose credibility has been challenged and the issue has not been resolved? In fairness to Judge Carswell, as well as to the Supreme Court and to the President who appointed him, to the Senate, and to the Nation, we ought to resolve these questions of doubt.

I think it is unfair to send a man to the Supreme Court as long as these

clouds are above him, as long as these suspicions are there, as long as these questions about his credibility exist. Time after time after time now evidences of doubt have appeared in the record.

I think this is as proper and as valid and as strong a case for recommittal perhaps we have ever had. I know that some have argued that recommittal is a subterfuge just to get rid of Judge Carswell. We have been debating primarily the case for an up-and-down vote on confirmation. But since that time many issues have come to light which we did not have before us before, which now fully justify a motion to recommit.

All I am suggesting to the proponents of the nomination of Judge Carswell is that the Senate has a right to know, and the people have a right to know, whether Judge Carswell is telling the truth. If he is telling the truth, perhaps he is qualified to sit on the Supreme Court, taking into consideration other qualifications. If he is not telling the truth, I do not care what other qualifications he has. Then I say he is not qualified to sit on the Supreme Court of the United States, if he comes before a Senate Judiciary Committee, sitting on his nomination, and deliberately tells them an untruth. How can we expect respect for order, how can we expect respect for law and justice in this country, if we confirm the nomination of a man whom we believe to be telling an untruth? We can only know that he is not telling an untruth if we go back to the Judiciary Committee, bring in these witnesses, and clear up the doubts that have been raised against him.

I thank the Senator for yielding.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. BYRD of West Virginia. I wish to ask the Senator a question which is not intended to be a flippant one, but is intended to be a serious one.

The Senator has graciously yielded to a number of Senators a number of times in this extended colloquy, and the Senator is laboring here tonight under greater burdens than are the rest of us. The hour is late. It is 5 minutes to 8 o'clock. We will be in session again tomorrow. We are coming in at 10 a.m. tomorrow, and there will be three special orders, none of which will extend beyond a half hour. Statements by other Senators on the Carswell nomination can also be made tomorrow.

I wish to ask the able Senator from Indiana how much longer he expects to speak if uninterrupted.

Mr. BAYH. I think the Senator does pose not a flippant but a serious question.

I think that perhaps the hypothetical question is beyond the realm of reason. Inasmuch as we have had a considerable amount of discussion—and I think most of it has been very much to the point—I would say, directly answering the specific question, perhaps 10 or 15 minutes, and perhaps another 15 minutes or a half-hour of discussion.

The Senator from Indiana regrets keeping his colleagues in at this late hour. I feel that the gravity of this nomination is such that at least the Senator from Indiana wants to take advantage of this opportunity to express himself. He does not ask anybody else to stay with him. Because of certain personal problems, of which the Senator from West Virginia is aware, the Senator from Indiana will not be able to be in the Senate tomorrow, and it is for that reason that I feel this is the opportunity I must take to express myself fully relative to the Presidential letter. That is why we are here.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield further?

Mr. BAYH. I yield.

Mr. BYRD of West Virginia. Let me say further that I recognize the necessity for the Senator's speech this evening, and there was not meant to be in my question any implication that the able Senator from Indiana was delaying the rest of us. I have been sitting here, and I know a colloquy has developed, and it has not been the Senator from Indiana solely who has spoken. Certainly, no reflection is intended to be cast upon any Senator who has participated in the colloquy. Every Senator has acted within his rights.

I merely wanted to determine how much longer the able Senator's speech would require if he were to be permitted to proceed without interruption. I would hope that the Senator would be allowed to proceed without interruption except for questions and complete his speech, and then if other Senators want to speak, we could go from there. Perhaps this suggestion would expedite matters tonight. If other Senators wish to speak further on this subject, perhaps we could get some additional orders for tomorrow and even come in earlier than 10 o'clock.

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

Mr. BROOKE. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virginia. The Senator from Indiana has the floor.

Mr. BROOKE. Mr. President, will the Senator yield for a question?

Mr. BAYH. I yield.

Mr. BROOKE. The distinguished acting majority leader has posed a very important question. The Senate, as I understand it, will come in at 10 a.m. tomorrow, and there will be, for about an hour and a half, three speeches of 30 minutes each.

Mr. BYRD of West Virginia. That is correct.

Mr. BROOKE. I understand that after that there will be an important resolution that is the pending business which will come before the Senate. That would mean that there is a possibility that tonight would end the debate on Judge Carswell until such time as the Senate convenes on Monday, at 10 a.m.; at that time we have 3 hours remaining, to be divided equally between the proponents and the opponents.

Some matters of grave importance have come before the Senate concerning the Carswell matter, and it would seem to me that the acting majority leader could perform a great service if he could assist in freeing time on the floor tomorrow for further debate on the Carswell matter after the conclusion of the three 30-minute speeches. I think that if that is not done, that will be the only time left to those who wish to discuss this important issue and matters that have come to light of recent vintage. That will be the only time left to those Senators who want to talk on these matters.

I know that the Senator may not have the authority to do so at this time, as the hour is late, and he does want to be considerate. But we certainly would like an opportunity subsequently, and prior to Monday morning, to continue this important debate on the Carswell matter.

Mr. BYRD of West Virginia. Mr. President, if the Senator from Indiana will yield so that I may respond, I know of no reason why there will not be opportunity tomorrow to discuss the Carswell nomination further. The so-called germaneness rule, paragraph 3 of rule VIII, applies only for 3 hours—3 hours following the laying before the Senate of pending or unfinished business. Pending business of some minor nature may be laid before the Senate by the majority leader immediately upon the securing of the floor under the previous order by the able Senator from Michigan (Mr. GRIFFIN), if, of course, Mr. GRIFFIN should yield for that purpose.

That would then be the pending business. He may do that 5 minutes after we come in at 10 o'clock, and then the Pastore rule would begin operating at that point for 3 hours, even though the business were disposed of by unanimous consent and without debate.

As long as there is no business laid before the Senate following that, concerning which statements must be germane, Senators can talk about anything. But the 3 hours continue running. After the 3 hours have been consumed, regardless of what business we may have before the Senate, it is the right of any Senator, if he can get the floor—and under the rule, the President of the Senate is supposed to recognize the Senator who first seeks recognition—it is the right of any Senator once the germaneness rule no longer operates, to talk on any subject he wants.

If the Senator from Massachusetts would like to discuss this nomination further tomorrow, he can do so and he could not be precluded, once that 3-hour rule had passed. Even during the 3-hour period, the Senator may ask unanimous consent to waive the Pastore rule, and failing that, he can move to do it.

Statements can also be made on the Carswell nomination during morning business if a period for morning business is ordered and Senators permitted to make speeches therein. I really think there will be ample time tomorrow for further discussion of this nomination, so I cannot see the difficulty the Senator envisions. Moreover, the pending Senate resolution is not bound to be finally acted upon tomorrow.

Mr. BROOKE. I thank the distinguished Senator from West Virginia. In his customary, knowledgeable manner, he has described the recourses which are available to us. I thank the Senator for that assurance.

Mr. TYDINGS. I should like to comment in response to the distinguished

Senator, with regard to the conference, but I have already inserted a speech which I had originally scheduled to give at 3 o'clock today, which would have taken an hour and a half if delivered. However, there are certain points in the speech of the distinguished Senator from Indiana with respect to the President's position on the historical responsibilities of the Senate as to advise and consent, so that I wish to join him in asking certain questions and give certain material for the RECORD, so that his delivery may be delayed by some 15 or 20 minutes by reason of the questions and the material I shall place in the RECORD.

Mr. BAYH. I shall be here as long as those who are interested in this matter care to discuss it.

Mr. President, I think we have had a rather thorough discussion, for the consideration of all who may read the RECORD, on the President's accusation that the charge of lack of candor is specious. So, let the RECORD speak for itself.

I ask unanimous consent to have printed in the RECORD an editorial published in the Washington Post on March 27, entitled "Judge Carswell: A Question of Candor."

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

JUDGE CARSWELL: A QUESTION OF CANDOR

It is not normally our practice to publish letters to the editor which are released to the press before we have even received them but we make an exception in today's letters column out of courtesy to Senators Hruska, Allott, Dole and Gurney, and because a crucial issue is involved. The senators have chosen to see in a news story, on the front page of this newspaper on Thursday, "charges" made in "desperation" on the eve of a vote on the nomination of Judge Carswell to the Supreme Court. Leaving aside the question of who may or may not be desperate in this matter at this moment, no charges, let alone desperate charges, were made in that story; it consisted of a simple, chronological recital of a set of facts which, taken together, show that Judge Carswell's memory about his role in the affair of the segregated golf club had been thoroughly refreshed *the night before* he appeared at a Senate hearing in which he gave every indication from his testimony that he could barely remember anything about it and hadn't given it a thought for years.

The senators are right in saying he first denied he had been an incorporator—that is, had signed the papers giving birth to the club—but later modified that and eventually, under questioning from Senator Kennedy who had the papers in his hands, said he had signed them. At the time, the sequence led us and, we suspect, others to believe that the judge had forgotten about the details of the incident. Now, learning about the meeting the preceding evening when he was questioned about the club and shown the incorporation papers he had signed, you have to wonder how hazy his memory really was; certainly it improved markedly as the questioning became more persistent and it began to appear that the senators had evidence in hand.

Thus, the real issue is not whether Judge Carswell misled the committee about his role as an incorporator but whether he misled it into thinking he had forgotten all about that until the morning of his testimony when he suddenly saw news stories concerning it. This, as well as a basic question of whether he was candid in saying he knew nothing about a motivation in this transaction to convert public property to private use in order to avoid desegregation, is best resolved by reprinting excerpts of what he said. Bear in mind, in reading the following extracts, that Judge Carswell had discussed this very question at length *the preceding night* with two representatives of the American Bar Association, who brought along for his inspection a copy of the articles of incorporation of the club.

"Senator HRUSKA. Now, this morning's paper had some mention that you were a member of a country club down in Tallahassee. I am confident that you read the account. I would be safe in saying all of us did. You are entitled to tell your side of the story and tell us just what the facts are.

"Judge CARSWELL. I read the story very hurriedly this morning, senator, certainly. I am aware of the genuine importance of the facts of that. Perhaps this is it now. I was just going to say I had someone make a phone call to get some dates about this thing. This is not it. (Noting a paper on his desk). I can only speak upon my individual recollection of this matter. I was never an officer or director of any country club anywhere. Somewhere about 1956, someone, a friend of mine—I think he was Julian Smith—said, we need to get up some money to do something about repairing the little wooden country club, and they were out trying to get subscriptions for this. If you gave them $100, you would get a share in the stock in the rebuilding of the clubhouse. I did that. Later . . . I was refunded $75 of that $100 in February of the following year, 1957 . . . The import of this thing, as I understand it, was that I had something to do with taking the public lands to keep a segregated facility. I have never had any discussion with any human being about the subject of this at all. This is the totality of it, senators. I know no more about it than that.

"Senator HRUSKA. Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

"Judge CARSWELL. No, sir; nor in any other official capacity.

"Senator HRUSKA. Did you ever attend any of the director's meetings?

"Judge CARSWELL. Never.

"Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the accounts I read?

"Judge CARSWELL. No, sir.

* * * * *

"Senator HRUSKA. Are you or were you at the time, familiar with the by-laws or the articles of incorporation?

"Judge CARSWELL. No, sir.

"Senator HRUSKA. Could the stock you received on this occasion have borne the label, 'incorporator,' indicating that you were one of the contributors to the building fund for the clubhouse?

"Judge CARSWELL. Perhaps. I have no personal recollection.

* * * * *

"Senator KENNEDY. Did you in fact sign the letter of incorporation?

"Judge CARSWELL. Yes, sir. I recall that.

"Senator KENNEDY. What do you recall about that?

"Judge CARSWELL. That they told me when I gave them $100 that I had the privilege of being called an incorporator. They might have put down some other title, as if you were potentate or something. I don't know what it would have been. I got one share and that was it.

* * * * *

"Senator KENNEDY. The point . . . is whether, in fact, you were just contributing $100 to repair of a wooden clubhouse, or whether in fact, this was an incorporation of a private club, the purpose of which was to avoid the various court orders which had required integration of municipal facilities . . .

"Judge CARSWELL. I state again, unequivocably and as flatly as I can, that I have never had any discussions with anyone. I never heard any discussions about this."

A day later, former Governor Collins of Florida supported Judge Carswell's testimony by saying that he, too, had put up $100 for the club and that he doubted he would have if he had known there were racial overtones in its creation. Subsequently, some residents of Tallahassee and a Miami lawyer who happened to be trying a case there at the time have stated that talk about the transfer of the golf club to keep it segregated was commonplace. Indeed, columnist James J. Kilpatrick, who thinks Carswell should be confirmed, wrote this week, "My own enthusiasm for Carswell is diminished by his evasive account of his participation in the golf club incident of 1956 . . . Forgive my incredulity, but if Carswell didn't know the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand."

Did Judge Carswell give the committee the impression that the whole incident hit him as a bolt out of the blue in that morning's newspapers or did he give them the impression he had discussed the matter and been shown the signed incorporation papers the night before? Did Judge Carswell know what was up concerning segregation when that golf course was formed (he was then the United States Attorney for that area) or was he, in Mr. Kilpatrick's words, "the only one in north Florida" who didn't know? Was he candid about that and in saying of his role in forming the club—in sequence, under probing—first that he wasn't an incorporator, second that maybe he was, third that he was. Was he candid or was he trying to slip something past the committee members? We think it was the latter and we think it argues powerfully against his fitness to serve on the Supreme Court.

Mr. BAYH. Mr. President, two other basic points that I should like to deal with deal with the Presidential reply or letter to our distinguished colleague from Ohio (Mr. SAXBE). The first deals with the matter of the nominee's position on human rights and civil rights—this broad and important area—and the second and the last point which I tried to discuss this evening goes to the more basic and fundamental question of State rights.

Let me deal with the first point as quickly as I know how. The President in his letter made the flat statement:

No decision he (Judge Carswell) has rendered can be fairly labeled "racist" in any respect.

Although one might disagree with the extent of hostility required to make a decision "racist," one can hardly disagree with the conclusion that Judge Carswell's record on the bench is one hostile to the interests of racial justice. The 17 separate cases in which the Judge was unanimously reversed by the fifth circuit on questions of civil rights or human rights have already been thoroughly discussed—although the President did not mention them in his letter. Beyond this record, however, the details of several particular instances raise serious questions of racial bias.

One of the most surprising acts of judicial hostility involved nine clergymen arrested in the Tallahassee Airport restaurant in 1961. They asked for a writ of habeas corpus from Judge Carswell's court, and the writ was denied. On

appeal, the fifth circuit ordered the judge to hold a hearing on the case immediately, if the State court did not do so. Judge Carswell, in the presence of the attorney for the nine imprisoned clergymen, then told the city attorney prosecuting the case:

If you go ahead and reduce these sentences, then there will be no hearing. There will not be anything. It will be moot.

On Judge Carswell's advice, this is precisely the action that was taken—over the objection of the clergymen, who wanted their claims decided on the merits so that their records could be cleared. As the State court judge told them, when he denied them the opportunity to vindicate themselves:

Now you have got what you came for. You have got a permanent criminal record.

Another indication of Judge Carswell's racial views comes from the chain of events arising out of the arrest of a group of voting registration volunteers and their imprisonment in the Gadsden County jail. In this case:

First. Contrary to controlling precedent in the fifth circuit, *Lefton* v. *Hattiesburg*, 333 F. 2d 280, an illegal filing fee was required by Judge Carswell's court before the petition for removal to Federal court was accepted.

Second. When a petition for habeas corpus was filed, Judge Carswell delayed the proceeding by requiring the petition to be resubmitted on a special form, which had been designed for a different class of cases.

Third. The proceeding was delayed further by Judge Carswell's requirement that counsel attempt to secure the signatures of the prisoners, although the attorney's signature was all that could be required under rule 11 of the Federal Rules of Civil Procedure.

Fourth. Judge Carswell told the attorneys representing the civil rights workers that he would try, if at all posible, to deny the petition.

Fifth. When he finally granted the petition, as the law expressly required, he violated 28 U.S.C. 1446 by refusing to have his marshal serve the writ on the Gadsden County sheriff.

Sixth. Despite the complexity of the questions posed, without any request from the State, and without affording the civil rights workers any hearing whatever, he remanded the case to the State on his own motion and made possible their immediate rearrest.

That, Mr. President, is about as unconscionable a thing as I have ever seen to have to fight a judge tooth and toenail right down to the mat to get him to grant habeas corpus to let seven young people out of jail and then he turns around on his own volition and waives jurisdiction and gives it back to the same sheriff who arrested them in the first place.

Seventh. Notwithstanding the congressional grant of a special right of appeal from civil rights remands, he even refused to stay his remand order, a decision promptly reversed by a single judge of the fifth circuit.

When the fifth circuit subsequently considered this case on the merits, it unanimously reversed Judge Carswell. *Wechsler* v. *County of Gadsden* 351 F.2d 311 (1965).

Another example of Judge Carswell's hostility on the question of racial justice appears in his final decision in the Tallahassee airport restaurant case, Brooks against City of Tallahassee.

I want particularly to emphasize this case, Mr. President, because it is one which has been used by the Senator from Nebraska (Mr. HRUSKA) and other supporters of Judge Carswell to show that he is a great pro-civil-rights judge.

The facts of the matter are these:

In this case, Judge Carswell decided that the airport could no longer be operated on a segregated basis, a decision plainly required by the Supreme Court's earlier holding on a question directly in point in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961). Senator HRUSKA has contended that the Brooks decision is one of Judge Carswell's "pro-civil-rights" decisions. However, the order issued by Judge Carswell in this allegedly "pro-civil-rights" decision includes a very unusual—and distinctly anti-civil-rights—statement. In the last paragraph of his order, Judge Carswell announced:

Nothing contained in this order shall be construed as requiring the city of Tallahassee to operate under lease or otherwise restaurant facilities at Tallahassee Municipal Airport.

This statement is clearly irrelevant to the decision before the judge. It is obviously a gratuitous offer of advice by Judge Carswell as to how the city could in the final result avoid its obligation to integrate public facilities.

In other words this great pro-civil-rights judge, this humane nominee, follows the Supreme Court law relative to restaurants and public facilities and says we have to keep the door open for everybody and then on his own volition he adds a little statement in the interest of his order, saying:

Although you have to be desegregated if you stay open, there is nothing in the law that makes you operate. So, you can really get around this rule by closing down the facility.

Whether or not this is racism I leave to other Members of the Senate. But I have no trouble concluding that this is a record of hostility to the cause of racial justice, a record of insensitivity to the most pressing problem of our times, a record not suited to a Justice of the Supreme Court.

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

Mr. BAYH. I yield.

Mr. TYDINGS. I think the Senator's special comment on President Nixon's claim that the Senate must vote to confirm Judge Carswell or place in jeopardy the historic constitutional balance between the executive and the legislative has been extremely pertinent and well phrased.

I would like at this time to ask the Senator a number of questions and ask the Senator whether he would agree with the Senator from Maryland.

Mr. BAYH. Mr. President, would the Senator from Maryland permit me to move a bit further with my speech?

Mr. TYDINGS. I withhold my questions.

Mr. BAYH. The Senator brought up the last point I was about to embark upon. I think it is very pertinent. I will be glad to yield to the Senator or to discuss the matter with any other Senator.

The President's letter concludes, as the Senator from Maryland knows, with his central argument, an argument which made the front pages and headlines in all of the newspapers which in my judgment reveals a fundamental understanding of the role of the Senate in the nomination of a Supreme Court justice.

The President says:

What is centrally at issue in this nomination is the constitutional responsibility of the President to *appoint* members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of *the one person entrusted by the Constitution with the power of appointment.*

The President goes on to say:

Under the Constitution, it is the *duty of the President to appoint* and the Senate to advise and consent.

This interpretation is wrong as a matter of constitutional law, wrong as a matter of history, and wrong as a matter of public policy. The Constitution does not, as the President three times tries to tell Senator SAXBE, confer upon the President the power to "appoint" Supreme Court Justices. Article II, section 2 of the Constitution carefully provides:

The President . . . shall *nominate*, and *by and with the advice and consent of the Senate* shall appoint . . . Judges of the Supreme Court.

The President is not, as President Nixon's letter tries to tell us, "the one person entrusted by the Constitution with the power of appointment." It is not, as the President tries to tell us, "the duty of the President to appoint." The Constitution clearly provides that the power and responsibility for Supreme Court appointments are to be shared between the President and the Senate, the President to "nominate" and the Senate to "advise and consent"—or, as it has some two dozen times in the history of our Republic, to withhold its advice and consent. This is not a quibble over semantics—it is a fundamental question of constitutional law and the distribution of powers.

It would seem that a simple and straightforward reading of the Constitution would be sufficient to demonstrate the shared power and responsibility of the President and the Senate over Supreme Court appointments. But if any confirmation is needed, one can find more than enough in the pages of American history. One of the grievances set forth in the Declaration of Independence concerned the appointment of judges by King George III: "He has made Judges dependent on his Will alone." In the Constitutional Convention there was very substantial support for the appointment of federal judges by the Senate alone, with no role whatsoever for the President.

Mr. TYDINGS. Is it not a fact that the nomination by President George Washington of a man to be Chief Justice of

the United States was turned down by the Senate of the United States?

Mr. BAYH. The Senator is correct. That was Judge John Rutledge who was turned down.

Mr. TYDINGS. He was from South Carolina.

Mr. BAYH. The Senator is exactly right. If we look at the record, we first see that there was substantial support for the appointment of Federal judges by the Senate alone, with no power whatsoever for the President.

Mr. TYDINGS. Is it not a fact that was in the original draft of the Constitutional Convention that was sent to the Committee on Detail and it was only after subsequent debate that the Constitution was agreed to so as to provide that the President would nominate and the Senate would advise and consent?

Mr. BAYH. The Senator is exactly right. That was adopted on the 21st day of July 1787, in the early working days of the Constitution.

Mr. TYDINGS. Mr. President, I will have printed in the RECORD a law note which will appear in the Yale Law Journal, written by the distinguished Prof, Charles L. Black, Jr., entitled "A Note on Senatorial Consideration of Supreme Court Nominees."

The article traces the very history of the Constitutional Convention proceedings which the Senator from Indiana has pointed out. And it makes reference to the Federalist Papers, particularly Nos. 76 and 77 with respect to what the constitutional fathers intended.

I read from one part of the Federalist Papers, No. 76, which was written by Alexander Hamilton:

> 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.

That is a quotation from Alexander Hamilton in the Federalist Papers.

I read the final paragraph of Professor Black's article:

> 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.

Mr. President, I ask unanimous consent that the article to which I have referred be printed at this point in the RECORD.

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

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 decisions, 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 far 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 life view, by his economic and political comprehensions, and by his sense, sharp or vague, of 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 who 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 that 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.

Footnotes at end of article.

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 world view 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 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 read 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.[8]

* * * * *

"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 by 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 its 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

* Henry R. Luce, Professor of Jurisprudence, Yale University. B.A. 1935, M.A. 1938, University of Texas; LL.B 1943, Yale.

[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 (1953) 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

Footnotes at end of article.

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 494–95 (Modern Library 1937) (Alexander Hamilton).

[9] *Id.* No. 77, at 498 (Alexander Hamilton).

[10] 2 C. Warren, The Supreme Court in the United States History 364 (rev. ed. 1926).

[11] 1 *Id.* at 704.

[12] *Id.* at 413.

[13] L. Pfeffer, The 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. TYDINGS. Mr. President, at this point I would like to read some very pertinent paragraphs from an article written by the distinguished Senator from Michigan (Mr. GRIFFIN) that appeared in the prospectus of the University of Michigan in April 1969.

This has to do with the nomination of Mr. Justice Fortas to be Chief Justice of the United States. In the article the distinguished minority whip, I think, ably presents very tellingly the complete rebuttal to the statement of the President of the United States in his letter to the Senator from Ohio (Mr. SAXBE) which denigrates the position and role of the Senate in its advice and consent function.

I ask unanimous consent that the entire part of the Law Review article entitled "The Historical Context for Advice and Consent," appearing on pages 287 through 291 be printed in the RECORD.

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

THE HISTORICAL CONTEXT FOR ADVICE AND CONSENT

Much of the controversy revolves around the appropriate functions of the President and of the Senate in the circumstances of a nomination to the Supreme Court. There are some who suggest that the Senate's role is limited merely to ascertaining whether a nominee is "qualified" in the sense that he possesses some minimum measure of academic background or experience. It should be emphasized at the outset that any such view of the Senate's function with respect to nominations for the separate judicial branch of the government is wrong and simply does not square with the precedents or with the intention of those who conferred the "advice and consent" power upon the Senate.

I am firmly convinced that approval by the confirming authority of a nomination to the third highest post in our land, the highest judicial post, on the basis of the record before the Senate in the Fortas case, would have been a disservice to the nation and would have constituted an abdication of the "advice and consent" power of the Senate. To assure the independence of the judiciary as a separate and coordinate branch, then, it is important to recognize that this power of the Senate with respect to the judiciary is not only real, but it is at least as important as the power of the President to nominate.

No one denies the constitutional power of the President to make an appointment to the Supreme Court, technically even at a time when he is only a few months from leaving office. But, of course, that is *not* the point. Some have not understood, or will not recognize, that under our Constitution the power of any President to nominate constitutes only *one-half* of the appointing process. The *other* half of the appointing process lies within the jurisdiction of the Senate, which has not only the constitutional power but the solemn obligation to determine whether to confirm such a nomination. Because the Senate has not used its power of "advice and consent," there is a widespread belief that it is almost a rubber-stamp.

However, against the backdrop of history we must recognize that the Senate has not only the right but the responsibility to consider more than the mere qualifications of a nominee to the Supreme Court of the United States, the highest tribunal in a separate, independent and coordinate branch of the government. The Senate has a duty to look beyond the question: "Is he qualified?" The Senate must not be satisfied with anything less than application of the highest standards, not only as to professional competence but also as to such necessary qualities of character as a sense of restraint and propriety. A distinguished former colleague, Senator Paul Douglas of Illinois, put it this way:

"The 'advise and consent' of the Senate required by the Constitution for such appointments (to the Judiciary) was intended to be *real*, and *not* nominal. A large proportion of the members of the (Constitutional) Convention were fearful that if judges owed their own appointments solely to the President the Judiciary, even with life tenure, would then become dependent upon the executive and the powers of the latter would become overweening. By requiring *joint* action of the legislature and the executive, it is believed that the Judiciary would be made more independent."

Illuminating the appropriateness of these views is the clear history of the formulation of constitutional obligations built into the structure of our government to realize such objectives as an independent judiciary and checks and balances on respective centers of power. In the Federalist Papers, Alexander Hamilton wrote that the requirement of Senate approval in the appointing process would . . . be *an excellent check upon a spirit of favoritism of the President*, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachments, or from a view to popularity.

In the Constitutional Convention of 1787, James Madison generally favored the creation of a strong executive; he advocated giving the President an absolute power of appointment within the executive branch of the government. Madison stood with Alexander Hamilton against Benjamin Franklin and others who were concerned about granting the President such power on the ground that it might tend toward a monarchy. While he argued for the power of the President to appoint within the executive branch, it is very important to note that Madison drew a sharp distinction with respect to appointments to the Supreme Court, the judicial branch. Madison did not believe that judges should be appointed by the President; he was inclined to give this power to "a senatorial branch as numerous enough to be confided in—and not so numerous as to be governed by the motives of the other branch; as being sufficiently stable and independent to follow clear, deliberate judgments."

At one point during the convention, after considerable debate and delay, the Committee on Detail reported a draft which provided for the appointment of judges of the Supreme Court by the Senate, Gouverneur Morris and others would not agree, and the matter was put aside. It was not finally resolved until the next to last day of the Constitutional Convention. The compromise language agreed upon provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all other officers of the United States." Clearly, the compromise language neither confers upon the President an unlimited power to appoint within the executive branch nor confers upon the Senate a similar power of appointment with respect to the judiciary. Significantly, however, we have moved in actual practice over the years toward those original objectives of Madison. It is a fact, though sometimes deployed by political scientists, that judges of the lower federal courts are actually "nominated" by Senators while the President exercises nothing more than a veto authority. On the other hand, the Senate has generally accorded the widest latitude to the President in the selection of the members of his cabinet. It is recognized that unless he is given a free hand in the choice of these associates, he cannot be held accountable for the administration of the executive branch of government.

I believe that history demonstrates that the Senate has generally viewed the appointment of a cabinet official in a different light than an appointment of a Supreme Court Justice. The general attitude of the Senate over the years with respect to the cabinet nominations was expressed by Senator Guy Gillette of Iowa in these words:

"One of the last men on earth I would want in my cabinet is Harry Hopkins. However, the President wants him. He is entitled to him . . . I shall vote for the confirmation of Harry Hopkins. . . ."

Throughout our history, only eight out of 564 cabinet nominations have failed to win Senate confirmation.

The reasons for a limited Senate role with respect to executive branch appointments, however, do *not* apply when the nomination is for a *lifetime* position on the Supreme Court, the highest tribunal in the *independent*, third branch of government.[2] No less a spokesman than former Justice Felix Frankfurter has emphasized one of the chief reasons for the higher responsibility of the Senate to look beyond mere qualifications in the case of a Supreme Court nominee:

"The meaning of 'due process' and the content of terms like 'liberty' are not revealed by the Constitution. It is the Justices who make the meaning. They read into the neutral language of the Constitution their own economic and social views . . . Let us face the fact that five justices of the Supreme Court are the molders of policy rather than the impersonal vehicles of revealed truth."

In an oft-quoted statement Chief Justice Charles Evans Hughes noted wryly: "We are under a constitution, but the Constitution is what the judges say it is."

Thus, when the Senate considers a nomination to one of the nine lifetime positions on the Supreme Court of the United States, particularly a nomination to the position of Chief Justice, the importance of its determination cannot be compared in any sense to the consideration of a bill for enactment into law. If Congress makes a mistake in the enactment of legislation, it can always return at a later date to correct the error. But once the Senate gives its "advice and consent" to a lifetime appointment to the Supreme Court there is no such convenient

Footnotes at end of table.

way to correct an error since the nominee is not answerable thereafter to either the Senate or to the American people.

Throughout our history as a nation until the pending nominations were submitted, one hundred and twenty-five persons have been nominated as Justices of the Supreme Court. Of that number, twenty-one, or one-sixth, failed to receive confirmation by the Senate. The question of qualifications or fitness was an issue on only four of these twenty-one occasions. In debating nominations for the Supreme Court, the Senate has never hesitated to take into account a nominee's political views, philosophy, writings, and attitude on particular issues.

The Senate's responsibility to weigh these factors is not diminished by the fact that such professional organizations as the American Bar Association limit their own inquiries. The ABA committee on the federal judiciary has acknowledged limitations on its role. For example, letters from the chairman of the committee, Albert E. Jenner, to Senator James Eastland which transmitted the committee's recommendation with respect to the nomination of Abe Fortas and Homer Thornberry contained this statement:

"[O]ur responsibility [is] to express our opinion *only on the question of professional qualification,* which includes, of course, consideration of age and health, and of such matters as temperament, integrity, trial and other experience, education and demonstrated legal ability. *It is our practice to express no opinion at any time with regard to any other consideration not related to such professional qualifications which may properly be considered by the appointing or confirming authority.*" [Emphasis added.]

---

[2] In this context, it is interesting to take note of the Senate's approach toward nominations for regulatory boards and commissions—agencies which are "neither fish nor fowl" in the scheme of government and perform quasi-executive functions and quasi-judicial functions. For example, in 1949, President Truman nominated Leland Olds for a third term as a member of the Federal Power Commission. Since Olds had served on the Commission for ten years, it was difficult to argue that he lacked qualifications. The Senate finally voted to reject the nomination. Afterward, there was general comment in the press that the real issue had nothing to do with the nominee's qualifications but everything to do with regulation of the price of natural gas.

In considering such nominations, it has not been unusual for the Senate to focus on the charge of "cronyism." That was the issue in 1946 when President Truman nominated a close personal friend, George Allen, not to a lifetime position on the Supreme Court, but to be a member of the Reconstruction Finance Corporation. Not only did such columnists as David Lawrence react sharply, but the New York Times opposed the nomination as well. Senator Taft led the opposition declaring that Allen was one of three who were nominated "only because they are personal friends of the President. Such appointments as these are a public affront."

In 1949, the Washington Post severely criticized the nomination by President Truman of Mon C. Wallgren, not to a lifetime position on the Supreme Court, but to be a member of the National Security Resources Board. A former Governor and Senator, the nominee had become a close friend of President Truman when the two served together on the Truman committee. The Washington Post characterized this nomination as a "revival of government by crony which we thought went out of fashion with Warren G. Harding." The Senate Committee which considered Wallgren's nomination voted seven to six against confirmation and the matter never reached the Senate floor.

Mr. TYDINGS. Mr. President, I would like, however, to read a number of paragraphs which, to me, seem to get right to the heart of the speciousness of the President's letter to Senator SAXBE on the role and responsibility of the advice-and-consent function of the Senate.

I now read a portion of the article of the distinguished Senator from Michigan (Mr. GRIFFIN):

THE HISTORICAL CONTEXT FOR ADVICE AND CONSENT

Much of the controversy revolves around the appropriate functions of the President and of the Senate in the circumstances of a nomination to the Supreme Court. There are some who suggest that the Senate's role is limited merely to ascertaining whether a nominee is "qualified" in the sense that he possesses some minimum measure of academic background or experience.

I will leave the text for a moment to comment we had some argument on the mediocrity point earlier in the debate on this nomination.

I now go back to the article written by the distinguished minority whip.

It should be emphasized at the outset that any such view of the Senate's function with respect to nominations for the separate judicial branch of the government is wrong and simply does not square with the precedents or with the intention of those who conferred the "advice and consent" power upon the Senate.

I am firmly convinced that approval by the confirming authority of a nomination to the third highest post in our land, the highest judicial post, on the basis of the record before the Senate in the Fortas case, would have been a disservice to the nation and would have constituted an abdication of the "advice and consent" power of the Senate. To assure the independence of the judiciary as a separate and coordinate branch, then, it is important to recognize that this power of the Senate with respect to the judiciary is not only real, but it is at least as important as the power of the President to nominate.

No one denies the constitutional power of the President to make an appointment to the Supreme Court, technically even at a time when he is only a few months from leaving office. But, of course, that is *not* the point. Some have not understood, or will not recognize, that under our Constitution the power of any President to nominate constitutes only *one-half* of the appointing process. The *other* half of the appointing process lies within the jurisdiction of the Senate, which has not only the constitutional power but the solemn obligation to determine whether to confirm such a nomination. Because the Senate has not used its power of "advice and consent," there is a widespread belief that it is almost rubber-stamp.

However, against the backdrop of history we must recognize that the Senate has not only the right but the responsibility to consider more than the mere qualifications of a nominee to the Supreme Court of the United States, the highest tribunal in a separate, independent and coordinate branch of the government. The Senate has a duty to look beyond the question: "Is he qualified?" The Senate must not be satisfied with anything less than application of the highest standards, not only as to professional competence but also as to such necessary qualities of character as a sense of restraint and propriety.

I wish to read one final paragraph:

Thus, when the Senate considers a nomination to one of the nine lifetime positions on the Supreme Court of the United States, particularly a nomination to the position of Chief Justice, the importance of its determination cannot be compared in any sense to the consideration of a bill for enactment into law. If Congress makes a mistake in the enactment of legislation, It can always return at a later date to correct the error. But once the Senate gives its "advice and consent" to a lifetime appointment to the Supreme Court, there is no such convenient way to correct an error since the nominee is not answerable thereafter to either the Senate or the American people.

I wish to ask my distinguished friend from Indiana whether or not the paragraphs I read do not completely refute the argument or the thrust of the argument in the letter sent to the Senator from Ohio by the President.

Mr. GRIFFIN. Mr. President, will the Senator yield on that point?

Mr. BAYH. Mr. President, if the Senator will permit me to proceed first I would be glad to yield to such an eminent authority on the subject. I think that if the Chief Executive had consulted the Senator from Michigan first he would not have sent the letter to the Senator from Ohio, or at least couched it in quite this manner.

I am glad to yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I want to say that the Senator from Maryland does me a great honor by quoting from the article I wrote. I retreat from it not one inch. I feel just as strongly now about the importance of the Senate's responsibility in the appointing process as I did during the debate on the nomination of Mr. Justice Fortas. It is not surprising that this President, as other Presidents, has sought to be very sure that his part of the appointing process was observed and not infringed upon.

The controversy, the conflict between the Senate and the executive branch has gone on for a long time. Unfortunately, for too many years the Senate did not assert itself, in my humble opinion, having studied the history of nominations to the Supreme Court; and in too many instances the Senate was a rubberstamp. No one could be more pleased than I am that now the Senate is truly exercising its advice and consent power.

The difference of this situation—and I respect the point of view of the Senator from Indiana and the Senator from Maryland—is that we differ and disagree as to whether or not this nominee is qualified. I think he is not only qualified but that he is highly qualified; that he is one of the best trained and most experienced nominees who has been nominated for the Supreme Court.

Mr. BAYH. Is it fair to assume the Senator from Michigan does not associate himself with the presidential letter which states that the central issue here is that we are going to destroy the presidential power if we do not advise and consent to this nominee?

Mr. GRIFFIN. The central issue before the Senate ought to be the qualifications of Judge Carswell to serve on the Supreme Court. It may well be that in the eyes of the President, and I think it is probably the conclusion of many others—although the Senator from Michigan will not say it—that there is a good deal of opposition to this nomina-

tion that is motivated from other reasons that are more political and that really are directed against the President than the person of Judge Carswell. But that should not be the question before the Senate.

Mr. BAYH. I am sure the Senator from Michigan would not want to impute other than the finest motives to his colleagues as to why they oppose Judge Carswell.

Mr. GRIFFIN. No, I believe I would not do that. I attribute the highest motives to those on the floor now.

Mr. TYDINGS. Would the Senator agree it is the responsibility of each individual Senator to use his own best judgment as to whether or not the nominee to the Supreme Court of the President or any President should be confirmed to that position and that the Senator should use his own best judgment rather than the best judgment of the President?

Mr. GRIFFIN. There is no question. Each Senator is elected from his State and he is elected to exercise his independent judgment.

Mr. BAYH. This is one matter that really concerned the Senator from Indiana more than anything else involved in all these debates.

A few years ago I was involved in opposing one of the nominations of a Democratic President. The nomination was not for the Supreme Court but to a lesser position. But I have some idea what this means. I do not think in the time I have been in the Senate we have ever had a President who began to go as far as the statement issued by the present President when he said:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the court—and whether the responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

I concur with my friend from Michigan. The question before us, Democrats and Republicans all, is: Is the man qualified?

The Senator from Michigan thinks he is and the Senator from Indiana thinks he is not; but the Senator from Indiana is not going to sit by and let the President, whoever he is, suggest uncontroverted that to deny him this nominee is going to destroy the relationship of the President's power to nominate and the Senate's power to advise and consent.

Mr. TYDINGS. I wonder if we could ask the Senator from Michigan one other question.

Mr. BYRD of West Virginia. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Indiana has the floor. Does the Senator from Indiana yield?

Mr. BAYH. Mr. President, I yield with the understanding I do not lose my right to the floor.

Mr. TYDINGS. I wish to ask the Senator from Indiana if it would not be helpful if we had a response from the distinguished Senator from Michigan to this question: Is it not a fact that the President of the United States, under the Constitution, does not have the right to appoint members of the Supreme Court or any other Federal judge? He has the right and the constitutional responsibility to nominate Justices of the Supreme Court and judges of the Federal judiciary. The Senate of the United States has the responsibility to advise and consent. Together they exercise the appointment provisions with respect to appointment of judges of the Federal bench.

Mr. BAYH. I think that an answer would be very helpful, but, as I recall, it was contained rather eloquently in the words of the Senator from Michigan in the law journal article which the Senator from Maryland has introduced into the RECORD.

Mr. GRIFFIN. Mr. President, if the Senator wants me to answer, I would answer it in this way: that, like a lot of other terms that sometimes are used interchangeably by those who are knowledgeable in the law and those who are not knowledgeable in the law, the term "appoint" and the term "nominate" are often——

Mr. TYDINGS. Confused?

Mr. GRIFFIN. Confused. That has happened, I am sure, in the speeches of the Senator from Maryland, and it happened in the very article that the Senator from Maryland referred to. I noticed, when I used the word "appoint" I should have used the word "nominate." It is a technical distinction the Senator is drawing, but it is accurate.

Mr. BAYH. But the Senator from Michigan did not write the letter that appeared on the front pages of all the newspapers, which said that the central issue appeared to be that we were taking away the responsibility from the one person empowered by the Constitution to appoint. I wish the Senator from Michigan had been consulted before the letter was written. Then I am sure it would not have been written and we would have been dealing with the essential question of the qualifications of the nominee.

Mr. GRIFFIN. If I had edited it, I would have used over the word "appoint," the word "nominate" and it would not have created any change in substance.

Mr. BAYH. I am sure we might overlook the word "appoint," but it would be rather difficult for us to misinterpret the reasoning of a rather lengthy 4- or 5-line sentence which has been quoted two or three times previously by the Senator from Indiana.

Let me proceed to finish my speech, if I may. I in no way suggest that any Senator who wants to proceed with colloquy should be denied the right to do so.

I would like to finish by suggesting that we can go to the times in which the Constitution was written to try to see what the Founding Fathers who penned these words had in mind.

In Federalist Paper No. 76, Alexander Hamilton makes it perfectly clear that the Senate might refuse its advice and consent to a Presidential nominee, and argues that this very possibility would be a "powerful" and "excellent check" on the President and "an efficacious source of stability in the administration." And in Federalist No. 77, Hamilton makes the Senate's power even clearer:

> If by influencing the President be meant restraining him, this is precisely what must have been intended.

Thus it was crystal clear from the very inception of the Constitution that the Senate was not intended merely to rubberstamp the President's nominees, but to exercise its independent judgment as to their fitness: their character and honesty; their fairness and judicial temperament; their professional competence and judicial record.

But the historical lesson does not end with the Founding Fathers. The whole record of Senate action on Supreme Court nominees since 1787 confirms the nature of the Senate's independent power and responsibility. The President's letter asks for the same right of choice in naming Supreme Court Justices which has been freely accorded to my predecessors of both parties. Let us look at that record. Is President Nixon being singled out, is he really being treated any differently from previous Presidents? In 1795—only 6 years after the enactment of the Constitution—the Senate rejected a Supreme Court nominee for the first time, Judge John Rutledge, a former Supreme Court Justice nominated by President Washington to be Chief Justice. Throughout the Federalist period and the entire 19th century, almost 25 percent of the Presidential nominees for the Supreme Court failed to receive Senate confirmation.

Four of President Tyler's nominees failed to secure Senate approval, as did three of President Filmore's nominees and three of President Grant's nominees. And of the 24 Presidential nominees for Supreme Court Justice who failed to gain confirmation, only 10 were defeated in a confirmation vote; the remaining 14 nominations were either delayed and never acted upon or were withdrawn by the President. And surely we have not so quickly forgotten the fact that President Johnson had two Supreme Court nominees confirmed—and submitted two additional nominees who failed of confirmation. So no one can fairly claim that this is merely a partisan political issue, that some absolute "right of choice" as the President calls it "has been freely accorded to" his "predecessors of both parties."

Mr. GURNEY. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield.

Mr. GURNEY. I listened carefully to the colloquy between the Senator from Indiana and the Senator from Michigan. It strikes me that what the President was saying in his letter is contained in these words:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

I think what the President is really saying there—and I find no quarrel with that—is that he feels that many of the issues being raised in the debate now going on before the Senate are really viable issues as far as the qualifications of this

nominee are concerned, but are subjective within a Senator's own interpretation and influenced by his political philosophy.

Therefore, if that be the case, the will of the President under his constitutional authority is truly being frustrated.

I do not mean to indicate that the Senator from Indiana and any other Senators who are opposing the nomination are not honestly and sincerely opposing it, but do so because they believe their objections are valid. That is not what I am saying. But I think that in his own mind the President feels that political philosophy and subjective attitudes that are personal within a Senator's own interpretation, rather than objective attitudes, are frustrating his constitutional authority. I do not think that that militates at all against the very high constitutional duty of a Senator to advise and consent.

Mr. BAYH. Since the Senator from Florida has brought up this point, he might care to give us his opinion as to what reasonable interpretation could be put on the following sentence. This is the President of the United States speaking. After going through a number of issues which he calls specious, he then comes to what I think could be called the high point of his letter:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

I repeat: "That of the one person entrusted by the Constitution with the power of appointment."

Does the Senator from Florida believe that the President has the power to appoint Supreme Court Judges?

Mr. GURNEY. Again, after amplifying my interpretation of that language—and that was the language the Senator read—the President feels that so far as the political philosophy of a judge on the Supreme Court is concerned, that ought to be his right to determine.

To decide whether a nominee should be a conservative or a liberal or a middle-of-the-road person is not within the contemplated purview of rejection under the advise and consent role of the Senate. I think that that is what the President is saying. That is my interpretation of his statement, and I think that throughout the history of the Senate that has been pretty much the Senate's interpretation.

Surely, men have been appointed to the Supreme Court in recent times by President Johnson, by President Kennedy, and perhaps even by President Eisenhower, of whom, I suspect, many Senators did not approve at all so far as the political philosophy of the appointees was concerned. But they voted to confirm the nominations, feeling that it was the prerogative of the President to appoint the men he wanted, so far as their political philosophy was concerned.

Mr. BAYH. I suppose the Senator from Florida could not completely avoid the fact that we are discussing the G. Harrold Carswell nomination, because this Senate refused to give to President Nixon's predecessor the prerogative which he now claims for himself.

Mr. GURNEY. What judge is the Senator referring to?

Mr. BAYH. The Senate refused to accept the nomination of Justice Fortas as Chief Justice, and refused to accept the nomination of Judge Thornberry at all. That is why we are here.

Mr. GURNEY. I am not familiar with the Thornberry case. I did not know that that came before the Senate. I know that he was contemplated at one time.

As far as the Fortas case is concerned, while I was not a Member of the Senate, I was of the House of Representatives. My recollection of the case is that it did not have much to do with political philosophy, but it had a whole lot to do with ethics.

Mr. BAYH. It had quite a bit to do with ethics.

Mr. GURNEY. And that is why he was rejected. I see nothing wrong with that. I think, certainly, ethics enters into the role of the Senate to advise and consent.

Mr. BAYH. The Senator might refer to the record. Judge Thornberry's nomination was never considered by the Senate because of the filibuster over the nomination of Justice Fortas to be Chief Justice.

It appears that it is very easy for the Senator from Florida to make the distinction between the ethical question involving Justice Fortas and the lack of candor and the refusal to be forthright with the Senate Judiciary Committee on the part of this judge. The Senator from Indiana finds great difficulty in making that distinction; but, of course, we have had great differences of opinion before in this debate.

Mr. DOLE. Mr. President, will the Senator yield on this point, just briefly?

The PRESIDING OFFICER. Does the Senator from Indiana yield to the Senator from Kansas?

Mr. BAYH. Oh, yes, I would not want to miss this opportunity.

Mr. DOLE. I appreciate the Senator's indulgence. I know he is a busy man.

On page 32 of the report, in the individual views of Mr. TYDINGS, I call attention to the last sentence in the first paragraph:

> Therefore, I must oppose confirmation of the appointment.

Later on on the same page the Senator from Maryland says:

> Men appointed to the Supreme Court have for practical purposes life tenure.

Mr. TYDINGS. That is correct. Men appointed to the Supreme Court do have life tenure. They are nominated by the President and confirmed by the Senate, and they have life tenure.

Mr. DOLE. The Senator from Indiana has yielded to me.

Mr. BAYH. I would associate myself with the remarks of the Senator from Maryland. I think the appointment process is a double headed vehicle. It involves the nomination by the President and the advice and consent authority of the Senate, and that is what the Senator from Maryland was referring to.

Mr. DOLE. Then, in the individual views of Messrs. BAYH, HART, KENNEDY, and TYDINGS, it is stated:

> In his campaign speeches, President Nixon pledged appointees to the court—

I just bring this up in connection with the word appoint, which seems to be causing great distress, and yet it is used in the individual views of the Senator from Maryland and in his individual views together with those of Senators BAYH, HART, and KENNEDY.

Mr. BAYH. The Senator is reading the record. Can he find any notation of views at all such as those in the President's letter, in which he refers to himself as "the one person entrusted by the Constitution with the power of appointment"? The one person?

The Senator from Maryland talks about the term "refusing the nomination" in terms of advising and consenting.

Mr. DOLE. I think the point is in the word "use." As the Senator from Michigan said, he may have used it instead of the word "nominate." Senators on the other side have used it, and perhaps they should have used the word "nominate" or "nomination" or "nominates." But I do not think we really misunderstand what the word means.

Mr. TYDINGS. I think the Senator makes a good point. It is sometimes easy, in haste, as I did, or the Senator from Michigan or others, to interchange the words.

But the fact is that the thrust of the President's letter was that if he nominated someone, and he felt they had the requisite qualifications, then it was up to the U.S. Senate to go ahead and confirm him. That is why he wrote the letter to Senator SAXBE.

The problem is not the use of the word "appoint." The problem is the whole thrust and tenor of the President's letter, which denigrates the role of the U.S. Senate to advise and consent. In fact, it overlooks the entire constitutional history of article III and the role of the Senate to advise and consent to a Supreme Court nomination.

It is not whether he used the word "appoint" or "nominate"; he could make a mistake. I make it all the time, and the Senator from Michigan makes it.

But he is the one who sent that letter. He is the one who is trying to get the Senate to go ahead and approve, without exercising its own responsibility through the advise and consent procedure.

Mr. DOLE. I think he says in the letter that we have that right, as of course the Senator, as a Member of this body, knows.

But again, at page 33 of the report, the Senator from Maryland uses the word "appointment." Now the Senator is asked to advise and consent to the appointment.

The point I make is that we all use the word rather freely, apparently.

Mr. BAYH. I would be the last to suggest that there have not been occasions, I suppose, when all of us have interchanged the word "nominate" and the word "appoint." But it would seem strange to me that the President of the United States, the Chief Executive of the land, advised by the Attorney General as his own personal attorney, would so con-

sistently confuse those words; and to use the theme of absolute right to make this determination and imply that the whole relationship between the President and the Senate is going to come apart if he does not have this right to appoint, I think, flies in the face of history.

It would be rather inconsistent for some of us to stand on the floor of the Senate and assert that it is time for us to take a little initiative to restore the inalienable rights of this body, and then suddenly yield that authority because the President feels he is not being treated properly.

It seems to me that we cannot avoid the responsibility to stand up and be counted on this issue any more than our responsibility to advise and consent to treaties—and we have in the past refused to ratify treaties on many occasions, notwithstanding the President's very substantial power to conduct our foreign affairs.

We cannot avoid this responsibility any more than our responsibility to advise and consent to the nomination of executive officers of the United States—and despite our desire to give the President much more latitude in this matter than over Supreme Court appointments, we have often withheld our advice and consent from Executive appointments. Only a few weeks ago, a prospective Presidential appointment was actually withheld after the distinguished Senator from Maine and the distinguished Senator from Mississippi suggested their unwillingness to confirm.

We cannot avoid this responsibility any more than we can avoid laying and collecting taxes, or declaring wars, or paying Federal debts, or any of the other heavy burdens which the Constitution places upon us as U.S. Senators.

We cannot avoid this responsibility any more than the President can avoid his obligation to make an independent judgment as to whether to sign into law or veto any measure we enact and send to him.

And, I for one, intend that we in the Senate, as representatives of the people of our respective States, shall not be intimidated into forsaking the powers—or evading the responsibilities—squarely laid upon us by the terms of the Constitution and faithfully exercised for 200 years.

Mr. President, let me suggest in closing that nothing should distract the Senate from the central issue of this debate—not the central issue as described by the President, but the central issue as described by the Senator from Michigan—the qualifications or lack of qualifications of the nominee. The record is clear; it is irrefutable. Unfortunately, Judge G. Harrold Carswell lacks the temperament, the legal competence, and the sensitivity to the role of the judiciary in interpreting the Constitution required for elevation to the Supreme Court. I hope and I am confident that the Senate will have the wisdom and the courage to exercise its independent judgment and reject this nominee as unqualified. This will permit the President to exercise his prerogative to send us another, a better nominee.

Mr. President, I ask unanimous consent, in behalf of the distinguished junior Senator from California (Mr. CRANSTON) to have a statement by him printed at this point in the RECORD.

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

STATEMENT OF SENATOR CRANSTON

There is an interesting omission in President Nixon's letter on Tuesday (Mar. 31) to Senator Saxbe in which the President attempted to deny Judge Carswell's obvious racism.

The President cited only three flimsy shreds of evidence—a letter from a World War II shipmate of the Judge, one law school professor, and Judge Carswell's alleged repudiation of his racial supremacy views.

Significantly, the President did not use the one source that had been the cornerstone of the efforts in the Senate to disprove Judge Carswell's racism.

Before last Monday's disclosures, Senators supporting Judge Carswell had repeatedly cited a letter from Charles F. Wilson to the Senate Judiciary Committee to argue that Judge Carswell is not a racist. But now we see that the President has avoided mentioning Mr. Wilson and we can only assume that the President now agrees that Mr. Wilson's letter has been completely discredited.

Contradictory and inconsistent statements by Mr. Wilson, Deputy Atty. Gen. Richard G. Kleindienst and Asst. Atty. Gen. William H. Rehnquist as reported in the press over the past few days gave the President good cause to shy away from Mr. Wilson's letter. For example:

On one hand, Mr. Rehnquist says he drafted the letter (New York Times, Washington Post).

But on the other hand, Mr. Wilson says "the language and draftsmanship was mine" (UPI Audio) and that he wrote the letter himself (Philadelphia Inquirer).

On one hand, Mr. Rehnquist says he didn't seek Wilson out (Washington Star) and Mr. Kleindienst says Mr. Wilson "stood in the shoes of a volunteer" (UPI).

But on the other hand:

Mr. Rehnquist says he decided to get in touch with Mr. Wilson (Washington Star, same story).

Mr. Rehnquist says Mr. Wilson called him (Washington Post).

Mr. Wilson says he was approached by Mr. Rehnquist (Washington Star).

And Mr. Wilson says he can't remember whether he or Mr. Rehnquist made the first contact (Washington Star, same story)!

On one hand, Mr. Wilson says he would have preferred to have seen someone other than Judge Carswell nominated (Baltimore Sun, Philadelphia Inquirer, Los Angeles Times, Washington News).

But on the other hand, a spokesman for Judge Carswell says Mr. Wilson telephoned the judge this week to express "his continuing support of the Carswell nomination" (Los Angeles Times).

On one hand, Mr. Wilson says he was "disturbed" that his letter had generally been interpreted as an endorsement by Judge Carswell's supporters when he hadn't intended it that way (Philadelphia Inquirer, Washington News).

But on the other hand, Mr. Wilson took no action whatever on his own initiative to correct the widespread misunderstanding his letter created.

On one hand, Mr. Wilson says his letter was intended as neither an endorsement nor a condemnation of Judge Carswell (Baltimore Sun, Philadelphia Inquirer, Los Angeles Times, Washington Post, New York Times).

But on the other hand, Mr. Wilson has never explained what induced him to send his letter in the first place—when he knew the Justice Department wanted that letter to advance Judge Carswell's nomination.

Mr. Wilson says Mr. Rehnquist asked him whether he would testify before the Judiciary Committee, prepare an affidavit, or write a letter. Mr. Wilson says he chose the third alternative offered to him—the controversial and now discredited letter (Baltimore Sun). Mr. Wilson and Mr. Rehnquist have never explained why it was decided that Mr. Wilson should not testify before the Committee, and should write a letter instead. Was it because they feared that under questioning by the Committee, the complete truth about Mr. Wilson's feelings toward Judge Carswell would come to light?

Mr. Wilson's letter to the Committee was an obvious attempt to mislead the Committee and the Senate by telling only half-truths. The technique of the half-truth has again been used by Mr. Wilson and the Justice Department to defend Mr. Wilson's letter.

Mr. BAYH. I yield the floor.

THE EXCELLENCE OF JUDGE CARSWELL

Mr. GOLDWATER. Mr. President, it will be my purpose today to urge that the Senate soundly reject the motion to recommit the nomination of Judge Carswell.

The record is already bulging with enough testimony, citations, letters, telegrams, and student memorandums to fill a bookshelf. If any Senator is incapable of reaching a decision after he has studied this encyclopedia, I do not think he will ever be able to resolve the question.

Mr. President, the committee hearings, together with the committee report on the nomination of Judge Carswell, run to over 500 pages. To this, we have added 12 days of floor debate that take up well over 300 pages of the CONGRESSIONAL RECORD.

This is enough. The business of the Court, and indeed of the Senate, must go on.

Let us remember that the seat which we are asked to fill has been vacant for almost a year now. The longer this body delays in acting on the merits of the nominee, the longer will grow the list of individuals whose rights are held in limbo because the Court is shorthanded.

One way or the other, we should vote on this nomination. But we owe it to the prestige of the Court, to the individual litigants awaiting their day in Court, and to the President who has asked for our advice and consent, to reach a decision on the nominee.

Mr. President, speaking to this point, I want to state my strong conviction that Judge Carswell should be confirmed.

Frankly, at first I had no intention of participating in this debate. Not being a lawyer, I did not think there was much that could be added to the record being developed by my colleagues who are members of the legal profession.

However, Mr. President, when I began to observe the type of campaign taking shape against Judge Carswell—the unreasoned, blistering condemnation of this man as a racist and mediocre jurist—I knew that I could not stand by and watch a distinguished, highly capable individual be so viciously and unfairly abused.

Perhaps I have an advantage in viewing these proceedings. It might be that the fact I do not have a legal training is the very reason I do not accept at face value the sweeping accusations being fired at Judge Carswell.

It is precisely because so much of the debate and testimony is devoted to a

highly technical analysis of case law and legal jargon that I have waited for the record to settle.

It is the layman's need to cut beneath the technical gobbledegook that has caused me to explore many points sharply that my professional friends may take for granted.

Mr. President, on the basis of my reading of the entire record, I can only express my complete amazement at the incredible collection of falsehoods, half-truths, and smears that make up the gist of the charges against the nominee. It seems unbelievable to me that the opposition, which by and large consists of people who claim to be liberals, would resort to such unjust and unproven accusations against another human being, whoever he might be.

To my mind, these practices smack of nothing short of neo-McCarthyism. Make no mistake about it. The political Left has resorted to glib charges, smear innuendos, and distorted statistics in presenting their case.

For example, one claim that has been bandied about is the idea that most of Judge Carswell's cases are reversed. The way this charge has been presented by Judge Carswell's critics, he is the biggest bungler ever to hold a seat on the Federal bench.

"Think of it!" We are told. Fifty-nine percent of Judge Carswell's cases have been reversed on appeal.

Why, this must run into the hundreds. The judge must be utterly devoid of any legal sense at all. This is certainly the image that the charge casts in the public's eye.

But, lo and behold, when one searches for the source of this sensational charge, he finds that the uproar is based on a claim of 10 reversals.

Ten cases. Out of 4,500 cases decided by a man.

Ten cases. Over a span of 11 years on the bench.

Ten cases. From more than 8,000 rulings, orders, and decisions which might have been challenged if an error or mistake had been made.

This is typical of the kind of unexplained, wild charge that has filled the air throughout these proceedings.

Upon examination, one finds that this figure was blown all out of proportion by selecting only the printed decisions of Judge Carswell that were actually appealed. In other words, if a case was so well handled that it did not lend itself to an appeal, it was not counted. Or if a decision was not printed, it was not counted.

This technique by itself seems highly dubious and misleading to me. But the worst part of it is the deceptive manner in which the statistic has been used without explanation.

Take another example. Examine, if you will, the specific cases that are cited against Judge Carswell.

Two of them concern school desegregation matters. Youngblood against Board of Bay County is one and Wright against Board of Alachua County is the other.

Judge Carswell's decisions in these cases happen to have been reversed by the fifth circuit as a result of an intervening Supreme Court opinion that changed the law in that circuit. The two decisions rendered by Judge Carswell were among 13 similar decisions which the circuit court reversed by reason of the later Supreme Court decision.

In fact, Judge Carswell was by then a member of the fifth circuit bench and he personally voted to reverse 11 of these 13 decisions.

Now there are three things wrong with the manner in which these cases were cited. First, Judge Carswell's detractors made it appear that he alone among all district judges in the fifth circuit was stubbornly defying the higher courts. What the liberals conveniently neglected to mention is the fact that Judge Carswell's decisions were only two of the 13 cases overturned by the appellate court.

They also failed to reveal or even consider that the law had been changed in that circuit as the result of a new interpretation which was first announced by the Supreme Court after these cases had been decided.

And, nowhere in their critiques will one find any mention of Judge Carswell's participation among the appellate judges who applied the new doctrine.

Again, I must express my amazement at the misleading manner in which important facts have been left untold. Again, the half-truth, the hidden truth has been presented as the whole truth.

Another instance of the distorted record is the repeated reference by the Carswell opponents to the Wechsler case.

In this instance, Judge Carswell sent back to the State court a criminal prosecution instituted there but sought to be removed to the Federal court by the defendants. The fifth circuit vacated Judge Carswell's order on the basis of two rulings which it expressly noted came at a later date than his order.

Now, not only do the critics pass over the significant time factor—the fact that Judge Carswell's decision came prior to the new circuit court rulings—but they completely fail to report that the circuit court's new doctrine was in turn rejected by the Supreme Court.

All the opponents have told us about is the reversal of the judge's order. That the Supreme Court later turned the tables on the circuit court and vindicated Judge Carswell's ruling was left unsaid.

Mr. President, this is the kind of slight of hand which the liberals have played in order to sustain their feeble claim that Judge Carswell is hostile to blacks.

But this is not all. The opposition squeezed more fluff out of the Wechsler case by pointing to the testimony of two New York lawyers who assisted the defendants during part of this case.

Prof. John Lowenthal, whose experience before Judge Carswell seems to amount to a segment of this one case, accused the judge of being "extremely hostile" toward northern lawyers.

Norman Knopf, an aide to Lowenthal, who says the Wechsler case was his first courtroom experience out of law school, also has given his notions about Carswell's hostile attitude.

Mr. President, all I can say about these accusations is that I agree with Professor Vandercreek of SMU Law School, who has written:

It seems that those who criticize his rulings are merely disappointed litigants who cannot evaluate Judge Carswell fairly in the light of their zeal for their cause.

Mr. Lowenthal's bias is spread all over his testimony. The professor went so far as to accuse Judge Carswell of telling his marshal to advise the county sheriff that he had sent the case back to the county court from the Federal court. Mr. Lowenthal claimed that his clients were rearrested because Judge Carswell did this.

This is truly a serious charge of prejudice and malicious intent. It clearly reveals the frame of mind which Mr. Lowenthal held toward Judge Carswell and, if untrue, throws doubt on his whole presentation.

Well, the record shows that is untrue. Marvin Waits, the U.S. marshal who is referred to in the incident, appeared before the Judiciary Committee to swear that he made the telephone call to the sheriff strictly as a matter of custom. Mr. Waits testified that he placed the call simply as part of a reciprocal arrangement that the local law enforcement officers had worked out. Judge Carswell had nothing to do with the call.

Mr. President, it is exactly this kind of unprofessional guesswork and doctrinaire bias that flows through almost every page of the hearings record where a Carswell critic appears.

Ernst Rosenberger, another member of the New York bar, testified that Judge Carswell informed a city court judge about a devious way in which the city could prevent his clients from getting a hearing on the merits of their case. Mr. Rosenberger claims that the city judge falsely recorded that the defendants had applied for this procedure, and yet, he failed to take any action to appeal the order which he alleges was falsely written. Instead he blames Judge Carswell for his troubles.

Mr. President, this testimony sounds like a lot of sour grapes to me. A few witnesses of this nature are bound to crop up with regard to any judge. The important thing is what the entire record of a man's career demonstrates.

There is one more New York attorney who appeared before the Judiciary Committee. He is Prof. Leroy Clark who represented the National Conference of Black Lawyers. He took the position that America is a racist society, "a Jim Crow society which is still intact—more than a century after the Emancipation Proclamation."

The thrust of Mr. Clark's testimony was that Judge Carswell is hostile to civil rights matters. Once again, Mr. President, I must raise the question whether this witness could view anyone to be free of prejudice unless he was an outspoken activist of liberal causes.

Mr. President, these instances are sufficient to reveal that the entire movement against Judge Carswell is founded on a persistent pattern of falsehood, emotional reactions, and gripes by disgruntled lawyers.

They fit part and parcel with the phony mailing campaign in which thousands of letters have been sent to Members of the Senate falsely represented to be from residents of a Senator's own State.

Mr. President, you will not find it out by reading the Washington Post or the

New York Times, or by watching the network news broadcasts, but there is a tremendous amount of eminent, first-hand testimony which strongly supports the integrity, scholarship, compassion, and industry of Judge Carswell.

Until the opponents chose to attack him, almost no one in the public had been informed about the impressive statement made by the longtime civil rights leader, Attorney Charles Wilson.

This gentleman, who is a black lawyer, probably was the first attorney to take up the cause of black plaintiffs in Florida. He appeared before Judge Carswell during a 5-year period and emphatically reaffirms his statement that "there was not a single instance in which he was ever rude or discourteous" to him.

Likewise, who in the general public has heard that Judge Bryan Simpson of the Fifth U.S. Court of Appeals endorsed the nomination of Justice Carswell with the most glowing words available to one judge speaking about another.

If the mass media would only quote from a small portion of Judge Simpson's letter, the public would catch the true picture of a man and his career.

Judge Simpson has written:

More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an open-minded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices.

Mr. President, how many front page stories have informed the public that Mike Krasny, who was law clerk to Judge Carswell for two and a half years, has assured the Senate that litigants before Judge Carswell "were not judged by their race, creed, or color."

Mr. Krasny writes:

Judge Carswell's integrity and honesty is beyond question in this regard. He dealt fairly, honestly and respectfully with all those who came before him. His judicial manner was not altered by the race or color of those who appeared before him.

Or take the telegram from Mr. William Corrouth, who was bailiff in Judge Carswell's court for 11 years. How often has anyone heard on the evening news shows that this gentleman was present in the chambers when counsel in the Wechsler case appeared before Judge Carswell? And that the bailiff never heard the Judge speak, then or at any other time, in a rude voice?

According to Mr. Corrouth, Judge Carswell "did not express any statement at all about lawyers from other parts of the country or express opposition to what they were doing."

For that matter, how many quotes have we seen in the daily news media from the many lawyers who went before Judge Carswell to try civil rights cases and who report that they have never seen him display hostility or discourtesy to any attorney, party, or witness in a case?

Mr. President, as persuasive as these voices are, the best witness who appeared before the Senate Judiciary Committee is none other than Harrold Carswell himself.

His testimony covers over 60 pages of the hearings record.

His words reveal the brilliance, character, and qualities attached to greatness.

His answers confirm beyond any doubt that here is an exceptional man, deeply versed in the philosophy and practicality of the law.

Judge Carswell advanced his great concern for the pressing problems that face our country. He expressed his awareness of the great issues of poverty, crime, education, job training, the frustrations of young people, and all the matters that serve as the grist mill from which cases arise.

He stated his efforts to understand where these problems came from and why they exist.

He announced his strong support for the application to Supreme Court Justices of strict ethical standards, such as reporting requirements, public disclosure, and other safeguards.

He proclaimed that the "law is a movement, not a monument."

He referred to former Justice Cardozo's paper about the essence of deciding and interpreting the law, and gave the straight-forward response that there is a grain of lawmaking power in every judge.

He gave his view that there are gaps in the law "where the judicial function and the judicial process inevitably requires the gap to be filled because action has to be taken and rights determined."

In short, Judge Carswell has given us a view of a man who is deeply concerned with human problems. He is sensitive to changes in our society and to the need for a living Constitution.

At the same time he shows an abiding affection for this historic document and for the people and institutions which make up the society which it serves.

Mr. President, I believe the record is crystal clear. Judge Carswell is a sincere, compassionate individual with a deep concern and interest in human feelings and rights.

He is a man of untarnished integrity, a man of excellence, and a man of high distinction.

He is unquestionably qualified to serve as a Supreme Court Justice and I shall vote for his confirmation without the slightest reservation.

Mr. President, I ask unanimous consent to insert at this point in the RECORD a commentary from the Miami Herald of March 26. The article is aptly headed: "Somebody Forgot To Mention Judge Carswell's Supporters."

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

SOMEBODY FORGOT TO MENTION JUDGE CARSWELL'S SUPPORTERS

(By Malcolm Johnson)

TALLAHASSEE.—Judge Harrold Carswell, it seems, is taking a worse beating from the news reports than he is in the official documents filed for and against his nomination to the U.S. Supreme Court.

The 567-page printed record on the Senate Judiciary Committee hearings on his nomination, just received here, provides a powerful refutation of the accusations of bigotry and mediocrity which are being used against him.

Much of it has not heretofore been revealed to his hometown editor who probably has watched the daily reports as closely as anyone.

For example, we have been regaled this last week or so by the supposedly scornful fact that two members of the U.S. Fifth Circuit Court of Appeals have not endorsed his elevation from their bench to the Supreme Court.

Now, mind you, they have not opposed his appointment. They have only not endorsed him. (And retired Judge Tuttle, who praised him highly then withdrew his offer to testify in his behalf, to this day hasn't opposed him, either.)

But have you heard, or have you read, what other members of the Fifth Circuit Court have said about him in official letters now a part of the printed record of the Senate?

Judge Homer Thornberry (who was nominated by President Johnson for this very Supreme Court seat, but it didn't become vacant by elevation or resignation of Justice Abe Fortas in time for a Democrat to get it) had this to say about Carswell:

". . . A man of impeccable character . . . his volume and quality of opinions is extremely high . . . has the compassion which is so important in a judge."

Judge Bryan Simpson, who was held up by civil rights lawyers as the kind of southern judge President Nixon should have chosen, wrote to the Senate:

"More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an open-minded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices."

Judge Griffin Bell, a former campaign worker for President Kennedy whose own name was mentioned for this vacancy:

"Judge Carswell will take a standard of excellence to the Superior Court . . .

Judge David W. Dyer: ". . . Great judicial talent and vigor."

Judge Robert Ainsworth: ". . . A person of the highest integrity, a capable and experienced judge, an excellent writer and scholar . . ."

Judge Warren Jones: ". . . Eminently qualified in every way—personality, integrity, legal learning and judicial temperament."

Most of these statements have been in the record since January, not recently gathered to offset criticism.

There are similar testimonials from a couple of dozen other Florida state and federal district judges in the record, but our newspaper received a news report from Washington about only a partial list of them (without quotation) only after calling news services in Washington and citing pages in the Congressional Record where they could be found.

And on the matter of antiracial views, the printed record of the committee contains numerous letters and telegrams disputing contentions of a few northern civil rights lawyers who said Judge Carswell was rude to them when they came to his court as volunteers, mostly with little or no legal experience.

Foremost among them is this letter from Charles F. Wilson of Pensacola:

"As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court," he said, "there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions.

"I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs

favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted."

Why such statements in the record have been overlooked by Washington news reporters while they are daily picking up any little crumb from the opposition is hard to explain to the public.

It could be that the organized forces opposing Judge Carswell are more alert to press agentry than the loose coalition in the senate that is supporting him.

The press agent offers fresh news, while the Record brings it stale to the attention of news gatherers upon whom there is great pressure to start every day off new with the abundance of news you know is going to develop that day.

That, really, could be a better explanation than the common assumption that our Washington reporters are just naturally more anxious to report something bad about a man—especially if he is a conservative, than something complimentary. But it isn't a very good explanation, at that.

Mr. MURPHY. Mr. President, I stand in support of the nomination of Judge G. Harrold Carswell which was sent by the President of the United States to the Senate Committee on the Judiciary and which that committee, after careful and extensive hearings, saw fit to report to the full Senate, either to be approved or rejected.

We, the Members of the Senate, have come once again to the exercise of one of our most important obligations with regard to our relationship with the executive branch—to advise and consent and thereby to exert our judgment and influence on the future course of the history of our Nation.

The dreadful importance of our position takes on an intensified value because of the times in which we live and the conditions which confront and surround us. Some of us are greatly concerned about the apparent breakdown and dissolution of the conditions of law and order across our broad land, with the daily examples of the disastrous erosion of our Nation's moral substance and standards, and the rising and rampant evidence of unleashed crime which is so disturbing that it defies our imagination and confounds our understanding completely. We know, all of us, that the restoration of the dignity of our courts is one of the most important goals to which we must address ourselves. And if there is any question about this in anyone's mind, I ask him to go back 3 or 4 weeks and look at the horrendous and ridiculous performance of the so-called Chicago seven. It is true that many of my colleagues differ in their assessment of the reasons for these current conditions by which we are presently vexed. However, I believe that we will all agree that the cornerstone of our national health and safety rests in our legal structure, which must certainly be preserved at all costs if we are to survive as a nation. And that cornerstone is the respect and high regard which our citizens must have restored once again for our courts and those who grace our benches.

Judged against the background of the unfortunate conditions which surround us, this present selection of a new Associate Justice for our Supreme Court demands our strictest attention, our most serious consideration, and, above all, our finest judgment—a judgment which will bear the most searching public scrutiny to insure that political considerations, philosophical biases, sociological differences, personal idiosyncracies, and all other minutiae have been carefully eliminated.

Not long ago we had another nominee sent to the Senate and after long, arduous, and serious debate, this man was rejected. There were all sorts of reasons raised during the extended discourse as to why he was not acceptable. After rereading that record and the full testimony of our colleagues, I believe that many Members of this distinguished body, including myself, are not certain that the true cause of justice was advanced by his rejection. It appeared that there were overruling political considerations—great pressure for a part of the press; maybe the desire to embarrass the new President or maybe an impulse on the part of some who were overenthusiastic in their assessment of some of our major problems. As the debate went on, there was a great deal of talk about something referred to as "the appearance of impropriety." This, I felt, was a contrivance and I believe we all suspected this. It is a new practice and it is disturbing to me since I do not feel we should try to create the impression of something that does not exist. However, I say it is possible that these conditions pertained and that conclusions were drawn from a hypothetical situation which was imagined or set up in an unreasonable and unreasoning manner. In other words, a column of figures was totaled up before the numbers involved were really known and then the numbers were made to suit the total.

Mr. President, I trust that my colleagues will not misunderstand my words and my meaning today. I have no intention of presenting any criticism of the past. This would be improper of me and would be overly presumptuous. I merely desire after a great deal of thought and study to make certain that in our judgments regarding the nimination now before us, we are only swayed by valid, reasonable and substantial matters and that we will have the good judgment and wisdom to discard hearsay, sly suggestions and contrived confusion, and questionable evidence. I believe we should extend the same presumption of truth we would hope to receive.

Now, let us for a moment trace the history of this nomination. First of all, it was made by the President of the United States. He did not reach out as some have in the past to select a good friend, a crony, a pal. He organized a search headed up by capable legal minds to find a particular jurist of experience, of wisdom and of capability in order to fill this most important position. And so this name came through. And the name was sent to the Committee on the Judiciary, and I am pleased to remind my colleagues that this most capable body spent 5 days of hearings and heard 25 witnesses in connection with the nomination. Then, at long last, the committee made its decision by a vote of 13 to 4 to send the name of this nominee to the entire body of the Senate. The committee also issued a report, of course, and I would like to quote from this report to remind my colleagues of some of the sections it contained.

For instance, the report said:

In evaluating the qualifications of Judge Carswell, the committee welcomed the opinion of the American Bar Association. Lawrence E. Walsh, a former Federal judge and the chairman of the association's prestigious standing committee on the Federal judiciary, reported by letter that "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."

The report also noted:

In addition, Judge Carswell personally impressed the committee by the reasonable, thoughtful, and articulate manner in which he responded to questions from the members of the committee. His appearance before the committee confirmed fully the views of his colleagues that he is a man of superior intelligence, impeccable integrity, and outstanding judicial temperament.

And finally the report said:

It is our opinion that Judge Carswell is thoroughly qualified for the post to which he has been nominated.

I do not think, Mr. President, that there is any reason to suspect the judgment of the very able committee members, and consequently I, for one, respect their opinions and their report. And so, after lengthy hearings and debate, we approach the moment of decision. Suddenly, however, it seems that there are those who would deny us the privilege of making this most important decision. In fact, we are to be faced with what may be termed a parliamentary procedural move by which some might attempt to avoid our obligation. I hope that this will not be the case.

Yes, I hope it will not be the case, for not only do I support the nomination of G. Harrold Carswell, I also go one step further.

I feel strongly that it is the moral duty of the Senate to meet the issue head on and to vote the nominee up or down, rather than take what some might consider to be the devious and disruptive course of recommittal.

There are, of course, sincere advocates of the recommittal approach, but unfortunately their stand has become clouded by the aura of misunderstanding which cloaks the movement.

This air of attempted deceit is apparent on two counts. It is apparent, first, in some of the phony "nose counts" designed to stampede votes toward or away from the nominee.

And it is also apparent in the not-so-subtle whisperings that recommittal would dispose of the Carswell issue in a way which purportedly would be clean, comparatively inoffensive and, in general, politic. It wouldn't hurt anyone but Judge Carswell.

I would like to discuss this air of deception for a moment, and I would like to offer as exhibit A a newspaper article which reported—completely erroneously, I want to point out from the beginning—on my stand on the recommittal issue.

Mr. President, I was dumfounded when I read in the Baltimore Sun of Friday, March 27, that I would vote to recommit the nomination of Judge G. Harrold Carswell to the Supreme Court of

the United States. I have never made such a statement. I have never waivered in my support for the nomination of Judge Carswell, nor have I ever indicated to anyone that I would vote to recommit the nomination, or that I would even seriously consider voting to recommit the nomination.

I was happy to see that the junior Senator from Kansas, in a speech on the floor of the Senate on Tuesday, March 31, call to account those opponents of Judge Carswell who have resorted to a campaign of untruths in order to defeat his confirmation. I want to discuss some points that the junior Senator from Kansas did not touch on, but first let me say a few more words about the article in the Baltimore Sun.

That same article attributes to Clarence M. Mitchell, Jr., the NAACP representative in Baltimore, the statement that the FBI reported Judge Carswell's 1948 speech, but that "somewhere along the way it got dropped."

We all know by now about this charge concerning the speech in question. Attorney General Mitchell denied it. The Director of the Federal Bureau of Investigation, J. Edgar Hoover, denied it. One's initial tendency is to call Mr. Mitchell to account for having made such a statement. But I think of my own position, where this very same article attributed a position to me which I had never taken. It may be that Mr. Clarence Mitchell did not really say what the reporter says he said, any more than I did.

If, in fact, Mr. Clarence Mitchell did not make the statement attributed to him, even as I did even as I did not make the statement that "unimpeachable sources" attributed to me, then we must classify among the opponents of the nomination the particular reporter who wrote the article in question. If this is the case, he is doing his part to oppose the nomination by printing untrue information in one of the leading daily newspapers on the East Coast.

I think we have here a question not just of what the announced opponents are resorting to in the way of tactics to prevent confirmation of Judge Carswell, but the tactics that a small minority of the working press are using.

There was a story in the Palm Beach Post, a newspaper published in Palm Beach, Fla., in the middle of February which first commented on the fact that Judge Carswell had signed a deed involving a racial covenant in 1966. Let me quote the first two paragraphs of that story:

> Barely four years ago, Supreme Court nominee G. Harrold Carswell and his wife, Virginia, sold a bayfront lot in nearby Wakulla County with the proviso that it could only be occupied by white persons.
>
> The restriction excepted, however, "domestic employees employed by and residing with such Caucasian family."

A story like this, appearing as it did while the nomination was pending before the Senate Judiciary Committee, suggests by its very presence in the newspaper, that it contains facts which have an important bearing on the nominee's qualifications or at least bear in some way on his qualifications for the office to which he was nominated. The plain implication of this story was that anyone who would do what Judge Carswell did in connection with this deed must be a segregationist or against civil rights.

Now, as you read through the story, if you read very carefully, you get an intimation—no more than that—that the particular covenant against occupancy by races other than Caucasian was not to be found in the deed itself, but in some other instrument. As a matter of fact, the story is so factually misleading as to be virtually indefensible. The question of the racial covenant has been discussed during these debates, but I would like to turn to it again not to justify Judge Carswell's conduct in the matter—that has already been ably done by others—but instead to point out just how insidious this type of news story is.

What were the facts in connection with this incident?

First, the deed signed by Judge Carswell did not contain the racial restriction. The only language it had relating to restrictive covenants was this: "Subject to those restrictive covenants as more specifically set out in that warranty deed from Jack W. Simmons, Jr., et al. to Virginia S. Carswell, dated November 1, 1963, and recorded in Official Records Book 5, pages 178–180 in the Public Records of Wakulla County, Florida."

Second, the earlier deed had not merely one, but numerous restrictive covenants relating to residential use of the property, limiting the use of the property to one dwelling, imposing setback requirements, and imposing a minimum square-foot requirement on any residence to be built. "Restrictive covenants" are by no means limited to one's dealing with race—all of these covenants I have just mentioned are restrictive covenants, because they restrict the use of the property in some manner.

Third, Judge Carswell did not even own this property. He signed it because it belonged to his wife, and under Florida practice, the title attorneys call for the husband's signature in a case such as this.

Fourth, when Judge Carswell conveyed land which he and Mrs. Carswell owned together, 7 years previous to this 1966 transaction, they imposed several restrictive covenants on the land. But none of these restrictions were related to race in any way. They are the sort of restrictions that any property owner might impose when he sells off a parcel of land which he owns, and retains the remainder. To illustrate this point, I shall place a copy of the 1959 deed in the record.

Unfortunately, the full facts seldom catch up with the initial "charge," and so the campaign of innuedo and misleading statements goes on apace.

The most recent example of misstatement and an actual use of names which was not authorized in any sense is that of the petition against Judge Carswell signed by former law clerks to the Supreme Court of the United States. One of the purported signatories to this petition was Charles Luce, the chief executive officer of the Consolidated Edison Co. of New York. The fact of the matter is, I am advised, that Mr. Luce did not sign the petition himself, and did not authorize anyone else to sign his name for him. I am advised that he has contacted the newspapers, and requested that his name not be shown as a signatory of this petition.

The question which this sort of thing raises in my mind is whether there are any other, among the 200-odd persons who signed this petition, who are likewise shown as signers without their consent. And how did Mr. Luce's name get on this petition without his consent? Who circulated it? Who was responsible for the unauthorized use of Mr. Luce's name? I think we would all feel a good deal more comfortable if someone would stand up and take the responsibility for this obvious error, rather than simply having the matter hang in an awkward silence.

I am dismayed at some of the stratagems that have apparently been adopted by the opponents of Judge Carswell's confirmation. The opponents apparently feel that the end which they seek justifies any means—truthful or untruthful, honest or dishonest—to accomplish that purpose. I hope they will regret their use of tactics such as those I have just described.

I say now to the Baltimore Sun, and to the so-called "unimpeachable sources" in the Senate that were quoted by the Baltimore Sun, that I will vote against recommittal of Judge Carswell's nomination, and I will vote for his confirmation.

In conclusion, I want to refer once again to the recommittal movement and urge as strongly as possible that this tactic be rejected.

Ours is a clear and present duty.
This is no time for timid hearts.
Nothing will be served by recommittal.
No new information will be developed.
Let the vote be up or down, and let there be no devious evasions.

We owe decisive action to the nominee, to our President, and to the persons who elected us, but just as importantly, perhaps, we owe it to ourselves, for only through a clearcut vote can we adequately fulfill our obligation to advise and consent in such cases.

I ask unanimous consent to have a copy of the deed printed in the RECORD.

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

WARRANTY DEED—DEED 245, PAGE 255

This indenture, made and entered into this 7th day of July, A. D. 1959, by and between G. Harrold Carswell and Virginia S. Carswell, his wife, of the County of Leon and State of Florida, Parties of the First Part, and James R. Warren and Leslie Warren, his wife, whose mailing address is 185 Devonshire Street, Boston 10, Massachusetts, of the County of Suffolk, State of Massachusetts, Parties of the Second Part.

Witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten dollars ($10.00) and other valuable considerations to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said parties of the second part, their heirs and assigns, forever, the following described land, situate, lying and being in the County of Leon, State of Florida, to-wit:

Commence at the Northeast corner of Section 1, Township 1 North, Range 1 West, and

run thence South 1320 feet, thence West 958.4 feet, thence South 969.5 feet, thence West 3600 feet, thence North 1320 feet, thence West 3538.1 feet to the Point of Beginning; from said point of beginning continue thence West 1235.5 feet to an iron pipe, thence continue West 629.7 feet to a point on the Randolph Meander Line of Lake Jackson, thence run South 59° 00' East along said Meander line 291.24 feet, more or less, thence run East 497.02 feet, more or less to an iron pipe, thence continue East 757.75 feet, thence run North 72° 58' East 365.13 feet, thence North 15° 10' East 44.6 feet to the Point of Beginning, containing 5.40 acres, more or less.

Together with a 30 foot easement for the purpose of ingress and egress, the center line of which is described as follows: Commence at the Northeast corner of Section 1, Township 1 North, Range 1 West, and run thence South 1320 feet, thence West 958.4 feet, thence South 969.5 feet, thence West 3600 feet, thence North 1320 feet, thence West 3538.1 feet, thence South 15° 10' West 44.6 feet, thence run South 59° 27' West 116 feet to the Point of Beginning being at the radius point of a circle of 50-foot radius. From said Point of Beginning run thence North 83° 53' East 333.57 feet, thence South 87° 52' East 235.49 feet, thence South 74° 08' East 83.5 feet, thence North 79° 38' East 285.1 feet, thence South 88° 00' East 265.7 feet to its terminal point in the Easterly boundary of property of G. Harrold Carswell at a point South 43° 30' West 69.6 feet from the Northeast corner thereof.

Further together with a 15 foot wide utility easement extending immediately north of and adjacent to the Northerly boundary of the aforementioned 30 foot easement for ingress and egress.

Reserving and excepting unto the said parties of the first part, however, and unto their heirs and assigns forever, an easement for a turning circle over the lands conveyed hereby, said turning circle being described as part of the hereinabove mentioned 30 foot easement for ingress and egress.

The property conveyed by this instrument shall be subject to the following restrictive covenants:

1. The property shall be used exclusively for single family residential purposes, and shall not be used for any commercial venture, or enterprise whatsoever. This restriction shall not prevent the construction of separate and distinct buildings for use as guest or servants' house, garage, storage, or the like so long as they are related to the general residential character of the property in type of construction in existing use.

2. No building or construction of any type shall be situated within twenty-five (25) feet of the Easterly, Southerly, and Westerly exterior property lines and within 15 feet of the Northerly exterior property line of subject property, with the exception of fencing which is not prohibited.

3. The Parties of the first part specifically reserve the right by this restriction to approve the exterior architectural design of any construction on subject property. The owner of subject property, however, shall have the right to construct any dwelling or building so long as it conforms generally in character and stability with others in the neighborhood as embraced in each of the lots of which it is a part, said neighborhood being exemplified herein by unrecorded plat of survey of property for G. Harrold Carswell dated February 17, 1959, by Poole & Poole, Engineers and Land Surveyors.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever, except for taxes for the year 1959, which are to be pro-rated as of this date.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the date and year first above written.

Signed, Sealed and Delivered in Presence of:

JOHN S. GWYNNE.
SARA WAYFORD.
G. HARROLD CARSWELL.
VIRGINIA S. CARSWELL.

State of Florida County of Leon:

I hereby certify, that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, G. Harrold Carswell and Virginia S. Carswell, his wife, to me well known to be the persons described in and who executed the foregoing instrument and they severally acknowledged before me that they executed the same freely and voluntarily for the purpose therein expressed.

Witness my hand and official seal at Tallahassee, County of Leon, and State of Florida, this 7th day of July, A.D. 1959.

JOHN S. GWYNN,
Notary Public, State of Florida at Large.

My Commission Expires: 12/6/61.

State of Florida, County of Leon:

I hereby certify that the above and foregoing is a true and correct copy of a Warranty Deed filed in my office on the 8th day of July A.D. 1959 and recorded in Deed book 245 at page 255.

Witness my hand and official seal this 13th day of February AD 1970.

PAUL E. HARTSFIELD,
By JANE SAUL,
Clerk Circuit Court.

DECEPTIVE MAIL

Mr. BENNETT. Mr. President, I commend the distinguished Senator from California for calling the matter of deceptive mail to the attention of the public and the Senate. As he has spoken about misrepresentations I, too, have had an experience with attempted misrepresentation. I have received a large number of postcards postmarked in Logan, Utah, opposing the Carswell nomination. When this mail began to pour into my office 3 weeks ago, I became very suspicious, because over the years this kind of political position and activity has been very uncommon in the Logan area. Consequently, I began to investigate the mail, and I was surprised to learn that almost none of the names appeared in the Logan telephone directory. I had sources at the Utah State University try to determine if such a mailing campaign might be under way on the campus from students who would not necessarily be in the phone book. To date, we still find none of these names.

Also, return addresses were excluded from this mail making it impossible to reply to the writer. This coupled with the fact that the names do not appear in the telephone directory have made me suspicious of the actual origin of the mail. When it was called to my attention that other Senators have received similar mail, I wrote to the Justice Department asking it to look into the Logan matter.

I hold sacred the right of Americans to petition and to communicate with their elected representatives. This is one of the fundamental principles of representative government and on such vital issues, as the Carswell nomination, I feel each Senator should hear from the citizens of his State. However, there are some ground rules that must be followed and this mail campaign has apparently violated them.

A person writing to his Senator should be responsible enough to give his full name and a legitimate return address. This person should also be willing to avoid any deceptive practice such as signing a postcard written in a different handwriting and without a return address.

I wonder if this is another part of the smear compaign against the nomination of Judge G. Harrold Carswell. I think Senators should be alert to this kind of deceptive communication. In my Senate career, I have held nothing more important than honest, legitimate communication from my constituency. On the other hand, if this is deceptive, as it appears, I condemn and reject it as being unfair and unrepresentative of the American practice of fairplay.

THE CARSWELL NOMINATION

Mr. TYDINGS. Mr. President, I have already addressed myself to the issue of whether Judge Carswell has the ability to put aside his own prejudices and biases so as to be able to approach every case with a fair and open mind.

I have referred to a number of lawyers who have come forward to report occassions where Judge Carswell manifested from the bench an antagonism toward or a bias against the rights of a litigant who was black or poor.

And now another lawyer has made known of instances in which Judge Carswell displayed an open animosity toward the rights of litigants in his court. I have a telegram from Henry M. Aronson, an attorney who appeared before Judge Carswell late in 1966 and early in 1967 on behalf of black students and parents seeking to desegregate their public schools.

Mr. Aronson states:

On each of these appearances, Judge Carswell displayed a marked disrespect for my clients, the 14th Amendment, and my professional responsibilities. He made no effort to mask his racial bias or his abhorrence for those of us advocating views inconsistent with his. Judge Carswell's demeanor was simply inappropriate to a United States Court House. In my three years experience as an attorney engaged in full time civil rights practice, I never appeared before a judge who demonstrated less balance, restraint, and general ability than Judge Carswell.

I ask unanimous consent to insert this telegram in the RECORD at this point.

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

NEW YORK, N.Y.,
March 26, 1970.

Senator JOSEPH TYDINGS,
New Senate Office Building,
Washington, D.C.:

I appeared before Federal District Judge G. Harrold Carswell late in 1966 and early in 1967 on behalf of black students and parents seeking to desegregate their public schools. On each of these appearances, Judge Carswell displayed a marked disrespect for my clients, the 14th amendment, and my professional responsibilities. He made no effort to mask his racial bias or his abhorrence for those of us advocating views inconsistent with his. Judge Carswell's demeanor was

simply inappropriate to a United States court house.

In my three years experience as an attorney engaged in full time civil rights practice, I never appeared before a judge who demonstrated less balance, restraint, and general ability than Judge Carswell to the Supreme Court. Would be an insult to the people of the United States, to the legal profession, to the law, and to the court. I urge your continued opposition.

HENRY M. ARONSON.

Mr. TYDINGS. Mr. President, despite the problems of temperament that Judge Carswell displayed on the lower courts, there might still be some bias for supporting his confirmation to the Supreme Court if he were a man of great intellectual and professional distinction. At least then there would be hope that once on the Supreme Court he would display a capacity for growth that would enable him to deal capably and objectively with the matters of vast importance that come before the Court.

However, the best that can be said of him is that he is a mediocre man. He has demonstrated neither the depth of intellect nor of understanding that would indicate that he might fill with distinction the seat once held by Felix Frankfurther and Benjamin Cardozo. He is, instead, in the opinion of the deans of two of our most respected law schools, a man who is professionally unqualified to sit on the Supreme Court. Dean Pollak of Yale testified:

Judge Carswell has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court.

I am impelled to conclude, with all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

Dean Bok of Harvard has written:

Judge Carswell has a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court.

Charles L. Black, Jr., Luce professor of jurisprudence at the Yale Law School and one of the most respected members of the academic legal community stated in a letter to the chairman:

There can hardly be any pretence that he—Carswell—possesses any outstanding talent at all. On the contrary, all the evidence I have seen would lead to the conclusion that mediocrity is an independent valid objection to his appointment.

The opinions of Deans Pollack and Bok and Prof. Charles Black are representative of the great weight of expert legal opinion on the subject of Judge Carswell's judicial ability. Indeed, by now it is perfectly clear that among legal experts who have studied his opinions, the overwhelming weight of opinion is that Judge Carswell clearly has not demonstrated the minimum standard of judicial ability required of a Supreme Court Justice. The outpouring of opposition from the Nation's legal scholars, judges and lawyers, both in terms of quantity and analytical perceptiveness, has never been equaled in the history of the Court. From all over the Nation those trained in the law have stepped forward to voice their opposition.

In my own State of Maryland, Eli Frank, the president of the Maryland Bar Association and William Marbury, past president of the Maryland Bar, are of the opinion that Judge Carswell "does not have the legal or mental qualification essential for service on the Supreme Court or on any high court in the land."

And this week I received a letter from the prestigious Junior Bar Association of Baltimore City, which is composed of the outstanding young lawyers of the city of Baltimore. This bar association has joined others in strongly opposing the nomination of G. Harrold Carswell. The bar association states:

Judge Carswell does not meet the high standards of intellect and scholarship which are required of a Supreme Court Justice.

I ask unanimous consent to insert their letter in the RECORD at this point.

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

JUNIOR BAR ASSOCIATION
OF BALTIMORE CITY, INC.,
Baltimore, Md., March 30, 1970.

HON. JOSEPH D. TYDINGS,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR TYDINGS: The Junior Bar Association of Baltimore City expresses its strong opposition to the nomination of Judge G. Harrold Carswell to the Supreme Court of the United States. Quite apart from legitimate questions raised in recent weeks concerning his candor in testifying before the Senate Judiciary Committee and his attitude respecting racial equality, Judge Carswell does not meet the high standards of intellect and scholarship which are required of a Supreme Court Justice. His judicial career has been among the least distinguished of the judges in his circuit and has been characterized by an unusually large number of reversals. On this ground alone, the Senate should withhold its consent.

In view of the serious doubts as to the qualification of Judge Carswell, we urge that you continue to exercise the vigilence and careful scrutiny demanded by the Constitution and vote against the nomination of Judge Carswell.

Sincerely yours,
HERBERT J. BELGRAD,
President, The Junior Bar Association of Baltimore City.

Mr. TYDINGS. The members of the faculty of the Department of Government and Politics of the University of Maryland likewise have gone on record in opposition to this obviously poor nomination.

Thirty political scientists from the Maryland faculty state:

We believe the public record reveals him to be a totally unsatisfactory candidate for this position at this time in our history. We believe that his confirmation by the United States Senate would greatly weaken the competence, prestige, and influence of the judicial branch of our national government. We fear that his confirmation and his service on the Supreme Court would result in an exacerbation of the racial crisis now confronting our nation.

I ask unanimous consent to insert their letter in the RECORD at this point.

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

UNIVERSITY OF MARYLAND,
March 24, 1970.

EDITOR,
The Washington Post,
Washington, D.C.

DEAR SIR: We the undersigned, members of the faculty of the Department of Government and Politics of the University of Maryland at College Park, wish to express our opposition as individuals to the confirmation of Judge G. Harrold Carswell as Associate Justice of the Supreme Court of the United States.

We believe the public record reveals him to be a totally unsatisfactory candidate for this position at this time in our history. We believe that his confirmation by the United States Senate would greatly weaken the competence, prestige, and influence of the judicial branch of our national government. We fear that his confirmation and his service on the Supreme Court would result in an exacerbation of the racial crisis now confronting our nation.

We join our many colleagues from the academic and legal worlds who have earnestly implored the Senate to ponder carefully its vote on this issue. Judge Carswell should not be confirmed.

Sincerely yours,

Aubrey C. King, Earlean M. McCarrick, Martin O. Heisler, Conley H. Dillon, Daniel Melnick, Ralph A. Ranald, Don C. Piper, Paris N. Glendening, Clarence N. Stone, Herbert H. Werlin, Elbert M. Byrd, Ernest A. Chaples, Jr., Thorton Anderson, Michael D. Hais, Anthony M. Angiletta, Jonathen Wilkenfeld, Harold Larson, Joseph L. Ingles, Eugene D. McGregor, Guy B. Hathorn, Peter K. Bechtold, Mavis Reeves, H. V. Harrison, Richard Claude, James M. Glass, Ronald J. Terchek, James H. Oliver, Eldon W. Lanning, Suzanne K. Sebert, Theodore McNelly.

Mr. TYDINGS. Moreover, I recently received a letter from Profs. David Skillen Bogen, Edward A. Tomlinson, Lawrence Kiefer, Hal M. Smith, Laurence M. Jones, John M. Brumbaugh, Everett F. Goldberg, James W. McElhaney, Garrett Power, Laurence M. Katz, Alice A. Soled, J. Joel Woodey, and Bernard Autrback, 13 distinguished members of the faculty from the University of Maryland School of Law.

In their letter these law professors state:

The undersigned faculty members at the University of Maryland Law School oppose as individuals the nomination of G. Harrold Carswell to the United States Supreme Court. Judge Carswell's undistinguished career does not qualify him to sit on the nation's highest court. Furthermore, his insensitivity on racial matters disqualifies him from sitting in judgment on the vital issues which confront the Court. We hope that the Senate will reject the nomination.

I request unanimous consent to print their letter in the RECORD at this point.

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

UNIVERSITY OF MARYLAND,
SCHOOL OF LAW,
Baltimore, Md., March 16, 1970.

EDITOR,
Washington Post,
Washington, D.C.

GENTLEMEN: The undersigned faculty members at the University of Maryland Law School oppose as individuals the nomination of G. Harrold Carswell to the United States Supreme Court. Judge Carswell's undistin-

guished career does not qualify him to sit on the nation's highest court. Furthermore, his insensitivity on racial matters disqualifies him from sitting in judgment on the vital issues which confront the Court. We hope that the Senate will reject the nomination.

Very truly yours,

David Skillen Bogen, Edward A. Tomlinson, Lawrence Kiefer, Hal M. Smith, Laurence M. Jones, John M. Brumbaugh, Everett F. Goldberg, James W. McElhaney, Garrett Power, Laurence M. Katz, Alice A. Soled (Mrs.), J. Joel Woodey, Bernard Auerbach.

Mr. TYDINGS. Mr. President, the objection voiced by the faculty of the Maryland Law School is part of the veritable crescendo of opposition that is emanating from the deans and faculties of practically every fine law school located in every region of the country.

Law professors from Harvard, Yale, Boston College, Notre Dame, Ohio State, Arizona State, Columbia, Catholic University, University of California at Los Angeles, Valparaiso, Georgetown, University of Iowa, University of Pennsylvania, Loyola, University of Maine, Indiana University, Rutgers, State University of New York at Buffalo, University of Illinois, Oklahoma City University, University of Chicago, New York University, University of Connecticut, Hofstra, University of California, University of Toledo, University of Arizona, University of Pittsburgh, Western Reserve, Cornell, Syracuse, University of Oklahoma, Willamette Univeristy, University of Kansas, as well as many others have expressed their opposition. Opposition to the nomination knows no geographical bounds, as witness the opposition expressed by numerous members of the faculties of the law schools of the University of North Carolina, University of Virginia, Washington and Lee, Duke University, and Florida State University.

Thirty-one distinguished members of the School of Law of Columbia University also have written the Senate urging rejection of the nomination of Judge Carswell. Their letter states:

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.

I request unanimous consent to print their letter in the RECORD at this point.

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

COLUMBIA UNIVERSITY SCHOOL OF LAW,
New York, N.Y., March 2, 1970.

AN OPEN LETTER TO MEMBERS OF THE UNITED STATES SENATE

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,

Harlan M. Blake, George Cooper, Robert M. Cover, Harold Edgar, Sheldon Elsen, Tom J. Farer, Allan Farnsworth, Henry Freedman, Wolfgang Friedmann, Nina M. Galston, Richard N. Gardner, Frank P. Grad, R. Kent Greenawalt.

Robert Hellawell, Louis Henkin, Alfred Hill, N. William Hines, W. Kenneth Jones, Victor Li, Louis Lusky, Willis L. M. Reese, Albert J. Rosenthal, Harold J. Rothwax, Benno C. Schmidt, Jr., Edwin G. Schuck, Hans Smit, Abraham D. Sofaer, Michael I. Sovern, Telford Taylor, H. Richard Uviller, Walter Werner.

Members of the Faculty of Law, Columbia University.

Mr. TYDINGS. Similarly, 25 members of the School of Law of the University of California, Los Angeles, have stated that they feel a "special responsibility to oppose the elevation of G. Harrold Carswell to the Supreme Court." I ask unanimous consent that their letter be printed in the RECORD at this point.

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

UNIVERSITY OF CALIFORNIA, LOS ANGELES,
Los Angeles, Calif., February 20, 1970.

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

DEAR SENATOR: Surely no one who values the unique role of the United States Supreme Court as both a symbol and as a vital instrument of liberty can relish the spectacle of yet another struggle in the effort to maintain high standards and judicial integrity on the nation's highest tribunal. Exhausted from a struggle to save the Court from the damage it would have suffered from the appointment of a judge who demonstrated a singular insensitivity to accepted norms of behavior in conflict of interest situations, the legal profession must now protect the court from a one-time self-professed white supremacist whose undistinguished career on the bench has contributed to the fulfillment of the vows he made more than twenty years ago to uphold the "ideals" of racial segregation.

The Supreme Court is as threatened now by racism as it was by impropriety two months ago. A judge whose career has all too frequently been marred by evasion of the letter and spirit of Supreme Court decisions, who has repeatedly been reversed by the Court of Appeals for his decisions in racial cases, and who has demonstrated a callous indifference to the constitutional rights of America's black citizens can hardly be gauged the right man for the Supreme Court at this turning point in American history.

For these reasons, as law professors who view the law as an instrument of peaceful and orderly social change, we feel a special responsibility to oppose the elevation of G. Harrold Carswell to the Supreme Court.

Respectfully,

Henry W. McGee, Jr., Benjamin Aaron, Reginald H. Alleyne, Michael R. Asimow, Robert C. Casad, George P. Fletcher, Kenneth W. Graham, Jr., Donald G. Hagman, Martin H. Kahn, Kenneth L. Karst, William A. Klein, James E. Krier, Leon Letwin, Melville B. Nimmer, Monroe E. Price, Paul O. Proehl, Joel Rabinovitz, Ralph S. Rice, Barbara B. Rintala, Gary T. Schwartz, Herbert E. Schwartz, Henry J. Silberberg, Frederick E. Smith, William D. Warren, and Richard A. Wasserstrom, Professors of Law.

Mr. TYDINGS. Mr. President, 20 members of the faculty of the Law School of the University of Pennsylvania have examined the judicial work of Judge Carswell. Like hundreds of other scholars who are outraged by this nomination, they have concluded that, "Judge Carswell has failed to exhibit those qualifications which the American people are entitled to expect of a Justice." The members of this faculty state, "our examination of his opinion in various areas of the law compels the conclusion that he is an undistinguished member of his profession, lacking claim to intellectual stature." I ask unanimous consent to print their letter in the RECORD at this point.

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

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., February 5, 1970.

It is bitter irony that in a society racked by the consequences of injustices long and callously visited upon black Americans the present nominee to the Supreme Court should be a man who at one point vehemently espoused the doctrine of white supremacy. Accepting his assurances that he no longer holds this view hardly dispels doubts concerning his generosity of spirit and breadth of vision. Indeed, the recent testimony of lawyers who have appeared before Judge Carswell raises serious questions as to his temperament and fair-mindedness, suggesting at best a grudging accommodation rather than a devotion to the constitutional rights of minorities. Beyond this, our examination of his opinions in various areas of the law compels the conclusion that he is an undistinguished member of his profession, lacking claim to intellectual stature.

It is one thing to say that Judge Carswell should not be rejected solely on the basis of views expressed as a young man. It is quite another matter, however, to elevate to the Supreme Court of the United States a judge whose principal distinctions appear to be his Southern heritage and his lack of investment in the securities market.

Appointment to the High Court is an event of national moment and lasting significance. We submit that Judge Carswell has failed to exhibit those qualifications which the American people are entitled to expect of a Justice.

Bruce Ackerman, Martha F. Alschuler, Martin J. Aronstein, Paul Bender, Paul W. Bruton, Morris L. Cohen, David B. Filvaroff, James O. Freedman, Stephen R. Goldstein, Robert A. Gorman, Jan Z. Krasnowiecki, Howard Lesnick, Richard G. Lonsdorf, Paul J. Mishkin, Clarence Morris, Covey T. Oliver, Louis B.

Schwartz, Ralph S. Spritzer, Edward V. Sparer, and Bernard Wolfman, Members of the Faculty of the University of Pennsylvania Law School.

Mr. TYDINGS. Rutgers Law School is another distinguished institute of higher learning that has addressed itself to the issue of Judge Carswell's legal qualifications to sit on the Supreme Court. Seventeen members of this faculty have concluded that, "his professional competence is of such a low level that approval of his nomination would, as the New York Times put it on January 28, come close to contempt of the Supreme Court." I ask unanimous consent to print their letter in the RECORD at this point.

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

RUTGERS—THE STATE UNIVERSITY,
Newark, N.J., February 11, 1970.

Hon. HARRISON A. WILLIAMS,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR WILLIAMS: We are dismayed by the nomination of Judge Carswell for the Supreme Court. Judge Carswell's judicial record unfortunately fulfills his 1948 pledge of racism, as lawyers who have practiced before him testified without rebuttal. Legal scholars who studied his opinions and decisions testified that Judge Carswell has been consistently reluctant to enforce the guarantees of the Bill of Rights, and that his professional competence is of such a low level that approval of his nomination would, as The New York Times put it on January 28, come close to contempt of the Supreme Court.

We trust that you will do everything in your power to prevent confirmation by the Senate.

Respectfully,

John G. Glenn, Frank Askin, Richard Chuseel, J. Allen Smith, Saul Mendlontz, Robert E. Knowlton, Eli Garmel, Steven A. Gifin, Alexander D. Brooks, Ruth B. Ginsburg, Era H. Hanks, Thomas A. Cowan, Thomas A. Cantry, Julius A. Lee, David Haber, John Lowenthal, and Vincent Kimberley, members of the faculty, Rutgers University, School of Law, Newark.

Mr. TYDINGS. Twelve members of the faculty of the College of Law of the University of Illinois state that there is "nothing . . . to indicate that Judge Carswell is a man of such eminence, quality, and demonstrated legal ability as to warrant a lifetime appointment to the high court of the land."

I ask unanimous consent to have their letter printed in the RECORD.

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

UNIVERSITY OF ILLINOIS,
Champaign, Ill., February 13, 1970.

Hon. CHARLES PERCY,
1200 New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: We, the undersigned members of the faculty of the College of Law, write to express our concern over the nomination of Judge Carswell to the United States Supreme Court. The concern is not that he is a Southerner or a conservative. Those are matters which seem to be properly within the discretion of a President in making his selection.

The concern is not primarily that Judge Carswell has a background of stated white racism. Even in as sensitive a position as justice of the Supreme Court, a man should not be automatically disqualified because of an error in his youth. Whether such error should be grounds for rejection at this particular point in our nation's history is a close judgment call.

The primary concern is simply this: nothing has yet been reported in the press or elsewhere to indicate that Judge Carswell is a man of such eminence, quality, and demonstrated legal ability as to warrant a lifetime appointment to the high court of the land. The question ought not be, has he done anything to cause the Senate to reject him; the question should be whether he has done enough to entitle him to acceptance. The evidence so far clearly suggests the answer is no.

We appreciate the difficulty after the Haynsworth matter of again challenging the wisdom of the President's choice, particularly for members of his own party. Nevertheless, in view of the importance of Senate confirmation of a Supreme Court justice, we ask that you give this matter the searching examination it deserves.

Very truly yours,

Sheldon J. Plager, Michael P. Dooley, Peter Hay, Jeffrey O'Connell, Wayne R. LaFave, Lawrence Waggoner, Rubin C. Cohn, Robert W. Brown, Roger W. Findley, Prentice H. Marshall, Victor J. Stone, and J. Nelson Young.

Mr. TYDINGS. Twenty-three members of the School of Law of the University of Puerto Rico, in an open letter to the Senate, state:

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.

I ask unanimous consent to print their letter in the RECORD at this point.

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

UNIVERSITY OF PUERTO RICO,
Río Piedras, P.R., March 13, 1970.

An Open Letter to Members of the United States Senate:

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 exasting 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,

Dean David M. Helfeld, Jacob I. Karro, Eulalio Torres, Demetrio Fernández, Samuel E. Polanco, Luis F. González Correa, Jaro Mayda, Helen Silving, Eduardo Ortiz Quiñones, Alvaro Calderón, and José E. Villares.

William C. Headrick, Raúl Serrano Geyls, Richard H. Francis, Efraín González Tejera, Ratimir Maximiliano Pershe, José M. Canals, Antonio J. Amadeo Murga, Margaret Hall, Jaime B. Fuster, Benjamín Rodríguez Ramón, Nicolás Jiménez, and Richard B. Cappalli, Members of the Faculty of Law, University of Puerto Rico (Organizational affiliation for purpose of identification only.)

Mr. TYDINGS. Twenty-one professors of law of the State University of New York have concluded that Judge Carswell fails to have the "strength of intellect" which is needed on the Court. I ask unanimous consent to print their letter in the RECORD at this point.

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

[From the New York Times, Mar. 17, 1970]

CARSWELL OPPOSED

To the Editor: Recent disclosures about the capacities and attitudes of Judge G. Harrold Carswell have persuaded us that he should not be confirmed as a Justice of the United States Supreme Court. We therefore urge the committee and the Senate to reject this nomination.

The Supreme Court plays a uniquely powerful role in our nation. Whether a justice is a "strict constructionist" or an "activist," the issues coming before the Court require great strength of mind and sensitivity to injustice. Every nomination for the Court thus carries a heavy burden in this regard.

Measured by these standards, the nomination of Judge Carswell is clearly deficient. In the past he has demonstrated attitudes hostile to our black citizens. Admittedly, these occurred many years ago, but when such evidence appears in the record, there is an obligation to show that the attitude then reflected no longer exists.

Justice Hugo Black had indeed been a member of the Ku Klux Klan some years before his nomination, but he had sufficiently demonstrated the insignificance of this by his conduct both before and after. Judge Carswell has not only made no such demonstration of a changed attitude, but the emerging evidence indicates that at least remnants of this attitude still linger.

Finally, as careful students of his judicial performance like Prof. William Van Alstyne (who, incidentally, supported Judge Haynsworth's nomination) and Dean Louis Pollak of Yale have concluded, the intellectual quality of Judge Carswell's opinions is far from distinguished. [Editorial March 13.]

This is not to deny the appropriateness of a justice from the South, but in these difficult days, strength of intellect and sensitive to minority aspirations are indispensable for any appointment to one of the most powerful and demanding offices our society possesses. Measured by either of these standards, Judge Carswell fails.

HERMAN SCHWARTZ.

BUFFALO, *March 9, 1970.*

(NOTE.—The letter was signed by twenty other Professors of Law at the State University of New York.)

Mr. TYDINGS. Mr. President, four statements of opposition from southern law school faculties deserve special note.

One letter comes from the University of Virginia School of Law, one of the South's finest law schools. Nineteen members of the faculty of this outstanding school have written:

The failure of the organized bar and law schools of this land to oppose vigorously the nomination of Judge Carswell to the Supreme Court can only be described as lamentable. President Nixon is entitled to his belief that what the Supreme Court needs now is another Southern justice, indeed even a "strict constructionist," but as faculty members of a Southern law school we cannot remain silent while a judge whose legal abilities and judicial background are so sadly wanting is awarded one of the highest judicial honors that this country can bestow upon a member of our profession.

I ask unanimous consent to have their letter inserted in the RECORD at this point.

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

LAW PROFESSOR'S OPPOSITION TO CARSWELL

The failure of the organized bar and the law schools of this land to oppose vigorously the nomination of Judge Carswell to the Supreme Court can only be described as lamentable. President Nixon is entitled to his belief that what the Supreme Court needs now is another Southern justice, indeed even a "strict constructionist," but as faculty members of a Southern law school we cannot remain silent while a judge whose legal abilities and judicial background are so sadly wanting is awarded one of the highest judicial honors that this country can bestow upon a member of our profession.

R. B. LILLICH,
University of Virginia School of Law.
CHARLOTTESVILLE.

(NOTE.—This letter also bore the names of 18 other members of the law school faculty.)

Mr. TYDINGS. Equally significant is a statement signed by 86 members of the graduating class of the University of Virginia School of Law. These young men well trained in law at one of the South's finest institutes of higher learning state:

Evidence overwhelmingly shows that G. Harrold Carswell is unqualified to sit on the nation's highest court.

I ask unanimous consent to have this petition inserted in the RECORD at this point.

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

ACT NOW AGAINST THE NOMINATION OF G. HARROLD CARSWELL

The integrity of the Supreme Court is a matter of concern to all citizens. Evidence overwhelmingly shows that G. Harrold Carswell is unqualified to sit on the Nation's highest court. As third year students at the Law School we urge all opposed to the nomination to express their views to their Senators and to urge their relatives and friends to do the same.

David T. Reidel, S. Martin Teel, Jr., Kurt A. Kaufmann, Robert J. Miller, John A. Mahaney, Hunter Hughs, Harvey A. Goldman, Russell R. French, M. Langhorne Keith, Harvey E. Bines, Mark J. Spooner, C. Porter Vaughan, III, John G. Milliken, J. Anthony Sinclitico III, Priscilla J. Rassin, Timothy E. Hoberg, Alan Stephenson, David Brewer, John R. Lacey, Kennth M. Greene, F. A. McDermott, Richard Saahl, Carl Hanzelik, Thomas J. Mullaney, Peter Tierney.

R. A. Graham, Edward L. Hogshire, Frederick T. Stant III, Vernon Swartsel, John T. Morin, John H. Cassady, Vincent Tramoute II, Luciene Wulsin, Jr., Russel H. Lubiner, Jay H. Calvert, Jr., Myron T. Steele, Robert W. Benjamin, James A. L. Daniel, Philip S. Davi, Lynn Groseclose, F. L. Carter, J. H. Morganstern, William N. Pollard, Elaine R. Jones, John S. Edwards, D. Sophocles Dadakis, Alice Rebecca Snyder, Leo L. Tully, Richard N. Carrell, Timothy More.

Andrew R. Gelman, William D. Cotter, Michael J. McDermott, John T. Schell, III, John A. Dudek, Jr., F. Guthrie Gordon III, Roger C. Wiley, Jr., Craig M. Bradley, John O. Wynne, Neil G. McBride, Stephen M. Pa, Samuel M. Bradley, John X. Denney, Jr., David S. Lott, H. Sadler Pi, T. James Bryan, John P. Paone, Richard A. Smith, Allan J. Tanenbaum, Marshall V. Miller, E. William Chapman, Charles H. Majors, Vincent J. Poppiti, Robert P. Kl, Marion H. Allen.

Robert A. Boas, John G. Milburn, M. R. Bromley, C. Ca, Kathleen A. Keane, Jack McKay, Thomas E. Bundy, Nancy Smith, David M. Levy, Paul C. Giannelli, R. M. C. Glenn III.

Mr. TYDINGS. The second statement comes from nine members of the law school of Florida State University, located in Tallahassee. Notwithstanding the fact that Judge Carswell helped to establish this law school, the members of the faculty asked the President to withdraw the nomination. Their letter states:

Because we believe that only the most highly qualified should be appointed to the United States Supreme Court, we urge you to withdraw the name of Judge G. Harrold Carswell and to submit to the Senate the name of some truly distinguished Southern jurist.

I ask unanimous consent that this letter be inserted in the RECORD.

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

THE FLORIDA STATE UNIVERSITY,
Tallahassee, March 17, 1970.

Hon. RICHARD M. NIXON,
President of the United States,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Because we believe that only the most highly qualified should be appointed to the United States Supreme Court, we urge you to withdraw the name of Judge G. Harrold Carswell and to submit to the Senate the name of some truly distinguished Southern jurist.

Sincerely,

Robert P. Davidow, Assistant Professor of Law; Raymond G. McGuire, Assistant Professor of Law; John F. Yetter, Assistant Professor of Law; David F. Dickson, Associate Professor of Law; John W. VanDoren, Associate Professor of Law; Ken Vinson, Professor of Law; Jarrett C. Oeltjen, Assistant Professor of Law; Francis N. Millett, Jr., Associate Professor of Law; Edwin M. Schroeder, Law Librarian & Instructor.

Mr. TYDINGS. A third letter in opposition comes from the law faculty of the University of North Carolina.

Twenty-two members of this law faculty, representing a majority of the faculty at this fine school, have declared their opposition. They state:

The Supreme Court deserves and demands the best America has to offer; and Judge Carswell is, as his Senate supporters admit, mediocre.

I ask unanimous consent to insert their letter in the RECORD at this point.

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

THE UNIVERSITY OF NORTH CAROLINA,
Chapel Hill, March 24, 1970.

Senator SAM ERVIN,
Senator B. EVERETT JORDAN,
Senate Office Building,
Washington, D.C.

DEAR SENATORS: We, the undersigned, being a majority of the law professors at the University of North Carolina, urge you to vote against the ratification of Judge Carswell. The Supreme Court deserves and demands the best America has to offer; and Judge Carswell is, as his Senate supporters admit, mediocre.

Daniel H. Pollitt, R. H. Robinson, Jr., Dale Whitman, Robert Melott, Kenneth S. Broun, Robert Byrd, Donald F. Clifford, Jr., John P. Dalzell, Dan B. Dobbs, John Evans, Morris R. Gelblum, Arnold H. Loewy, Martin B. Louis, Laughlin McDonald, Barry Nakell, Walter D. Navin, Jr., Dickson Phillips, Thomas J. Schoenbaum, John W. Scott, Jr., John E. Semonche, Frank R. Strong, W. L. Walker.

Mr. TYDINGS. The fourth statement comes from 57 faculty members, including more than half of the law school faculty, of the Washington and Lee University at Lexington, Va. They state:

Judge Carswell's judicial record is undistinguished . . . He seems to be a thoroughly mediocre man by the most lenient standards. . . . Surely, here in the South, are judges of conservative mind, but men of good will and judicial ability. Let the Senate turn aside the nomination of Judge Carswell and then let the President look again.

I ask unanimous consent to print their letter in the RECORD at this point.

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

JUDGE CARSWELL'S NOMINATION

We, the undersigned members of the Washington and Lee University faculty, oppose the confirmation of Judge G. Harrold Carswell as Associate Justice of the Supreme Court of the United States of America. His appointment would be a slap in the face to 23 million black Americans—our fellow citizens—and would further disenchant young Americans in their hope for quality and noble leadership in government. Judge Carswell's judicial record is undistinguished. The deans of the law schools at Yale, Harvard and the University of Pennsylvania have called his record "the least distinguished in this century." He seems to be a thoroughly mediocre man by the most lenient of standards.

Surely, here in the South, are judges of conservative mind, but men of good will and judicial ability. Let the Senate turn aside the nomination of Judge Carswell and then let the President look again.

MILTON COLVIN,
Professor of Political Science, Washington and Lee University.

Mr. TYDINGS. Mr. President, some have asserted that Judge Carswell should be confirmed because in the past nominees have been confirmed who lacked judicial experience. This argument totally misses the point. Judge Carswell should not be confirmed because he does

have judicial experience and this experience has proved that he is not fit to sit on the Supreme Court.

The facts are that Judge Carswell has not distinguished himself in any aspect of the law whatsoever. Distinguished and learned professors have examined Judge Carswell's opinions dealing with property law, tax law, criminal law, torts, and contracts. Their conclusion—Judge Carswell "has failed to demonstrate even the most elementary of judicial skills."

He simply strikes out when it comes to judicial ability.

Prof. Charles R. Nesson, who teaches courses in personal property and real property at Harvard Law School examined Judge Carswell's property decisions. Professor Nesson writes that Judge Carswell's opinions are flawed by his failure "to state the facts in any comprehensible fashion," "to indicate the basis for Federal jurisdiction" and by his dismissal of "the defendant's major contention in conclusionary fashion with no indication of the facts supporting the conclusion."

Professor Nesson concludes:

In a time when law and courts are seen increasingly as instruments of political repression it is particularly important that judicial appointees be men on legal and moral distinction. Judge Carswell does not appear to meet such standards.

I ask unanimous consent to insert this statement in the RECORD at this point.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., February 14, 1970.

Senator JOSEPH TYDINGS,
Senate Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Apart from the issues of social outlook and racial bias of Judge Carswell, serious questions have been raised as to whether he has the requisite judicial qualities to be appointed to the Supreme Court. Because these latter qualities are difficult to evaluate with precision, there is a tendency for witnesses at the hearings and public commentators to overlook or deemphasize this issue as a factor in the Senate's decision. It appears, for example, that the ABA Committee on Judicial Appointments gave no more than perfunctory attention to Judge Carswell's record on the bench as a measure of his abilities as a judge. This approach to judicial appointments impairs the quality as well as the stature of the Supreme Court, and seriously undercuts respect for law.

As a professor of Property Law I have evaluated the published opinions of Judge Carswell in my field. These opinions are Lefkowitz v. McQuagge, 230 F. Supp. 757, affirmed 334 F. 2d 243; U.S. v. 452 Acres of Land, 207 F. Supp. 323; and First Nat. Bank v. US, 350 F. 2d 606. They are not distinguished opinions. The opinion in Lefkowitz v. McQuagge, for example, fails to state the facts in any comprehensible fashion, fails to indicate the basis for federal jurisdiction (the case is an ejectment proceeding), and dismisses what appears to be the defendant's major contention (a claim of adverse possession) in conclusory fashion with no indication of the facts supporting the conclusion.

In a time when law and courts are seen increasingly as instruments of political repression it is particularly important that judicial appointees be men on legal and moral distinction. Judge Carswell does not appear to meet such standards.

Sincerely yours,

CHARLES R. NESSON,
Professor of Law.

Mr. TYDINGS. Prof. Guido Calabresi of Yale reviewed Judge Carswell's opinions in tort cases, an area that Professor Calabresi has taught for 11 years and concluded:

There is nothing in them to suggest any special distinction or qualification for the United States Supreme Court.

Interestingly, Professor Calabresi also noted that Judge Carswell's opinions in the field of torts "do not show that universal dedication to precedent and strict construction which it is said the President desires."

I ask unanimous consent to have this letter printed in the RECORD.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., February 13, 1970.

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

DEAR SENATOR TYDINGS: I have taught the law of Torts over the last eleven years at the Yale, Harvard and Columbia schools of law. Recently I have read some twenty-three torts opinions by Judge H. Carswell. These, I believe, include substantially all his writings in this area which have been published. My view of his opinions is that while most are competent, there is nothing in them to suggest any special distinction or qualification for the United States Supreme Court. It is an unfortunate fact that lack of distinction, by itself, has rarely been deemed a sufficient ground for denying the President his choice of appointments to the Supreme Court. Where an appointment, however, is insulting to a great number of citizens as this one is, lack of distinction adds a very important dimension.

Judge Carswell has made blatant and public racist remarks. A Senator may feel bound to vote to confirm a man who has made such racial remarks if he believes that those remarks have been honestly recanted and if falure to confirm would substantially limit the President's appointment prerogatives. This last might be the case if the nominee was a jurist of distinction who could be replaced only with difficulty. My reading of Judge Carswell's opinions in my field suggests this is not the case. Indeed, it suggests that there are many sitting judges both in the country and in the South who hold the view of law the President seems to espouse, who are at least as qualified technically as Judge Carswell, and who have not publicly insulted a large number of our citizens. Under the circumstances confirmation of Judge Carswell amounts to gratuitous insult.

It may be worth noting that Judge Carswell's opinions in the field of Torts do not show that universal a dedication to precedent and strict construction which it is said the President desires. This raises a question whether in those areas of law like Civil Rights, where experts say they have detected an especially narrow constructionism, something is at work other than a general judicial philosophy.

I sincerely hope that you will vote to withhold your advice and consent to this nomination.

Very truly yours,

GUIDO CALABRESI,
Professor of Law, Yale University, Visiting Professor of Law, Harvard University.

Mr. TYDINGS. Professor I. Lazerow, professor and assistant dean at the University of San Diego School of Law read and analyzed 10 of Judge Carswell's opinions relating to property or Federal taxation. These are areas in which Professor Lazerow has expertise. Professor Lazerow has found that Judge Carswell "Adduces conclusion of law—which are unsupported by any reasoning." On the basis of his analysis, he has found that Judge Carswell demonstrates a marked inability "to relate the facts of the case to the governing law."

Professor Lazerow concludes:

Judge Carswell does not possess sufficient lawlerly ability to sit on the Supreme Court of the United States.

I ask unanimous consent to insert Professor Lazerow's letter in the RECORD at this point.

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

UNIVERSITY OF SAN DIEGO,
San Diego, Calif., March 26, 1970.

Senator GEORGE MURPHY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MURPHY: I have noted in the press allegations with respect to the competence of Judge Harrold Carswell to sit on the Supreme Court of the United States, and have made my own investigation of the matter.

I have read and analyzed ten of his opinions relating to property or federal taxation, areas in which I have some expertise. From the opinions in those cases, I must conclude that Judge Carswell does not possess sufficient lawyerly ability to sit on the Supreme Court of the United States.

In Lefcowitz v. McQuagge, 230 F. Supp. 757 (N.D. Fla. 1963), defendant was claiming title by seven years' adverse possession. Judge Carswell's opinion presents conclusions of facts or law, rather than findings and reasoned judgment. On the question of adverse possession, he states that the evidence fails to establish adverse possession as a result of taking turpentine from trees on the land. Every first semester property student learns that adverse possession is the use of the land in the manner to which it is best suited. There is no discussion in Judge Carswell's opinion of the use to which the land is suited or of the scope of the defendant's activities in taking turpentine. Both are crucial. For contrast, compare the court's opinion in Brumagin v. Bradshaw, 39 Cal. 24 (1870).

In the same case, Judge Carswell adduces conclusions of law with respect to the Florida statutes which are unsupported by any reasoning, and therefor unpersuasive.

The same inability to relate the facts of the case to the governing law in an adequate and persuasive manner was demonstrated in three tax cases. All of these cases were correctly decided, but failure to adequately use judicial techniques mars the opinions. See Patterson v. Belcher, 302 F.2d 289 (5th Cir. 1962); Lazonby v. Tomlinson, 272 F. Supp. 558 (N.D. Fla. 1967); and Motor Fuel Carriers v. U.S. 202 F. Supp. 497 (N.D. Fla. 1962).

In Patterson, he also fails to point out the

significance or purpose of the distinction between acquisition and sales intent in deciding whether an asset is held primarily for sale in the ordinary course of business.

In Macey's Jewelry Corp. v. U.S., 242 F. Supp. 25 (N.D. Fla. 1965), rev'd 387 F.2d 70 (5th Cir. 1967), Judge Carswell fails to consider the purposes of the law in deciding whether a particular credit charge is included in the list price of the goods or is a finance charge. The basic proposition that laws (even tax laws) are to be construced according to their intent seems to have escaped him.

I have not investigated his opinions in other areas. However, briefly reviewing the subsequent history of his decision, I note that he has been reversed by higher courts in a disproportionate number of cases.

For the above reasons, I would urge you to vote against his confirmation and to urge the President to nominate an individual better qualified to carry on the important functions of the Supreme Court.

Sincerely,

HERBERT I. LAZEROW,
Assistant Dean and Professor of Law.

Mr. TYDINGS. Professor John Griffiths, a teacher and a scholar in the field of criminal law and procedure at Yale Law School and four of his students undertook to examine Judge Carswell's judicial work in the area of their expertise—criminal law and procedure. They studied a substantial body of opinions—both written by him and written by appellate courts reviewing his decisions.

Here is their conclusion:

We found no sign whatever of special ability. Judge Carswell's opinions are characterized, at best, by unimaginative, mechanical mediocrity. This is not a matter of judicial ideology: one did not expect to find a future Justice Black or Brennan, but no potentially solid (let alone great) judicial conservative—no Justice Harlan, no Judge Friendly—is revealed in these opinions either. We found nothing that, by *anyone's* lights, could conceivably justify confirming Judge Carswell to the Supreme Court. . . .

We conclude that, in the area we investigated, Judge Carswell's judicial performance does not begin to qualify him for elevation to the Supreme Court.

I ask unanimous consent that their letter be inserted in the RECORD at this point.

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

YALE LAW SCHOOL,
New Haven, Conn., Feb. 18, 1970.

Hon. JAMES O. EASTLAND,
Chairman of Senate Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: In the course of the growing controversy concerning Judge Carswell's fitness for the Supreme Court, the question of his professional competence for such a position has been relatively little discussed. This seems unfortunate. Surely there can be no doubt but that only the most distinguished and technically qualified members of the legal profession ought even to be considered for the highest Court in the Nation. Surely, also, it is part of the Senate's duty to exercise its responsibility in confirmation as to maintain the highest standard, in proficiency as well as in integrity, as a *minimum* qualification for elevation to the Supreme Court. But while the subject has not been intensively discussed, there is certainly widespread belief in the profession, and beyond that Judge Carswell falls far short of any reasonable minimum standard and ought therefore not be confirmed. Dean Louis H. Pollak of the Yale Law School was one of the few witnesses before your Committee who dealt with this question. He put what is apparently a widespread consensus bluntly when he stated that Judge Carswell possesses "more slender credentials than any nominee in this century." Dean Derek C. Bok of the Harvard Law School has likewise expressed the view, in a letter to your Committee that the nominee shows "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the Court."

The undersigned are a teacher and scholar in the field of criminal law and procedure, and four students in his criminal law course. We undertook to examine Judge Carswell's judicial work in the area of our expertise—criminal law and procedure. We studied a substantial body of opinions—both written by him, and written by appellate courts reviewing his decisions. These cases are listed in an appendix to this letter.

The enterprise solidly confirmed the general opinion we had set out to test. We found no sign whatever of special ability. Judge Carswell's opinions are characterized, at best, by unimaginative, mechanical mediocrity. This is not a matter of judicial ideology: one did not expect to find a future Justice Black or Brennan, but not potentially solid (let alone great) judicial conservative—no Justice Harlan, no Judge Friendly—is revealed in these opinions either. We found nothing that, by *anyone's* lights could conceivably justify confirming Judge Carswell to the Supreme Court.

In addition, we found some troublesome indications of a lack of proper judicial temperament in the Judge. For example, in the important area of federal jurisdiction comprised of *habeas corpus* petitions from State prisoners, Judge Carswell had to be reversed four times in the single year 1968 (*Dawkins, Brown, Harris, Barnes*). In three of these, his error was the same: failure to hold an evidentiary hearing as required by the face of the petition (*Brown, Harris, Barnes*). It is essential to emphasize that this reflects not only a questionable ideological bias operative in his adjudication, but apparent lack of technical ability—in one case (*Brown*) he erred *in favor of the petitioner* on one critical issue, by failing to investigate whether State remedies had been exhausted.

Inadequacy as a judge also appears in *Hayes*, where Judge Carswell held that the petitioner could not raise exclusion of Negroes from his jury on *habeas corpus* because he had not done so at trial. Such an automatic waiver doctrine is not the law and has not been since *Fay* v. *Noia*, 372 U.S. 319, 438–440 (1963). The cases on which Judge Carswell relied were inapposite, because they concerned the effect, in *federal* cases, of a defendant's failure to conform to Rule 12(b)(2), F. R. Crim. P. — Only the *habeas* hearing which Judge Carswell refused—in this, as in so many other cases—to hold, could have discovered whether the petitioner's failure to raise the issue could "fairly be described as the deliberate by-passing of state procedures." 372 U.S. at 439.

As a final example, his opinion in *Boulden* raises serious questions of craftsmanship, at least, if not of judicial integrity. The case involved the "voluntariness" of a confession, under the "totality of circumstances" rule. Judge Carswell's opinion failed even to refer to the petitioner's first confession, which preceded the two confessions used at his trial, and which had been extracted by a police chief who promised petitioner safety from an angry mob and a pistol-waving policeman if he would confess. Surely scrupulous integrity with facts is a *sine qua non* of an adequate judge, and in the *Boulden* case, at least, Judge Carswell did not display it.

We conclude that, in the area we investigated, Judge Carswell's judicial performance does not begin to qualify him for elevation to the Supreme Court. We hope you will take these considerations under advisement and, if this is in conformity with the Rules of your Committee, transmit them not only to the members of the Judiciary Committee, but also to the Senate as a whole.

Very sincerely yours,

JOHN GRIFFITHS,
Assistant Professor of Law.
ABRAHAM A. ARDITI.
ROSSER H. BROCKMAN II.
ROBERT H. CLARIDGE.
ERIC P. STAUFFER.

APPENDIX

OPINIONS OF JUDGE CARSWELL AND CASES IN WHICH HE RENDERED A DECISION

Abrams v. Goodwyn, 186 F.Supp. 271.
Barnes v. Florida, 402 F.2d 63 (reversing Carswell).
Baxter v. Florida, 295 F.Supp. 1164.
Bell v. Wainwright, 299 F.Supp. 521.
Beufve v. U.S., 238 F.Supp. 494, vacated 344 F.2d 958.
Boulden v. Holman, 385 F.2d 102, vacated 394 U.S. 478.
Brown v. Wainwright, 394 F.2d 153 (reversing Carswell).
Dawkins v. Crevasse, 391 F.2d 921 (reversing Carswell).
Grissetle v. U.S., 313 F.2d 187.
Hall v. Wainwright, 263 F.Supp. 727.
Harris v. Wainwright, 399 F.2d 142 (reversing Carswell).
Hayes v. Wainwright, 302 F.Supp. 716.
Holstein v. Wainwright, 302 F.Supp. 615.
Johnson v. U.S., 293 F.2d 100.
Landers v. U.S., 304 F.2d 577.
McCullough v. U.S., 231 F.Supp. 740.
Malone v. U.S., 269 F.Supp. 755.
Miller v. U.S., 207 F.Supp. 5.
Tyler v. U.S., 397 F.2d 565, cert. den. 394 U.S. 917.
U.S. v. Levy, 232 F.Supp 661.
Walker v. U.S., 301 F.2d 36.
Weaver v. U.S., 298 F.2d 497.
Yeloushan v. U.S., 313 F.2d 303.

Mr. TYDINGS. In the area of contract law, Judge Carswell's opinions have been analyzed by Prof. Monroe Friedman of the George Washington University Law Center. Professor Friedman has been teaching courses in contracts for 12 years and is the author of a case book on contracts. Professor Friedman states that one of Carswell's opinions in this area shows him to be a "broad constructionist." He states that another opinion shows him to be, in Professor Friedman's words, "an absurd constructionist." Professor Friedman states that in this opinion Judge Carswell, "interpreted a contract to mean that one of the parties to it could change any of the terms, including the price, any time he pleased. This decision violated well-established principles of contract law as well as commonsense."

Another Carswell opinion that Professor Friedman analyzed suggests, according to Professor Friedman, "serious doubts as to his ability to perform the most elementary form of legal analysis; that is, the matching of facts and rules."

Professor Friedman concludes that—

Judge Carswell's opinions in the Contract area show him to be a broad constructionist, favoring technicalities over common sense and fair dealing, and a jurist incapable of performing the most elementary of legal analysis.

I ask unanimous consent that Professor Friedman's letter be inserted in the RECORD at this point.

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

THE NATIONAL LAW CENTER,
March 9, 1970.

Re Nomination of Judge Carswell.

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

DEAR SENATOR MANSFIELD: The controversy over the nomination of Judge George Harrold Carswell to the Supreme Court of the United States has focused upon the Judge's background as a "strict constructionist" and on his views and conduct regarding civil rights. These issues, of course, are charged with considerable emotion and involve questions of political preference, as to which the President should have wide latitude.

At the same time, substantial doubts have been raised as to Judge Carswell's quality as a jurist—his intellectual capacity and his ability to carry out legal analysis in a professional way. It therefore seems worth while to consider the Judge's opinions in areas of the law that are less political and emotional in their implications. One of these areas is Contracts. Since I have taught Contracts I and II at the National Law Center for twelve years and am the author of a casebook on Contracts (2d ed., 1967), I have undertaken to review Judge Carswell's opinions dealing with Contracts. There are five in all, and only three of these are presented in such a way as to permit adequate analysis: *Dove Sheet Metal* v. *Hays Heating,* 249 F. Supp. 266; *Associated Beverages Co.* v. *Ballantine,* 287 F. 2d 261; and *Luse* v. *Valley Steel Products,* 293 F. 2d 625.

The *Dove* case is of particular interest because it shows Judge Carswell to be a broad constructionist of statutory technicalities. In this case the plaintiff and defendant, two businessmen, had orally contracted for construction work, and the defendant had admittedly broken the contract without cause. The defense rested entirely upon a technicality: the contract had not been written, and the defendant contended that the Statute of Frauds therefore permitted him to violate his word with impunity. Judge Carswell recognized that the law was unsettled on this point and that the statute might well have been construed strictly, so as not to apply to the particular transaction. Nevertheless, Judge Carswell chose to construe the statute broadly, thereby permitting the defendant to avoid a just claim by means of a questionable technicality.

The *Associated Beverages* case reveals the Judge as what can best be called an absurd constructionist. There he interpreted a contract to mean that one of the parties to it could change any of the terms, including the price, any time he pleased. This decision violated well-established principles of Contracts law as well as common sense.

The most significant of Judge Carswell's Contracts opinions, however, is in the *Luse* case, because it suggests serious doubts as to his ability to perform the most elementary form of legal analysis, that is, the matching of facts and rules. Indeed, this level of legal analysis is so simple that it is assumed that candidates for law school are all capable of doing it; for this reason all "matching" questions were eliminated from the Law School Admission Test several years ago in favor of more complex problems. (See my article, "Testing for Analytic Ability on the Law School Admissions Test," 11 Jour, Legal Education 24 (1958).)

In *Luse* the question was whether the manufacturer of defective goods was liable to the plaintiff, who had purchased the goods through another. The overwhelming weight of modern authority in such cases is to hold the manufacturer liable, since he is the party who is responsible for the defective goods he produces and markets, and because he is the party best able to prevent such harm and best able, usually, to spread the cost.

Judge Carswell, however, wholly ignored both the trend of authority and the underlying questions of policy. Instead, he misread and misapplied previous cases. One of these cases had held that "the mere resale" of an article did not give the subpurchaser rights. The other prior case had held that an ordinary resale by a retailer did not make a wholesaler liable where there was "nothing to indicate" that the wholesaler understood that he was dealing with the ultimate purchaser. What Judge Carswell somehow failed to see was that the transaction in *Luse* was not a "mere resale" by a retailer with "nothing to indicate" that the defendant understood that he was dealing with the plaintiff. On the contrary, the facts of *Luse* as stated by the Judge clearly show that the defendant shipped the goods to the care of the plaintiff. Thus, the cases cited by Judge Carswell did not "match" the one before him for decision, as he somehow believed, and they therefore did not require his decision exculpating the manufacturer from liability for his defective goods.

In sum, Judge Carswell's opinions in the Contracts area show him to be a broad constructionist, favoring technicalities over common sense and fair dealing, and a jurist incapable of performing the most elementary tasks of legal analysis.

Yours truly,

MONROE H. FREEDMAN,
Professor of Law.

Mr. TYDINGS. In light of the analysis of Judge Carswell's legal ability, it is no wonder that a disproportionate number of Judge Carswell's opinions that were appealed were reversed.

The opinions of two other legal scholars, William Van Alstyne, of Duke Law School, and John P. Frank, deserve special mention.

Prof. William Van Alstyne of the Duke University Law School is one of the most distinguished legal scholars of the South. Professor Van Alstyne had testified before the Senate Judiciary Committee in support of Judge Haynsworth, but testifying in opposition to Judge Carswell, Professor Van Alstyne concluded that Judge Carswell's decisions reflected a lack of reasoning, care, or judicial sensitivity overall.

John Frank taught law at both Indiana Law School and Yale Law School. He is the author of nine books largely on legal subjects, including several works on the Supreme Court. Mr. Frank testified at the Judiciary hearings on Judge Haynsworth's nomination in support of that nomination. Mr. Frank feels differently about Judge Carswell. He opposes this nomination and has also gone on record as believing that "Judge Carswell does not have the legal or mental qualifications essential for service on the Supreme Court or any high court in the land, including the one where he now sits."

Another voice to be heard in opposition comes from a man who is perhaps the most eminently qualified to adjudge the fitness of Judge Carswell to sit on the Supreme Court. This is because it is his seat on the Supreme Court that Judge Carswell has been nominated to fill. Mr. Justice Arthur Goldberg recently addressed himself to the Carswell nomination and asserted:

How can it be said that Judge Carswell is qualified to take the seat once held by Justice Cardozo and Justice Frankfurter. He is not fit.

And 206 former law clerks to Supreme Court Justices are of the same opinion; 206 of the Nation's best legal minds who have worked for Supreme Court Justices, starting with Justices Brandeis and Holmes, and who know first hand the special qualities required of a Supreme Court Justice—the intellect, judgment, and temperament—have concluded that Judge Carswell clearly does not have these qualities.

They state:

We are all united in our conviction of the importance of the Supreme Court as an American institution and are similarly united in our opposition to the confirmation of Judge Carswell. All nominations to the Court are important; the filling of the present vacancy is of particular significance. There is widespread lack of confidence in many of our institutions, including the courts. It is therefore imperative that the nominee possess the qualities of judgment and intellect necessary to discharging with distinction the exacting and vital functions of the nation's highest court.

Unfortunately, Judge Carswell is not equal to these responsibilities. The record shows him to be of mediocre ability. His performance on the lower courts—and as United States attorney—reflects the absence of the qualities which, we believe, all Supreme Court nominees should possess.

There has never been a time when it was more important to have a nominee with the recognized capacity, character, and professional accomplishments who could immediately contribute to the Court's work and its place in the life of our country. Confirmation of Judge Carswell would be a disservice to the Court and the nation. We urge that his nomination be rejected.

I ask unanimous consent to print their letter in the RECORD at this point.

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

MARCH 31, 1970.

DEAR SENATOR: We are all former law clerks to Supreme Court Justices, having served for Justices starting with Justice Holmes and Brandeis. Our views on the basic issues before the country vary widely. We are of various political persuasions. Some of us are active in political affairs, some are not.

But we are all united in our conviction of the importance of the Supreme Court as an American institution and are similarly united in our opposition to the confirmation of Judge Carswell. All nominations to the Court are important; the filling of the present vacancy is of particular significance. There is widespread lack of confidence in many of our institutions, including the courts. It is therefore imperative that the nominee possess the qualities of judgment and intellect necessary to discharging with distinction the exacting and vital functions of the nation's highest court.

Unfortunately, Judge Carswell is not equal to these responsibilities. The records shows him to be of mediocre ability. His performance on the lower courts—and as United States attorney—reflects the absence of the qualities which, we believe, all Supreme Court nominees should possess.

There has never been a time when it was more important to have a nominee with the recognized capacity, character, and professional accomplishment who could immediately contribute to the Court's work and its place in the life of our country. Confirmation of Judge Carswell would be a disservice to the Court and the nation. We urge that his nomination be rejected.

Dean Acheson, Bruce Ackerman, James N. Adler, Lee A. Albert, Francis H. Allen, William H. Allen, Margaret Altschuler, Richard S. Arnold, Jr., Mac Asbill, Jr., Joseph Barbash, Stephen R. Barnett, Paul M. Bator, Scott H. Bice, Ronald L. Blanc, Bennett Boskey, Paul

Brest, Stephen G. Breyer, Tyrone Brown, E. Edward Bruce, Julian Burke, Donald M. Cahen, Guido Calabresi, James S. Campbell, Abram J. Chayes, Jerome R. Cohen, Louis R. Cohen.

William Cohen, Alan Y. Cole, Robert Cole, William T. Coleman, Jr., Vern Countryman, Roger Crampton, David P. Currie, Kenneth W. Dam, Walter Estes Dellinger, Jan G. Deutsch, Paul M. Dodyk, J. William Doolittle, Norman Dorsen, John W. Douglas, Earl C. Dudley, Jr., Steven B. Duke, Allison Dunham, James Edwards Philip Elman, John Hart Ely, Jerome B. Falk, Jr., Floyd Feeney, David Feller, David Filvaroff, William T. Finley, Jr., H. Bolton Finn, III, Peter M. Fischbein.

Adrian Fisher, Raymond C. Fisher, Fred Fishman, Dennis M. Flannery, Martin J. Flynn, Richard J. Flynn, Laurence S. Fordham, Marc Franklin, John D. French, Charles Fried, Stephen J. Friedman, Walter Gellhorn, David Ginsberg, Robert A. Girard, Stephen M. Goodman, Robert Gorman, Kent Greenawalt, Ronald J. Greene, Francis M. Gregory, Jr., Eugene Gressman, C. B. Grey, John Griffiths, Bruce Griswold.

Isaac N. Groner, Harvey M. Grossman, Gerald Gunther, James T. Hale, Robert W. Hamilton, Milton Handler, Carl Hawking, Irving J. Helman, Louis Henkin, Ira M. Heyman, Michael Heyman, Philip B. Heymann, Richard Hiegel, Donald Hiss, Robert Hoerner, C. Stephen Howard, Manley O. Hudson, Jr., Louis L. Jaffe, Nicholas Johnson, Philip Johnson, William K. Jones, Andrew L. Kaufman, Phillip B. Kurland, Robert T. Lasky.

Leonard M. Leiman, Marx Leva, Gerry Levenberg, Daniel P. Levitt, Jerome B. Libin, Peter Van N. Lockwood, Roderick M. Hills, Louis Lusky, Patrick F. McCarten, Nicholas J. McGrath, Jr., Ellis H. McKay, John K. McNutly, Lee B. McTurnan, Malachy Mahon, J. Keith Mann, Bayless Manning, Harry K. Mansfield, James M. Marsh, William B. Matteson, Daniel K. Mayers, Lewis B. Merrifield III, Frank I. Michelman, Abner J. Mikva.

Charles A. Miller, Alan J. Moscov, Phil C. Neal, C. Roger Nelson, Charles R. Nesson, John D. Niles, Matthew Nimetz, John Nolan, William A. Norris, Alan R. Novak, Dallin H. Oaks, Louis F. Oberdorfer, Joseph Onek, Alan K. Palmer, W. Cary Parker, Michael E. Patterson, John H. Pickering, Louis H. Pollak, Earl E. Pollock, S. Paul Posner, Richard A. Posner, Joseph H. Price, Monroe E. Price, Robert L. Randall, Joseph L. Rauh, Jr.

Cecil Ray, Jr., Charles D. Reed, Charles A. Reich, Curtis Reitz, William A. Reppy, Jr., Charles E. Rickershauser, Jr., William D. Rogers, H. David Rosenbloom, Albert J. Rosenthal, Stuart Philip Ross, Ernest Rubenstein, Neal P. Rutledge, Albert A. Sacks, Henry P. Sailer, Terrance Sandalow, Frank E. A. Sander, George L. Saunders, Norbert A. Schlei, Benno C. Schmidt, Jr., Carl W. Schneider, Roy A. Schotland.

Murray L. Schwartz, David I. Shapiro, Richard E. Sherwood, Harry L. Shniderman, Stephen N. Shulman, Larry J. Simon, Michael Smith, Abaham D. Sofaer, John B. Spitzer, Henry J. Steiner, Henry J. Steinman, Jr., Samuel A. Stern, Richard B. Stewart, Preble Stolz, Stephen D. Sussman, Peter R. Taft, Stanley L. Temko, Stephen M. Tennis, Stuart W. Thayer, Donald T. Trautman, Lawrence Tribe.

Howard J. Trienens, Max O. Truitt, Jr., Donald F. Turner, Steven M. Umin, John W. Vardaman, Robert B. Von Mehren, James Vorenberg, Robert W. Wales, Robert Weinberg, Emmanuel G. Weiss, Harry H. Wellington, Howard C. Westwood, Charles H. Wilson, Jr., Payson Wolff, Kenneth Ziffren, Edwin M. Zimmerman.

Mr. TYDINGS. I also have received statements from the Philadelphia Bar Association and the Bar Association of San Francisco declaring opposition to the nomination of Judge Carswell.

I ask unanimous consent to insert these statements in the RECORD at this point.

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

PHILADELPHIA BAR ASSOCIATION,
Philadelphia, Pa.

RESOLUTION

Whereas, there is no more compelling occasion that calls for the public expression of informed opinion by the Organized Bar than the occasion of an appointment of a Justice of the Supreme Court of the United States;

Whereas, the testimony and statements of leading legal scholars and lawyers raise serious questions as to Judge Carswell's legal ability and judicial stature to serve upon the highest court of our land; and

Whereas, the evidence raises serious questions as to Judge Carswell's sensitivity to human and individual rights;

Now Therefore, Be it Resolved that the Board of Governors of the Philadelphia Bar Association hereby urges the Senate of the United States to refuse its consent to the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Adopted the 23rd day of March, 1970.

REPORT OF THE SPECIAL COMMITTEE ON THE QUALIFICATIONS OF JUDGE CARSWELL TO SERVE ON THE SUPREME COURT OF THE UNITED STATES

There is no office which should be of more concern to the Organized Bar than the office of Justice of the Supreme Court of the United States. It should be a compelling obligation of the Organized Bar to make its views known publicly on the qualifications of a nominee for that office.

The Board of Governors established this Special Committee to review the available evidence on the proposed nominee for the Supreme Court, Circuit Judge G. Harrold Carswell, and to make a report to this Board.

The Special Committee has reviewed the transcript of the hearings before the Judiciary Committee of the United States Senate, the Report of the Judiciary Committee, the analysis of the Ripon Society, and the Statement of the Lawyers' Committee, which was prepared by leading members of the New York Bar.

On the basis of this review, we unanimously recommend that the Board of Governors of the Philadelphia Bar Association declare its opposition to the confirmation of Judge Carswell as a Justice of the United States Supreme Court and that it adopt the attached Resolution.

Respectfully submitted.

ABRAHAM J. BREM LEVY,
Chairman.
WILLIAM T. COLEMAN, Jr.,
ROBERT M. LANDIS,
DANIEL MUNGALL, Jr.

SAN FRANCISCO, CALIF.,
March 21, 1970.

Hon. JOSEPH D. TYDINGS,
Washington, D.C.:

The following resolution was adopted by the board of directors of the Bar Association of San Francisco Friday, March 20, 1970:

"Whereas the Bar Association of San Francisco has a policy of recommending and supporting for judicial office those judges and members of the bar who by their character, temperament and professional aptitude and experience have demonstrated their special qualifications for judicial office and opposing the selection for judicial office of those persons who do not possess these qualifications; and

"Whereas the members of this association as lawyers are particularly concerned with the status of the Supreme Court of the United States as an institution and as a symbol of justice particularly in this day of growing skepticism about the ability of the judiciary to deal with current crisis; and

"Whereas the directors of this association recognize the right of the President of the United States to appoint to the Supreme Court of the United States persons of competence who reflect his judicial and political philosophy but believe that standards of professional aptitude and experience should be maintained on that Court as well as all others; and

"Whereas the directors of this association have considered the qualifications of G. Harrold Carswell as a lawyer and judge;

"Now, therefore, be it resolved that the directors of the Bar Association of San Francisco recommend that the nomination of G. Harrold Carswell as an Associate Justice of the Supreme Court of the United States be withdrawn or disapproved on the basis of his lack of qualifications to sit on that Court."

We commend this to your serious consideration.

CHARLES P. SCULLY,
President.

Mr. TYDINGS. Justice Goldberg's statement on top of the refusal of Judges Wisdom, Brown, Tuttle, Goldberg, and others who sit with Judge Carswell on the fifth circuit, to affirmatively support Judge Carswell strongly suggest that Judge Carswell is not deserving of Senate confirmation.

Despite his failure to follow the opinions of the higher courts in a number of areas of the law, Judge Carswell has been referred to by his supporters as a strict constructionist or a judicial conservative. Such terms, properly applicable to men with highly developed judicial philosophies such as Mr. Justice Frankfurter and Mr. Justice John Harlan have no relevance to a man such as Judge Carswell who at best is mediocre and, more accurately, has allowed his biases to permeate his courtroom.

CONCLUSION

I must conclude that Judge Carswell has displayed neither a proper judicial temperament nor a professional competency equal to the task set for him. I oppose the confirmation.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

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

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

ORDER FOR RECOGNITION OF SENATOR GRIFFIN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that after the disposition of the reading of the Journal on tomorrow, the able Senator from Michigan (Mr. GRIFFIN) be recognized for not to exceed 30 minutes.

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

ORDER FOR RECOGNITION OF SENATOR PROXMIRE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the Senator from Michigan (Mr. GRIFFIN), the Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 30 minutes.

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

ORDER FOR RECOGNITION OF SENATOR HOLLAND TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, upon the completion of the remarks of the Senator from Wisconsin (Mr. PROXMIRE), the distinguished Senator from Florida (Mr. HOLLAND) be recognized for not to exceed 30 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the completion of the special orders which have previously been entered into for tomorrow, there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

THE NOMINATION OF JUDGE G. HARROLD CARSWELL

Mr. HART. Mr. President, I know the hour is late. It approaches 9 o'clock. But in somewhat the nature of defense, I have been here for approximately 5 hours and enjoyed thoroughly the discussion. It is possible that had I prepared remarks, I would have been able, as was the Senator from California, simply to submit them for the RECORD. Unhappily, I have not prepared them.

I rise now very briefly to make an observation about the pending nomination.

We have heard discussion about who signed what incorporation papers. What did he see the night before? Did he respond fully to questions addressed to him by the Committee on the Judiciary? Could you live in Tallahassee and be able to read and still not be aware of the dominant reason or motive for the incorporation of that club? Was the FBI investigation thorough? Is the FBI on trial? All these things have relevance. Each is one of the elements that Members of the Senate should evaluate as we approach action on the nomination.

I came to the floor because I had received a letter from a Michigan citizen. Unfortunately, but understandably, the letter cannot be made a part of the record, nor can the identity of the writer. But I think the point he makes is one that is, not only central, to use a phrase from the President's letter, but of critical importance; and I raise it in his words, in part:

> Over the past fifteen years, we have been engaged in a slow, often painfully faltering, process of redressing injustices committed against our Negro population during the past three centuries. Not only is this crucial undertaking incomplete; its eventual success remains seriously in doubt.
>
> To name at this time to any high-level Federal post a man whose views on racial equality are open to question would be a grave error. To make such an appointment to the nation's highest tribunal—the very institution in which most black citizens have, plausibly, deposited maximum confidence—would bring incalculably tragic consequences.

Now, you can resolve as you want what the nominee's views on racial equality may be to you, and I can to me. But they are open to very fair debate and question, and the point of concern voiced to me by this very responsible citizen from Michigan is that no such person should be considered as a potential occupant of the Supreme Court seat.

I remind my colleagues again of the statement made by President Nixon when he was accepting his party's nomination at Miami. He said then:

> Let those who have the responsibility for enforcing our laws, and our judges who have the responsibility to interpret them, be dedicated to the great principles of civil rights.

We have before us a nominee about whose whole attitude there is fair question—the nominee who said:

> 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.

The Senator from California rose and said:

> Yes, and look what he said before the Judiciary Committee. He repudiates that.

Is it prudent or right or wise or responsible to place on the one court to which we appeal to the black American to turn for relief of injustice a man over whom will hang that kind of statement?

Is not such a man precisely opposite of what the President, as candidate Nixon, told his party's convention he would look for when he accepted his nomination; that we should look for men who are dedicated to the great principles of civil rights? "Dedicated," Mr. President.

There was a great hangup around here about the apparent conflict of interest of Judge Haynsworth.

I think we can read the RECORD during the debate over Judge Haynsworth's nomination to establish the proposition that an apparent conflict of economic interest may not have affected or colored the judgment of the nominee, but the appearance of such conflict was sufficient, in itself, to bar his approval by this body because it would undermine faith in the fairness of the Supreme Court.

Now, the apparent conflict then was economic—money. We can accept Judge Carswell's statement that he no longer believes in the principles of white supremacy, that he repudiates his statement that he will always be governed by the principles of white supremacy. But our action in the Haynsworth nomination would suggest that that apparent conflict, now, not money, but people, not portfolio but people, bars him from a seat on our highest Court—that the appearance of prejudice or insensitivity is such that the black American who loses a case should not be asked to believe as you may choose to believe, my colleagues, that Judge Carswell was not influenced by that pledge of support to the principle of white supremacy. Do we wish to put on the Court a man to whom we must say to 20 million black Americans, "Take our word for it, he really does not believe it any more."

In my book, that, in and of itself, should persuade at least a majority of this body to say, "We do not consent. We do not consent."

It is on that note that I came to the floor with that purpose, persuaded by the letter I had just received that to name at this time to any high level Federal post a man whose views on racial equality are so seriously open to question would be a grave error.

I share the opinion of my friend who wrote me that thoughtful letter and I hope that a majority of us shall.

Mr. BAYH. Mr. President, will the Senator from Michigan yield?

Mr. HART. I yield.

Mr. BAYH. The Senator from Indiana is always moved by the thoughtful and well-reasoned presentations made by my distinguished friend and colleague from Michigan.

It has been the good fortune of the Senator from Indiana to sit on the Committee on the Judiciary for 8 years and watch my friend from Michigan approach the problems that are ours, as individual Senators and as a committee.

I have never been more moved by his presentation than that made by the Senator from Michigan this evening.

As I have heard him discuss this previously on the floor, it goes back to the old legal adage that justice must have the appearance of justice. To those of us concerned about the trying times in which we live and who have, as the Senator from Indiana has, I have talked to large groups of people in terms of working in the system, making it respond, making it better, making it possible for all our dreams to come true, to bridge the gap between rhetoric and reality, promise and performance.

If my face were a different color and a Member of the U.S. Senate approached me with the reasoning that I should not resort to violence, that I should stay out of the streets, and redress my grievances through the system, I feel certain that I would be tempted to say, "What do you mean, Senator? We have just put a man at the top of the system who spoke very plainly about what he thinks the possibility is of my getting equal justice or treatment as a citizen of this country."

I salute the Senator from Michigan and ask to have myself associated with everything he said.

Mr. HART. I thank the Senator from Indiana very much. I am delighted to have had the opportunity to be on the floor when he was making his speech. I think he wrapped up pretty well the reaction of most of us to the President's letter.

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

Mr. HART. I yield.

Mr. DOLE. I want to say briefly that I am certain the Senator from Michigan does not mean to leave the impression

that there cannot be redemption in our lifetime. I am certain the Senator does not mean that those who may do something wrong may not be redeemed later on, that those who say something one day may not find redemption in finding themselves wrong, or during the course of some kind of conduct that they will not later be able to redeem themselves. That is the impression I have, but I am certain that the Senator from Michigan realizes and recognizes that there is that very real possibility. It happens. It happens many times. It happened to Hugo Black. According to the Senator from Michigan, he would have opposed that nomination based on the statement he made this evening.

Mr. HART. Mr. President, the Senator from Michigan hopes prayerfully that redemption is possible, in a very personal sense. I hope my view of that concept never weakens, because I will have to appeal to it many a time.

But I am also troubled in connection with a flat, hard-nosed white supremacy statement. Again, I must go back to a basic observation: What we were is part of what we are, and what we are tonight is part of what we will be.

If I were a black American, would I ever be able to convince myself that that little part of G. Harrold Carswell, in his pledge always to support white supremacy, might not be a part of him tonight and tomorrow when I am in front of him? And in that sense, while you and I can believe, and in my remarks I indicated and suggested that we operate on the assumption that he has changed, is it prudent to put on the Supreme Court a man who, having made that statement, we must now say of him to 20 million black Americans, "Oh, he did not mean it," or "Honest, he has changed. Have faith in the system."

So far as Hugo Black is concerned, there was never a hard-nose white supremacy statement. It was an early membership in the Klan and there was a record as a municipal judge, I am told, in Alabama, where Hugo Black, contrary to the mood of the community during those years, aggressively assisted minority groups in the city in which he was a municipal judge, in search of equal treatment.

Mr. DOLE. Well, the only point I make is that there is that hope——

Mr. HART. There is.

Mr. DOLE. I would hope that we would judge one another and judge Harrold Carswell, if he is confirmed, on what he does on the Bench and not on what may have happened 30 years ago.

Mr. HART. How many years ago?

Mr. DOLE. Twenty-two years ago, I believe.

Mr. HART. Twenty-two years ago, right. And in that interval, what was his record. This is another one of the problems for those who advocate the nominee but who are eager, as all of us are, that the President gets what he told the Miami Convention we should have, a man dedicated to the great principles of civil rights.

In those intervening 22 years, as the able Senator from Indiana so graphically portrayed in his remarks, there is a very poor track record on which to find rehabilitation—a very poor track record. When I rose some 2 weeks ago and asked my colleagues who are advocating the confirmation of this nominee, "Where is the record of his dedication to the great principles of civil rights in his record?" I got no answer. I am still waiting for an answer.

I can repeat the question. I asked in the words of President Nixon at the Miami Convention, where is this record of dedication. I was told that he was nice to a mess boy and was understanding of the problems of a group on the ship. And there was one other thing.

Mr. BAYH. There was the airport case to which the Senator from Indiana referred.

Mr. HART. And there was the black lawyer who said that as far as he was concerned, his treatment has always been decent.

Mr. DOLE. Mr. President, I might suggest that tomorrow morning at 10 o'clock the senior Senator from Michigan might listen to the junior Senator from Michigan discuss this very question.

Mr. HART. Mr. President, the reason I spoke at this late hour was that there is a possibility that I would not be able to be present tomorrow morning. I will do my best to be here. However, it involves an early appointment and I doubt that I can.

I would suggest—indeed, I have the deep conviction—that if the President of the United States had known that this nominee had nailed himself in concrete with this kind of pledge, he would never have sent his name here.

Why blink at it? Why kid ourselves? Does anyone want to stand up here and say, "You bet. Given that knowledge, my President would have sent in the name."

I doubt it very much. I hope very much that we can rescue him and the country from the consequences.

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

Mr. HART. I yield.

Mr. BAYH. I think the record will show that I started in the hearings searching for this chain of events following the terrible racist statement of 1948, searching for the chain of events which would lead me to believe that there had been a reversal, a reincarnation, or new spirit.

I might suggest to the Senator from Michigan, inasmuch as there has not been one statement on the record denying the authorship or, indeed, denying that the statement accurately expressed its author's views, that perhaps the strong denial by the nominee is just a bit self-serving when it comes 22 years after the original statement and then only after the nominee's name had been sent to the Senate to sit on the highest court of the land.

Mr. HART. Well, I know that has been suggested, and I think it can properly be suggested.

In my own mind, I tend to assign less reason to that particular circumstance than the chain of events which the Senator from Indiana has described.

We then have a series of judicial opinions and the unusually substantial number of reversals in the area of civil rights which the Senator from Indiana has identified, together with some of the other activities that the Senator from Indiana and others have described in the separate views of the report.

This later evidence confirms the basic feeling I have that the country would be best served if there were not present on the Supreme Court of the United States in the seventies anyone who had pledged himself always to be a believer in the principle of white supremacy.

I think it is just wrong in principle to face the people of this country with that kind of hangup as a man goes on the Court.

I think we all know that there are men in the Federal judicial system and outside, in the South as well as elsewhere, who have some mark of excellence about them, whether in their performance as judges, their skill in writing, their work as law school faculty members or deans, superior performance or—some manner of distinction which this nominee, conspicuously lacks acceptance as outstanding members of the bar. And there is also in this land, happily, a large number of Americans who do not have to explain, who do not have to ask to be believed that they no longer support the principle of white supremacy which they once pledged they always would.

If we have not learned anything in the last few years to caution us against putting that kind of problem on the Supreme Court, we have not learned much.

Mr. President, I yield the floor.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is Calendar No. 745, Senate Resolution 211, a resolution seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

ADJOURNMENT

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 9 o'clock and 16 minutes p.m.) the Senate adjourned until tomorrow, Friday, April 3, 1970, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 2, 1970:

DISTRICT OF COLUMBIA COUNCIL

The following-named persons to be members of the District of Columbia Council for terms expiring February 1, 1973:

Stanley J. Anderson, of the District of Columbia.

Henry S. Robinson, Jr., of the District of Columbia.

Carlton W. Veazey, of the District of Columbia.